

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-146

Complainant: No. 1395110203A

Judge: No. 1395110203B

ORDER

The complainant alleged that a superior court judge was mean, vicious, and biased, and she issued improper rulings. After analyzing the issues and viewing the recordings of the trial, the commission found no ethical misconduct on the part of the judge. The recordings revealed that the judge did not demonstrate bias or behave improperly. The complainant's primary concern involves the judge's rulings; however, the commission is not a court and cannot review or change legal decisions. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: July 28, 2010.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on July 28, 2010.

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

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 State of Arizona Commission on Judicial Conduct
 1501 W. Washington Street, Suite 229
 Phoenix, Arizona 85007

COMPLAINT AGAINST A JUDGE

Your name: _____ **Judge's name:** _____ **Date:** June 3, 2010.

Instructions: Use this form or plain paper of the same size to file a complaint. Attach additional pages, as needed. Please describe in your own words what the judge said or did that you believe constitutes judicial misconduct. To help us understand your concern, be specific and list all of the names, dates, times and places where the conduct occurred. Include only copies of original documents or court recordings that are relevant to your allegations. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

(Attach additional sheets as needed)

Complaint to the Commission on Judicial Conduct against Judge

I divorced my ex-husband, John, after 22 years of marriage because he was abusive on every level. For many reasons, not the least of which was the safety of my children and myself, this was a private nightmare that never made its way into an official record, police report, order of protection or the divorce papers themselves, something I am most assuredly remiss about in hindsight.

The moment the divorce was finalized on July 25, 2008, John stopped "playing nice." The children and I have not had a moment's peace, culminating in a frivolous petition John filed in June of 2009 in which he claimed, among other things, that:

- I was in contempt of parenting time (I was not)
- I did not report income from my jewelry business (I report every cent I earn)
- I thwarted 125 attempts at visitation; a few paragraphs later he claimed I thwarted 13 attempts at visitation (I thwarted none and encouraged visitation)
- John also requested that child support go down to \$0 and he respectfully requested that I be incarcerated.
 - That John is a Supervisory Special Agent with the FBI, carries a gun and has connections in high places make his threats all the more insidious and the possibility of them actually coming to fruition all the more real.

Certain the system would work for me and the children as all tenets in the family court structure are driven by what is in the best interests of the children, I was confident as numerous seasoned professionals advised me that Judges hate when ex-spouses use the family court system as a venue to continue to abuse and harass their former partners. This was clearly the underlying motive in John's petition, and Judge appeared to grasp that immediately, issuing the following rulings at the preliminary hearing held on August 11, 2009:

- Kept parenting time exactly as it was, with agreement from John and OC;
- Made no changes to child support;
- Granted my request that the children be interviewed as to their wishes for parenting time, which John opposed in writing to the court. The children are both older: My son, _____ is 17 and my daughter, _____ is 12, and Judge _____ agreed they were old enough to be heard.
 - However, she asked if we would agree to a Limited Family Assessment to achieve this.
- Judge _____ herself stated that it's not like you can throw a 16-year-old over your shoulder and force him to have parenting time;

Yet at the Evidentiary Hearing finally held on May 4, 2010, Judge _____ in a stunning reversal of position:

- Did an abrupt about-face and laid blame squarely on me for not forcing to see his dad, penalizing me financially for this as well;
- Assigned no responsibility whatsoever to John, who was supposed to have 1-2 overnights with _____ per month despite the fact that during most months since the August 2009 hearing, he exercised none or only one overnight – the sole reason being he did not extend invitations to _____. Again, the blame was laid entirely on my shoulders.

I believe Judge breached the Arizona Code of Judicial Conduct:

- Judge was not impartial. She was biased in favor of both the court evaluator assigned to our case, , and John.
- Judge refused to hear my concerns regarding the evaluator and interrupted me during a January 13, 2010 conference call before I even had a chance to get the words out of my mouth that my attorney and I had consulted with a prominent expert the day before who confirmed we had very legitimate reasons to question Julie's motives and approach. You will find his identifying information in the supporting exhibits, however, if at all possible I would like to respect his desire to remain anonymous and will refer to him as Dr. X.
- When she interrupted me, Judge said Julie was "vetted". Yet, Julie, who has only been licensed since January of 2009 at just a master's level, set us up so that we were forced to bring in other irrelevant issues that she then claimed she could not ethically ignore. Julie held an initial 90 minute conference call with both parents and attorneys and allowed John and opposing counsel to spend 40 minutes hurling false accusations at me for which I had no choice but to respond. She then did home visits at each parent's house at which time she spent 90 minutes interviewing each parent, asking direct questions about domestic violence and alienation; again, we had no choice but to respond.
- In contrast, Dr. X stated Julie's work should have consisted of interviews with the children and perhaps their therapists; and nothing beyond. He said that Julie's work should have taken 4-5 hours to complete and resulted in a 2-3 page report. He also said she could have easily produced a report for the first hearing and she failed in refusing to complete the LFA as ordered within 14 days prior to the hearing.
- For the sole reason of Julie performing this "necessary" work, Judge allowed the trial to be delayed twice for a total of 6 months. Dr. X confirmed Julie was doing the work of a full-on CCE back in November of 2009, at a time when only just the LFA had been ordered; additionally, he used the word "churning" to describe the thousands upon thousands of dollars for unnecessary work she

performed. Dr. X added that we were the third party to have consulted with him regarding a case Julie completely mishandled and that he felt she was not capable of doing a CCE. He also said she did not have the prerequisite training to administer the MMPI.

- When my attorney, _____ expressed grave concerns about Julie's ability to be objective, based on Julie's January 5, 2009 (sic) correspondence to Judge _____ ("Mother objects to a CCE and refuses to cooperate"), Judge _____ said that Julie would be objective. Although Judge _____ was fully aware of my circumstances: my extremely limited income, my disability, and the fact that I am a student, she did not hesitate to allow Julie to continue this "essential" work. My attorney explained to Judge _____ during the preliminary hearing on August 11, 2009, and reiterated at length during the January 13 conference call that finances are a huge concern for me yet Judge _____ did nothing to stop the carnage. I was forced to rely on my only credit card, which I was already using to pay for my attorney. This card has now reached its maximum limit. Julie was also well aware of my limited means and paid them no heed.
- When we finally received Julie's report, which was not submitted until March 30, 2010, it was very unfavorable toward me as anticipated, however, everything negative Julie wrote about me was not substantiated by any supporting data. Yet Judge _____ followed Julie's report right on down the line in its scathing characteristics and accusations directed at me and in its recommendations.
- My attorney and I submitted a written objection to Julie's report, along with supporting exhibits. During the April 20 conference call, Judge _____ stated that she did not read the exhibits and was leaving them at the desk for my attorney to pick up.
- My due process rights were denied by Judge _____ as Julie's records were essential for the preparation of my case, yet Julie refused to release them, and Judge _____ did nothing. Instead of releasing the non-confidential file, and allowing me access to the data with which to refute her report, Julie forced me to subpoena the records (done on March 4, 2010) and then waited until the last possible moment to submit an objection letter to Judge _____ Julie claimed the

records contained sensitive records for both parties which was untrue; she was trying to protect John. The details are outlined in our objection to Julie's March 19, 2010 letter to Judge

- Astonishingly, Judge took no immediate action, went along with whatever Julie requested and instead scheduled a conference call for April 20, a mere two weeks before the trial date.
- During the April 20 conference call, Judge disregarded the fact that Julie had gone on a heavily weighted pursuit of *my* records, *both* medical and psychological, and stated there was a disparity in *my* favor because John's psychologist submitted John's records whereas my current and former psychologists instead asked for phone consultations as their records were written almost in code; they wanted to ensure that Julie received all of the information she needed and had lengthy conversations with her; all of which were part of the file. This all in spite of the fact that John had lied about his own psychological issues and had been trying throughout this process with Julie and in his deposition to state / was mentally ill and volatile. Judge allowed Julie to redact information from John's file – and to charge me a share for the 3+ hours Julie charged for this process.
- As this battle was being waged, Julie refused to release any of the non-disputed records in the file, in spite of repeated requests, until after the April 20 telephone conference with the Judge. These records included, but were not limited to, my MMPI results, as I wanted a second opinion and which I had requested on February 12. The Judge did not intervene on this issue.
- The records were finally released just one week prior to trial and contained information not mentioned in her report:
 - Notes from Julie's interviews with the children stating they had both witnessed John being physically abusive to me.
 - Notes from Julie's conference call with our former marriage counselor, Dr. who stated in no uncertain terms that

John alone had perpetuated domestic violence against me (see Julie notes of conversations with Dr.): “Father was physically and emotionally abusive to mother, hit, slap and grab (sic) her hair when they were married...F reported loss of temper problems with his wife has gotten violent with her in the past name calling...F confirmed that he had been violent with her...Father perpetrated towards Mother. Unaware of any physical violence by Mother towards Father.”

- From therapist, records, “M is strongest support....Ct is sensitive to M's issues having witnessed physical violence by F against her; so there is also animosity toward F by client.” And from Dr. notes of session with “Dad lies all the time....No ownership of lies...All levels of abuse: emotional, physical verbal – bad on all levels; tackled me and choked me; hit my mom; held mom down wouldn't let her talk.”
- John's psychological records which repeatedly, over the course of years of treatment, revealed he was suicidal, anxious, agitated and had, in fact, on at least one occasion actually turned his gun over to the FBI's EAP counselor as he was afraid of what he might do; stated he felt like “eating his gun,” and on numerous occasions had drank alcohol and simultaneously taken his prescriptions for depression and sleep aids.

Judge failed to recuse herself after reading an e-mail submitted by OC in which I described her in a negative light

- Dumbfounded over Judge treatment of me during the January 13 and April 20 conference calls, I discovered she had been officially reprimanded for acting angrily toward a litigant and she had been spoken with privately by the Judicial Commission regarding her temper. I was scared to death of how she would treat me at trial. I sent an e-mail to the head of a local Anthem volunteer group (Anthem ACTS) seeking support in the form of volunteers

to attend my trial. I felt the more witnesses present, the less likely she would be to behave inappropriately. In the e-mail I described Judge [redacted] as extraordinarily volatile and spoke of her official reprimand. In a most unfortunate, yet well-meaning, attempt to assist me, Mr. [redacted] without first seeking my permission, forwarded the e-mail to a “friendly lawyer,” asking advice on how his group could help me. That lawyer happened to be none other than

John’s attorney of record. Disregarding an immediate request to ignore the e-mail due to the conflict of interest, opposing counsel instead submitted it as an exhibit. Overruling objections as to relevance, Judge [redacted] allowed the e-mail into evidence and read it. After reading the email, the Judge addressed the parties. She appeared at first to be very gracious about the e-mail, however, as the day progressed she became meaner and more vicious toward me.

During the hearing held on May 4, 2010, while opposing counsel was cross-examining me in a very condescending manner, the Judge joined in.

- OC handed me a list of abuse Julie [redacted] had requested I prepare and submit when she visited with me at my home in November 2009. OC asked, didn’t you say John threatened to kill you on numerous occasions? I don’t see it listed here. I took the list, explaining that I had whittled it down from 31 pages to 13. OC scoffed and suggested one wouldn’t remove something as significant and serious as death threats from the list. The Judge chimed in to say she was wondering the same thing; she couldn’t find any reference to it, either. This was a clear accusation from OC and the Judge that I was lying. The Judge said it would have been listed on the first 4 pages according to how I had organized my list. As I calmly perused the document it was reiterated by the Judge that if it was in this document it would be contained in pages 1-4 and that is where I should limit my review. I said I hadn’t looked at the document in a while – I had submitted it to Julie back in November. Then the snide remark from OC – we don’t have all day. I found it. It was on page 9, not pages 1 through 4. You see, pages 1-4 were chronological listings of specific single events of abuse while on page 7 was a heading titled, “Continuous examples of John’s abusive behavior,”

followed by pages of descriptions of acts of violence perpetrated by John repeatedly throughout the course of our marriage, which was why the death threats were listed there.

All of the following actions by Judge were a direct result of her lack of impartiality:

- The Judge cross-examined me very vigorously but did not do the same to John.
- The Judge stated in her Minute Entry that I chose not to have testify. That statement is false. Judge refused to allow me to have an expert testify to refute Julie report unless Julie was present to testify, penalizing me because I did not have the money to pay Julie to testify (her prebill was \$1200; she upped it a day later to over \$1700).
 - I neither needed or wanted Julie present; I already had her report.
 - I think it is important to note that it was a very difficult process to find an expert willing to testify; my initial expert refused to testify against his peers. the Executive Director of an advocacy group, Defenders of Children, would have provided expert testimony at no charge. Defenders of Children comes on board only after you are already in the court system, exhausted every other option within the system who was supposed to advocate for you and failed you at every level, and then only after poring over the evidence to determine if you have been denied your rights and there is ongoing abuse. They took my case, but I was unable to use them due to the Judge's ruling regarding Julie testimony.
- Abuse of authority in awarding increased parenting time to John:
 - Even though there was substantial evidence of domestic violence directly on my son,
 - Even though there was substantial evidence of domestic violence against me and viewed by both children.
 - Even though the children's wishes were to leave parenting time as it was
- The Judge assessed me fees for the co-parenting with boundaries class, TI and PC even though I am destitute and John makes over \$150,000 per year

- Abuse of authority by the Court in recalculating child support:
 - The Judge approved John's request that his historically earned, mandatory, not optional, overtime be removed from the calculation of his gross monthly income (he has received 25% automatic overtime in every paycheck since he began working for the FBI in 1995) because she said she believed his testimony that he was going to stop working the overtime in order to increase his parenting time. Without hesitation I would bet my life that 6 months from now, if John were required to submit copies of every pay stub between now and then, each would contain the AUO – the FBI's own acronym for Automatic Overtime listed separately on each paycheck.
 - Did not factor in that _____ : refused to see his father – as a stated penalty to me.
- Abuse of discretion in not allowing in certain relevant exhibits of mine even though she let in everything of John's despite their lack of relevance and the fact that many were clearly altered. He cut off his inciting, provocative e-mails and submitted only my angry, sarcastic responses (and I take full responsibility for reacting badly).
- Abruptly interrupted my attorney as she was walking me through exhibits substantiating John's numerous attempts to have me arrested, refusing to allow her to continue.

Do you have any idea of the emotional toll and the level of stress my children and I have been forced to endure as a direct result of Judge _____ actions? Not to mention the seemingly endless inability to achieve closure caused by the unnecessary delays of the trial? Or the countless hours I have had to devote to this case? Or the fact that I have exhausted all of my monetary resources and more?

And it was all for nothing.

Imagine what it feels like to have someone, an ex-spouse no less, actively trying to destroy you personally and financially. And that you, the victim, are viciously characterized by the Judge as the abuser, and the abuser is characterized as the victim. Do you have any idea how humbling it is to read a Judge's orders that force the victim of domestic violence on every level imaginable to be deferential to the abuser?

As a victim who should have been afforded a modicum of protection when being forced into the frontlines of the family court venue, I have to ask, What on earth is this loaded gun doing in a family court setting overseeing sensitive domestic violence cases? I cannot imagine a worse choice for a jurist on the family court bench.

There is no oversight in the family court system and I urge you to make similar changes as those currently being considered in the probate courts. It is a clear conflict of interest to have mental health professionals on your court rosters (with no type of background check or verification of their self-reported qualifications), who do not hesitate to abuse their positions of trust and authority to substantially profit financially off of victims. And then, for no other reason than legitimate questions and concerns are raised, to turn on you like Nurse Ratched. To have Judges who not only do nothing to protect the most vulnerable of litigants from these predators, and conversely, show favoritism toward the inept, ethically-challenged evaluator is astounding beyond belief and inexcusable. It is an egregious abuse of power and authority on both fronts.

I would welcome the opportunity to sit on an oversight board as one who has no financial interest to be gained and one has been victimized by the current system in order to ensure impartiality and to address grievances that arise during the court/evaluation process itself.

I am now destitute. I should have been awarded approximately \$500 more per month in child support plus all of my attorneys fees and court costs and instead I have no money to even try to appeal this miscarriage of justice. And now I face with great anxiety and dreadful anticipation that Judge might actually assess me some or all of John's

attorneys fees and court costs? (The applications and affidavits are due by June 4, 2010.)

Under the Code of Judicial Conduct I believe the Judge has breached at minimum, the following:

- From Scope: The black letter of the rules is binding and enforceable
- From Preamble: Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity and competence.
- Canon 2, Rule 2.2 A judge shall uphold and apply the law, and shall perform all duties of judicial office **fairly and impartially**. (Emphasis added.)
- Canon 2, Rule 2.5, Comment 4. In disposing of matters promptly and efficiently, a judge **must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay**. A judge should monitor and supervise cases in ways that **reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs**. (Emphasis added.)
- Canon 2, Rule 2.6. Ensuring the Right to be Heard. 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.
- Canon 2, Rule 2.8, B. A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers