

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-172

Complainant:	Elizabeth Qualkenbush	No. 1397610163A
Judge:	Julie Roth	No. 1397610163B

ORDER

The complainant alleged a superior court judge failed to provide notice of a hearing and then held the hearing in her absence. After analyzing the allegations and the judge's response, the commission found no evidence of ethical misconduct on the part of the judge. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: October 13, 2010.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on October 13, 2010.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2010-172

COMPLAINT AGAINST A JUDGE

Your name: _____ Judge's name: _____ Date: 7-1-2010

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.

April 20, 2006 Judge _____ issued a No Contact Order between my ex-husband, Richard, and my daughter, Jessica.

It specifically states:

Page 2 Para 17 "unrestricted access would seriously endanger the child."

Page 2 Para 18 "IT IS ORDERED there shall be no access with the child, including written or by phone."

Page 2 Para 20 "The Court directs Mr. _____ to find a program that deals with initial assessment for an adult offender's program."

Page 2 Para 21 "The Court directs Mr. Engan to approve the program as to form; a signed Court order will be necessary."

Page 3 Para 1 "The Court advises the Mr. _____ and the parties that will be a step process: 1) Initial Assessment; if it is in Jessica's best interest; then...."

Page 3 Para 2 "Discussion ensues regarding setting a Status Hearing at the end of summer; the Court will notify counsel."

1. The Status Hearing was never set. Counsel was never notified by the Court.
2. Richard never went to the Court ordered program that deals with initial assessment for an adult offender's program.

Respondent, Richard, hired a new attorney, Steven C Moss. I am my daughter's only representation in court, her attorney, from June 30, 2004 to present. I had an attorney, Eric Engan, who clearly stated he never worked for my daughter when that is what I hired him to do; according to him two years into our case, he was simply my divorce attorney.

We have been involved with the re-unification plan since July 2008. I have done everything Judge has asked of me in the past six years, while Richard continues to defy direct Court orders, and Judge conveniently changes her orders to meet his interests not 'the best interest for the child'.

It is part of the digitally recorded Status Hearing July 2008, over two years later, the Judge stating, "Whether or not this actually happened is no longer an issue, the only issue now is if family reunification is possible between father and daughter."

3. Judge does not seem interested in serving justice; it is clear that 'the best interests of the child' are no longer her goal in this case. Does she think an abused child just forgets what happened to them for over three years of their short life span just a mere two years later? Is Judge unaware of the lifetime of suffering she is subjecting Jessica too?

Respondent, Richard, testified July 2008 that he would not pursue visitations with Jessica if it was at all detrimental to her health.

4. Judge has not enforced this in her Court Room either.

December 2008 Jessica started having seizures for the first time in her life. Every single hospital release states the same basic thing: Pseudo-seizures; take her to counseling. The seizures had been ongoing until a week after her mental health providers put Jessica, 11 years old, on 200mg of Wellbutrin daily, February 12, 2010, original prescription copy enclosed.

April 5, 2010 I receive a phone call at work, I am in the process of opening a retail store, open to the public at 9 am, working alone, and the phone rings at 8:40 am, it is Judge office, and I am now in Court. I tried to explain I was not ready as I had no notice of the Hearing and I was at work. Weeks later I am told by Legal Aid in California, where Jessica and I live, that it was an illegal Court Hearing due to no notice given to me.

I then followed Judge instructions given to me in a Court order from the April 5, 2010 illegal Court proceedings. Acting as Attorney for Jessica, I researched Federal HIPPA Laws and discovered Mr. Moss' HIPPA Release was not what the HIPPA Regulations stated. In fact, it contradicted the Federal Law requesting far more information than the Law states per Court Orders and Subpoenas listed in "The HIPPA Privacy Rule for Consumers" copy attached to MOTION TO QUASH PARENTING TIME; RE: FAMILY RE-INTEGRATION PLAN; RESPONSE TO MOTION TO CONTINUE; RESPONSE TO MOTION FOR SANCTIONS; RESPONSE TO MOTION IN LIMINE SUBMITTED TO THE Court fax May 27, 2010 and via US Mail May 28, 2010.

All Motions are enclosed.

Judge specifically stated in her Court Order dated April 5, 2010:

Page 1 Para 6 "There must be a link between Jessica's mental health issues and the visitation reintegration plan with her Father in order for there to be a suspension of the plan. This mental health issues must be documented by her physicians."

I provided Judge [redacted] with a copy of the letter Dr. Fred Osborne MD, Jessica's primary physician, wrote April 30, 2010 in my MOTION TO QUASH PARENTING TIME; RE: FAMILY RE-INTEGRATION PLAN filed May 4, 2010.

On May 4, 2010 I requested the June 7, 2010 court date be settled via US Mail and/or telephonically being as the letter fulfilled the Court's request. I requested the Evidentiary Hearing be cancelled to free up the Court's time and prevent to hardship to both me and Jessica. The Judge denied it, but allowed me to appear telephonically during the June 7, 2010 Hearing.

Mr. Moss filed May 24, 2010 MOTION TO CONTINUE; MOTION FOR SANCTIONS; MOTION IN LIMINE; RESPONSE TO MOTION TO QUASH PARENTING TIME RE: REGARDING FAMILY RE-INTEGRATION PLAN. I filed a PETITION TO ASSIST IN MEDICAL RELEASE May 28, 2010, as soon as I found Mr. Moss was having difficulty.

I filed all my Motions via fax machine May 27, 2010. Upon telephoning the Court the next business day to set my telephonic appearance for June 7, 2010, I learned from Judge [redacted] voice message that it is inappropriate behavior to submit Court Documents via fax machine, and she does not accept them; however, Mr. Moss had done so earlier that week and she accepted his. I sent a letter of apology to Judge [redacted] for my inappropriate filings via fax. Mr. Moss works with Judge [redacted] Court on a continual basis, why would he not know fax was unacceptable? And why would Judge [redacted] accept them?

Mr. Moss has had the signed HIPPA Compliant Medical Releases for a month, April 19, 2010, and did not act on them until the May 20, 2010. Mr. Moss filed his motions May 24, 2010, knowing that the medical records were on their way to his office to arrive May 25, 2010. Mr. Moss attacked me personally, acting as Jessica's attorney of record, with scores of false accusations.

Mr. Moss' documents state they were mailed this 24th day of May 2009 to the Courthouse and May 24, 2010 to the rest of the parties listed.

Judge [redacted] acknowledged receipt and filing of all fax documents May 28, 2010.

Page 1 Para 2 IT ORDERED granting the Motion to Continue to allow time to sort out medical records issue.

5. Judge [redacted] extended the court date, from June 7 to July 7, 2010, the exact time frame Mr. Moss had the Medical Releases and chose to do nothing with them, one month, from April 19 to May 20, 2010.

Page 1 Para 3 Judge [redacted] then vacated the trial date of June 7, 2010, resetting the date to one month later.

Page 1 Para 3 the Court will delay ruling on the other Motions until the response time has expired.

6. The response time expired on June 7, 2010. Judge [redacted] was and is fully aware of the time frame of the Medical Release expiration date.

Conveniently ready to file motions but not ready to appear in court, June 7, 2010 Mr. Moss filed a MOTION TO STRIKE OR, IN THE ALTERNATIVE, MOTION TO SEAL PETITIONER'S PETITION TO ASSIST IN MEDICAL RELEASE. Mr. Moss filed Motions that I was hindering his obtaining medical records, and when I offer to assist him, he files to STRIKE or SEAL my Petition.

7. Judge never acknowledged in writing or through any other form of communication to Petitioner receiving the MOTION TO STRIKE OR, IN THE ALTERNATIVE, MOTION TO SEAL PETITIONER'S PETITION TO ASSIST IN MEDICAL RELEASE.

June 18, 2010 Judge ordered a telephonic Oral Arguments for Tuesday June 22, 2010. A copy of Order and envelope enclosed.

Page 1 Para 1 "Both parties were contacted by phone with this information."

8. Petitioner was never contacted by any means until after the Court Hearing on Oral Arguments had already taken place.

June 22, 2010 Oral Arguments takes place, without my knowledge. You will have to read this order due to the numerous mistakes in it.

Page 1 Para 2 "...It appears Petitioner did not get adequate notice because the notice was mailed just last Friday."

9. It is postmarked June 22, 2010, the same day Oral Arguments were heard.

Page 1 Para 2 "...The Court notes that the sole purpose of today's hearing was to see if the parties were prepared to go to trial on July 7, 2010."

Page 1 Para 6 "The Court recesses at 8:46 a.m."

Page 1 Para 7 "Court reconvenes at 1:24 p.m."

Page 1 Para 8 "The Court misspoke this morning...Therefore, Respondent was aware of today's hearing."

10. The Court's Secretary, Carol Pashano, stated a blatant mistruth to Judge she never spoke to me regarding June 22, 2010. She spoke to me, May 28, 2010, about the Hearing scheduled for July 7, 2010 regarding my telephonic appearance.
11. Judge went on to make decisions based solely on the word of her Court Secretary, Carol Pashano. I verified with Ms. Pashano today via telephone she has nothing in her notes showing she spoke to me regarding June 22, 2010 Hearing the Court was scheduling on June 18, 2010. She does show in her notes speaking to me regarding the July 7, 2010 Hearing Date.

Page 1 Para 8, Page 2 Para 1-2

12. I am now suddenly the Respondent? Or is Judge referring to Richard in this Court order?

Page 2 Para 5 "...releases executed by Ms. _____ are not appropriate as they were modified and not done with any authority and the affect of that is that the HIPPA releases did not produce information necessary for Mr. _____ to prepare his case for trial. ..."

13. Is Judge _____ stating that Mr. Moss' version of a HIPPA release is the only legal one? Nowhere in HIPPA Regulations does it state anyone has to release THE DISCLOSURE AND USE OF any medical records. It clearly states the Consumer should be very specific as to what is to be released and only release exactly what the Court ordered. HIPPA goes on to explain the difference between 'disclosure' and 'use' of terminology, and does not require both for a valid release. This is exactly what I did.
14. How can Mr. Moss acting as Richard's Attorney have any more authority than I do acting as Jessica's Attorney to prepare a HIPPA Compliant Document?
15. Why did Judge _____ choose a course of action against me regarding testimony and medical records being admitted into evidence? I quoted her Court order in my HIPPA release per the federal law. All Judge _____ needed to do was clarify her Court order.
16. How can Judge _____ state April 5, 2010 'if there is a link between Jessica's mental health issues and the re-integration plan with her Father she will stop the reintegration plan' only to change her mind again during a hearing that should not even be on the record? While clearly not in the best interest of the child.
17. Why does Richard need a HIPPA release to obtain his own daughters medical records? There is no Court order stopping him from obtaining her medical records on file anywhere, only the no contact order, modified to include one monthly phone call and one monthly email. Richard has obtained copies of Jessica's medical records in this Court case in the past without any hindrance from the medical facilities involved.

Page 2 Para 7 "Mr. Moss will submit an order for the Court's signature."

18. Is it not the job of the Judge to draw up her own orders? Or is she subject to acceptance of the orders drawn up by an Attorney not representing the best interest of the child?

This is the tip of the iceberg of what I have had to deal with in Judge _____ Courtroom since June 2004.