

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-021

Complainant: No. 1177910672A

Judge: No. 1177910672B

ORDER

The complainant alleged that a superior court judge made inappropriate comments, failed to provide a sufficient opportunity to present evidence and argument, and made incorrect rulings. After reviewing the allegations and listening to the recordings of the hearing in question, the commission found no evidence of ethical misconduct on the part of the judge. The judge did not rush the hearing or deny the complainant an opportunity to be heard, and he did not base his decision on an unrelated case. Whether the judge's calculations were consistent with the evidence is a legal matter outside the jurisdiction of the commission. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: April 27, 2011

FOR THE COMMISSION

/s/ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on April 27, 2011

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: 01/18/2011

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.

Summary:

I am filing this complaint against the judge for violation of several of the Codes for Judicial Conduct.

1. During the proceedings, the Judge also made several comments about going on vacation and needing to hurry this court case. During that haste, the judge did not allow for closing arguments after the second hearing. This is in violation of RULE 2.6. Ensuring the Right to Be Heard.
2. Additionally, the Judge indicated that he had heard enough evidence to make a ruling and that this case was similar to another. The Judge made his decision before hearing all of the testimony and fully understanding all of the issues regarding the case. This is in violation of Rule 1.2 Comment 5 in that it "reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."
3. This Judge made mistakes in his initial ruling by failing to utilize proper physical evidence in determination of child support calculations. This is an abuse of power. I have filed requests to correct these errors and the Judge has replied with remorse showing no reasoning. This Judge has failed to perform his duties as a judge and is now showing Bias and Anger in his rulings. As such, this judge is in violation of Canon 1 of the Arizona Code of Judicial Conduct: A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY. Rule 1.2 Comment 5 states, "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party."

Background:

I am a caring father of a 13 year old girl who wants to play a significant role and help his daughter be successful in life. For the past three years, I have been keeping meticulous records and trying to work with the mother on what is needed for my daughter to be successful in school. The teachers have all pointed out that the child is very capable of doing well in school if she were to work harder and do her homework when she is with her mother. Father is disciplined where mother tends to be the child's best friend. Mother has refused to work with father on this and continues to say that the courts have to decide these things. Additionally, we were seeing a family counselor named Ms. Nolletti who uncovered that the mother has a codependency addiction with my daughter. I have noticed that this is resulting in mental abuse of my daughter and is leading to alignment and alienation. During our meetings with Ms. Nolletti, the counselor had suggested that our daughter go to school under the care of the father. Because of this, mother refused to continue seeing the family counselor. I believe that the parents should work together in the best interest of the child, but mother refuses to work together and seems to be looking out for herself and not in the best interest of the child. As a result, my only alternative was to go to the court system and ask for a change.

This motion for change was filed in December of 2009. After several delay tactics (and a change in judge request) by the mother and her legal counsel, the first hearing was held on July 19, 2010. Because of a late start and time constraints, a second hearing was held on July 28, 2010. In between the first hearing date and the second hearing date, the mother placed the child on ADHD medication without the knowledge or consent of the father. Father was unaware of this until after the second hearing, or he would have used this evidence in the trial. The Judge also made several comments about going on vacation and needing to hurry this court case. During that haste, the judge did not allow for closing arguments after the second hearing. This is in violation of RULE 2.6. Ensuring the Right to Be Heard. Additionally, the Judge indicated that he had heard enough evidence to make a ruling and that this case was similar to another.

Judge's Ruling and subsequent actions:

Instead of taking the time to understand all that is involved with this case (because he was going on vacation), the judge assigned a parenting coordinator and kept the current parenting plan in place. During my testimony, I had offered a 50/50 parenting plant that would allow my daughter to be under my care during school times and under mother's care other times. That was not even considered by the judge. The judge mandated a child support calculation that failed to utilize existing physical evidence and relied on "here say" and lies from the mother. The judge did not allow any cross examination in determining a fair child support calculation. An example of this: Mother stated that she was utilizing private tutoring in the amount of \$240 per month. In her financial affidavit, it showed only \$75 per month. No receipts were shown to substantiate any of this information. In a second example, father showed that he cared for child over 120 days per year over the past three years. Mother stated that he only saw daughter every other weekend. Even though the existing parenting plan showed 120 days of child care, the

judge only allowed for 75 days in the calculation. In another example, the judge also provided \$600 per month in child care expenses that are not necessary. The mother's testimony provided that she has no need to child care. The mother's financial affidavit only showed \$50 per month in child care expenses and never showed any receipts for such. Father has been provided "first right of refusal to care for minor child" if the mother needs to be out of town for her job. As a result of these errors in the calculation of child support, father is paying \$1400 per month in child support when the actual amount should be closer to \$800 per month. This extra \$600 per month burden has resulted in the father being unable to take care of his monthly financial responsibilities.

When asked for further clarification on these items, the Judge refused. When asked for a retrial based on mother's actions between the first and second hearing which impacted the outcome, the Judge refused. Since the judge's ruling, the parenting coordinator has issued a change in the parenting plan. This change shows the actual time being utilized by both parties. Additionally, the amounts credited towards private tutoring and child care are not needed and are not being used. A child support change request was filed with Conciliation Services to correct these items and the judge denied that request. I feel that the judge is denying my rights to a fair child support calculation based on actual amounts and physical evidence (financial affidavits with receipts) out of Bias and Anger and Abuse of Power.

Conclusion:

The judge has made many mistakes and has not performed his duties. Specifically:

1. Judge made incorrect and rush decisions because of personal vacation plans. The Judge, in his haste to end the proceedings, failed to allow closing arguments and violated RULE 2.6. Ensuring the Right to Be Heard. The Judge's actions also violate RULE 1.2. Promoting Confidence in the Judiciary "A judge 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."
2. The Judge indicated that he had heard enough evidence to make a ruling and that this case was similar to another. The judge was making a decision before hearing all of the evidence. This is in violation of Rule 1.2 Comment 5 in that it "reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."
3. This Judge made mistakes in his initial ruling by failing to utilize proper physical evidence in determination of child support calculations. This is an abuse of power and again in violation of RULE 1.2 above. When a motion was filed to correct the child support calculations due to a change in custody, the judge denied the change. The judge is clearly showing Bias and Anger with his abuse of power.

As a result of this Judge's performance, my daughter's future success continues to be in jeopardy. I feel that this Judge has penalized me for a desire to play a significant, important function in my daughter's future. I ask this commission to penalize this judge for poor performance, abuse of power and for showing Bias and Anger in his rulings in violation of Canon 1 and 2 of the Arizona Code of Judicial Conduct.