

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-068

Complainant: No. 1415000271A

Judge: No. 1415000271B

ORDER

The complainant alleged that a superior court judge was biased, rude, and overlooked state law in issuing rulings. The commission reviewed the allegations and found no evidence of ethical misconduct. Whether the judge's ruling complied with the law involves a legal issue outside the jurisdiction of the commission. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: June 29, 2011.

FOR THE COMMISSION

/s/ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on June 29, 2011.

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

2011-068

COMPLAINT AGAINST A JUDGE

Your name: _____ Judge's name: _____ Date: 3/6/2011

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

It is my opinion that Judge _____ has violated the Code of Judicial Conduct, Rules, and failed to live up to the ethical standards described in the State's Constitution. I will show that Judge _____ did not make reasonable accommodations for my personal matter to be heard fairly, that she showed bias, prove she did not demonstrate impartiality, that she demoralized and humiliated me in the courtroom and with her rulings, she violated and overlooked Arizona Revised Statutes, and acted with impropriety. The following points are taken from the Arizona Code of Judicial Conduct, examples of Arizona Revised Statutes that have been violated as I understand them:

Canon 1, Rule 1.1 states that a Judge shall comply with the law. On October 23, 2007, Judge _____ granted a restriction on Mother's parenting time based on an accusation of emotional and mental child abuse from Minor Child's social worker, even though there was no proof (see Exhibit 1 and Exhibit 2 – lack of Report from CPS / DES). Judge _____ failed to require the social worker, Father, Father's attorney, or other caregivers as mandatory reporters of child abuse / neglect to provide supporting documentation (ARS 13-3620) (ARS 25-403.A.8 & ARS 25-403.A.10) (Exhibit 2), _____ did not allow mother to present evidence to defend against the accusation. Exhibit 3, page 4 shows that this matter was to be "heard based on evidence presented by the appearing party" However, no evidence was shown by opposing party, except hearsay. Additionally, at the Evidentiary Hearing dated 3/24/2008, Mother was not represented by a lawyer, but was pro-per and at a great disadvantage. Judge _____ ordered to permanently release Petitioner's Exhibits 60-68 without reviewing or submitting them as evidence (Exhibit. 4, pg.2). She then proceeded to vacate Mother's parenting time and contact, (Exhibit 4, pg.3).

ARS 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. For the purposes of this subsection, "person" means:

1. Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or **social worker** who develops the reasonable belief in the course of treating a patient.
3. The **parent**, stepparent or guardian of the minor.

Canon 1, Rule 1.2, states that a Judge shall avoid impropriety and the appearance of impropriety. Judge showed impropriety by allowing unsubstantiated claims provided by other parties attorney without requiring proof of any child abuse or considering the best interests of child before making her ruling. There was no report to CPS, or no documentation to the Police, which is a direct violation of ARS 13-3620.

Canon 1, Rule 1.2 – Comment 4, states that Judges should participate in activities that promote ethical conduct among judges and lawyers. Judge violated the essence of this comment by showing favoritism to opposing counsel by ruling without requesting any authentic, legally binding supporting documentation from CPS, DES, or the Police Department. Additionally, when the court was made aware of the fact that the testimony from the Social Worker (Michael Caputa) had lied under oath regarding the claims of child abuse, (2009) Judge did nothing in terms of reconsidering her ruling based on a significant change in circumstance, nor has she imposed any admonishment to opposing counsel in terms of unethical conduct.

Canon 1, Rule 2.2 – Comment 2, states that the Judge must interpret and apply the law, whether they approve or disapprove of the law in question. Based on ARS 25-403 A.8, 25-403 A.10, ARS 13-3620, ARS 8-807 C & D. Judge failed to apply or rather denied Mother and Minor Child the right to a child interview with the Judge or family service provider as allowed for by ARS 25-405.

Canon 1, Rule 2.2 – Comment 4, states that the Judge should make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard. I was perpetually demoralized by continual refusal, denial, rejection of Motions and Requests, and due to the lack of a reasonable opportunity to be considered innocent and falsely accused due to lack of evidence. Judge rushed to judgement without allowing me to be heard. Judge continually refused to read or acknowledge my Motions, requests and even an expedited motion to modify visitation, phone access, or parental rights due to a significant change in circumstances. This significant change in circumstance was an admission of perjury of testimony provided before Judge in 2008 as evidence of emotional child abuse of Minor Child, which all began with a letter provided to court in 10/ 2007 by Michael Caputa, LCSW for Minor Child, that originally stated and accused me of mentally and emotional abusing my son. After an investigation by the Arizona Attorney General's office and the State of Arizona Board of Behavioral Health, Michael Caputa's license was revoked (see Exhibit 5). However, Judge refused to amend or overturn her revocation of Mother's parenting and visitation rights. I felt there was prejudice against me personally since I was trying to represent myself and was disrespected for being a "non-lawyer" and was not provided reasonable accommodations as provided in the Code of Judicial Conduct.

ARS 8-201. Definitions

In this title, unless the context otherwise requires:

2. "Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which **emotional damage** is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual having care, custody and control of a child. Abuse includes:

(Attach additional sheets as needed)

- (a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.
 - (b) Physical injury that results from permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug as defined in section 13-3401.
 - (c) Unreasonable confinement of a child.
5. "Award" or "commit" means to assign legal custody.
7. "Complaint" means a written statement of the essential facts constituting a public offense that is any of the following:
- (a) Made on an oath before a judge or commissioner of the superior court or an authorized juvenile hearing officer.
 - (b) Made pursuant to section 13-3903.
 - (c) Accompanied by an affidavit of a law enforcement officer or employee that swears on information and belief to the accuracy of the complaint pursuant to section 13-4261.
29. "Serious emotional injury" means an injury that is diagnosed by a medical doctor or a psychologist and that does any one or a combination of the following:
- (a) Seriously impairs mental faculties.
 - (b) Causes serious anxiety, depression, withdrawal or social dysfunction behavior to the extent that the child suffers dysfunction that requires treatment.
 - (c) Is the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child prostitution pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.

Canon 1, Rule 2.5 – Comment 1, states that competence in the performance of judicial duties requires the **legal knowledge**, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office. Judge _____ was negligent and blatantly disregarded the Arizona Revised Statutes in place to protect the custody and best interest of children, as well as to protect against malicious actions taken by opposing party/parent/lawyers.

Canon 1, Rule 2.5 – Comment 4 states that Judges shall dispose of matters promptly and efficiently, and that a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. After it was proven that the social worker was lying and that the allegations of child abuse were false, Judge _____ imposed further professional counseling/interventions in which Mother does not have resources to pay for, which has hindered my ability to resolve this injustice. (ARS 13-3620.01 False Reporting) This is clearly another example of bias and lack of impartiality. It is further evidence of socioeconomic discrimination as the Judge is well aware of mother's inability to pay, and the extreme discrepancy between Father's and Mother's income which blatantly violates this comment.

ARS 13-3620.01. False reports; violation; classification

- A. A person acting with malice who knowingly and intentionally makes a false report of child abuse or neglect or a person acting with malice who coerces another person to make a false report of child abuse or neglect is guilty of a class 1 misdemeanor.
- B. A person who knowingly and intentionally makes a false report that a person has violated the provisions of subsection A of this section is guilty of a class 1 misdemeanor.

Canon 1, Rule 2.6 – Comment 2, Item (2) states that judges should consider when deciding upon an appropriate settlement practice for a case whether the parties and their counsel are relatively sophisticated in legal matters. Judge [redacted] appointed a Best Interest Attorney (BIA- Exhibit 6), Larry Ruhl for Minor Child. Her Order directly instructed the BIA & other agencies to fully cooperate with the investigation of the accusations and to provide reports, proof, and documentation as requested. However, the BIA did not act on the procedures stipulated in her Order on 11/19/2007. Thus, the BIA assigned by Judge [redacted] to this case was clearly not qualified or knowledgeable in the area of child abuse claims and false reporting. This ties very closely with Canon 1, Rule 2.15 (B), in which the Judge needs to be aware of the fitness, or legal sophistication in which they are capable to complete their appointment. This was grossly a misrepresentation and not in the best interest of minor child's ability to be heard or represented.