

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-248

Complainant: No. 1428310851A

Judge: No. 1428310851B

ORDER

The complainant alleged that a superior court judge issued a series of improper rulings in his custody and child support case and failed to consider his arguments and evidence because of bias.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the judge's letter and related documents, the commission decided to issue a private warning reminding the judge of his obligation to perform his judicial duties diligently and promptly and to promote public confidence in the judiciary.

The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: December 20, 2011.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on December 20, 2011.

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

September 27, 2011

Dear Commission of Judicial Conduct,

As a litigant in a Family Court case, it has become clear to me that Judge _____ has been ruling on my case with extreme bias against me. I believe that his rulings are due to an apparent relationship with common acquaintances with the other party. There is a strong appearance of impropriety shown in unfair orders.

Here is a list of five of his recent orders that stand out:

Order dated 06/02/2010, see Exhibit 1:

This ruling completely changed the parenting time schedule that we have had for over 5 years. Judge _____ gave Ursula Hursh absolutely everything she asked for, and I received nothing that I asked for. Due to what was presented during trial and based on the history of our case, including sanctions from other judges against mom for her prior behavior and a custody evaluation by a psychologist who wrote, among other things, that 'Mother shows the behavioral signs of a drug user', I felt that the ruling was shockingly one-sided. At the time I assumed it was because of my not having been represented by an attorney. Looking back now, however, I believe that this ruling was also externally influenced.

Order dated 04/14/2011, see Exhibit 2:

In this ruling, Judge _____ found me in contempt of court for taking a vacation with my son. We had an order that stated that the Mother and I both had to finalize our summer vacation plans by April 15th. I did exactly that and bought airline tickets for us to see family prior to the June 2011 Order that changed the access times, and paid I for a summer camp for my son to attend with his cousins. Judge _____ 06/02/2010 order changed our vacation time after the 2010 summer plans had already been finalized and paid for. Due to the new order, the mother planned her vacation during my previously reserved time, even though she claimed that she did not intend to take a vacation, was going to stay and town and only wanted to take our son school shopping.

A paralegal firm that I had employed at the time found the 06/02/2010 order difficult to interpret and made numerous attempts to receive clarification from Judge _____ all of which were ignored. They then advised me to go on the vacation as planned as it would not violate the new court order since I was still entitled to vacation time myself, that I had already declared my summer vacation intentions by April 15, 2010, and made financial commitments associated with my vacation time that were subject to penalty if I had canceled. I was relying on a current court order when I made my plans

and financial commitments, which were subsequently changed by the June 2010 order. Mother then filed for contempt after we went on our vacation.

All of this was presented during the evidentiary hearing, but Judge ruling did not mention even one of our defenses. Instead, the ruling states:

"The fact that Father believed he could circumvent the Court's June 2, 2010 order because he filed a notice of appeal regarding the order does not absolve Father of his contemptuous behavior."

However, the appeal was never part of our defense; it was a small part of the petitioner's (mother's) case, that I explained during trial was a comment made out of frustration due to mother having previously ignored other rulings until her appeal had completed, and we explained that the comment soon after became moot because my legal council decided to drop the appeal. Judge did not mention one of our defenses, found me in contempt of court, and ordered that I pay the mother's attorney fees.

Order dated 05/16/2011, see Exhibit 3:

My attorney filed a Motion for Reconsideration for the order dated 04/15/2011 pointing out that Judge did not take any of our defenses into consideration, but the Motion was denied without explanation. A Motion for Clarification was granted, and reads:

"IT IS ORDERED granting Father's Motion for Clarification. Father is permitted the opportunity to review the Application for Attorney's fees and file his objection if he deems it necessary."

Order dated 07/05/2011, see Exhibit 4

The mother's attorney had submitted his Application for Award of Attorney's Fees and Costs asking for the amount of \$1,700. After a cost/benefit analysis, my attorney recommended that we not file an objection. I immediately began making payments to the petitioner's attorney. It was my intention to pay \$50 per month until it was paid off, which is exactly what the mother did when I was awarded my attorney's fees years before. However, after my first payment I received the attached email (see Exhibit 5) from the mother in which she states in part "it's going to be ordered anyway".

Despite the fact that the petitioner and her attorney did not file any documents with the court after the email, Judge next order did exactly what the petitioner's email said it would do, plus it nearly doubled the awarded amount to \$3,375.

Order dated 08/17/2011, see Exhibit 6:

My attorney filed a Motion for Reconsideration for the order dated 07/05/2011 due to the inappropriate amount awarded. The motion also asked that I be allowed to pay the amount off at \$50 per month as the mother was allowed to do. Finally, the order notified the judge that the mother has still not paid off the amount that I was rewarded years before and asked the judge to refer us to Family Support Services to calculate any outstanding orders and to apply the appropriate offsets.

The petitioner filed a Response to this Motion for Reconsideration on August 17, 2010 and Judge [redacted] denied the motion on August 19th, with no explanation or giving me the chance to Reply. Judge [redacted] denial was posted two days after the Petitioner filed a response and two weeks before my attorney even received the response.

This Order for Attorney's Fees is highly inappropriate as Mother's counsel's application only requested \$1,700 and Judge [redacted] with no basis, awarded twice that amount.

Based on these biased rulings, the input from members of the law community, and a number of comments made by mother not mentioned herein because I don't have proof, it is apparent that Judge [redacted] has a relationship with common acquaintances with the other party. It should be noted that the petitioner is a legal secretary at a large law firm (Kutak Rock) in Scottsdale and she has previously worked for other law firms in the valley. This provides many opportunities for many of the attorneys she knows to be an acquaintance with Judge [redacted]

I request that Judge [redacted] be removed from my case and that his rulings be reviewed for any improprieties. I firmly believe that any judge that would do such a thing should be permanently removed from his position, but I do not know if that is something that the Commission would or is able to do. I would also think that if any inappropriate behavior is found, all of the Judge [redacted] rulings should either be reversed or reevaluated by an un-biased judge, if possible.