

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-091

Complainant: No. 1439410313A

Judge: No. 1439410313B

ORDER

The complainant alleged a superior court judge was biased, treated her unfairly, and did not provide an adequate opportunity to be heard.

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 review, the commission decided to dismiss this matter with a private advisory cautioning against automatically disqualifying from cases where a complaint has been filed, pursuant to Advisory Opinion 98-02. The case is dismissed pursuant to Rules 16(b) and 23(a).

Dated: July 19, 2012.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed
to the complainant and the judge
on July 19, 2012.

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

COMPLAINT

NOTE: Any quotes are not intended to be exact, but representative paraphrases.

I went to the Superior Court for a requested hearing for the opportunity to respond to my ex-husband's request to modify child support. The events of that day disturbed me tremendously both at the time and subsequently, to the extent of disturbing my sleep and my waking moments with starts, and leading me to feel compelled to write to you for oversight.

The day of the hearing at approximately 9:30AM I entered Alpha-Graphics down the hill from the court house. I arrived in a half hour early believing that sufficient time to make copies for the judge and my ex-husband of the documents I planned to present in court per instructions for the hearing. At the start of service I told the clerk who waited on me that my hearing began at 10:00AM. No other customers were in the facility. All employees were Hispanic. There were about six employees there. As the clerk began making copies I attempted to retrieve four paycheck copies from my email. During one five to seven minute period the male clerk stepped outside to a car at the curb and left no one else making copies – despite knowing I was in a hurry. I attempted to ask an older woman to print my papers. She took my memory stick but said she couldn't figure it out. She gestured to the man outside and said I would have to wait for him.

To my significant distress the process of making copies took the store until 10:08AM. When finished the copies were laid out unsorted. As it was so late I had to take them 'as is,' pay, and leave. Despite arriving with reasonable time to expect to get copies, the slow pace of service made me late. As I was leaving the clerk joked that I should tell the judge that I was late because of Alpha-Graphics. He said the court hearings often run late and not to worry. The memory stick that I had brought to the site which the older woman took was not returned to me.

I did not have time to pre-print my paperwork because my job has been extremely hectic (requiring about 64 hours a week), I drive 2.5 hours a day to get to my job in Tucson and home, plus my rural location otherwise precluded my quickly stopping by a copy shop to make copies even if I could at 11PM at night. I just did not have time. That morning I considered the Post Office but felt a 'real' copy shop would be much faster service-wise.

I got to the court-house and asked someone where the hearing would be. To file the Request for Hearing I had been to the new location but was unsure if the courtrooms had also moved or just administration. This woman pointed me to the new building. I parked and went in. After going through the Security checkpoint I asked where I would appear and someone told me Court room 1. I took the elevator upstairs and rushed to the far court room and went in, waiting a minute - but the room was empty. I approached the microphone and said "hello." A security guard came down into the room and said the hearing was moved. We hurried to the room three rooms down. I entered the room at about seventeen after ten.

When I arrived my ex-husband was up standing by the judge at her stand. He returned to his seat at her request. I apologized to the judge and explained that the delay had been due to obtaining copies for the hearing.

The hearing began. The first odd thing was when the judge told me to ask questions of my ex-husband looking at her instead because "he might find things intimidating." Thinking maybe that was so, and of course to comply, I did so.

I presented to the judge (and my ex-husband confirmed) that he had spent 28 years working professionally as a survey crew chief. I challenged his statement that his "potential" lie within the two years history as a bus driver, most of it part time. I showed from 1999-2003 he made between \$30,000 and \$48,000 a year. He claimed he was only capable of earning \$20,000.

When presenting his information he had a tax return from 2008 showing earnings over \$32,000. The judge asked me, when I presented his potential earnings, "where are the taxes for the years 2003 onwards" perhaps wondering why I had six years but it ended at 2003. I said "I am not privy to this information." I wanted to ask for access to all of his missing years but was not afforded the opportunity to ask.

My ex-husband had a 2008 tax form along with several other papers that he used in presenting his case. The judge asked him if he'd made copies and he said no. A copy was not offered to me. The judge did not chastise him for not following required process and making copies yet twice chastised me for being late. I still don't have copies of what he presented in court.

When it came time to discuss my points to the judge, she interrupted my testimony asking if I was done after only making one or two points. I felt she was impatient. As a result I missed making one of two major arguments: telling the court what I believe the true reason my ex-husband stopped paying full child support. That reason lie within a domestic violence incident. My earlier specific questioning to him about whether anything preceded his shift in payment amount therefore was in vain.

When I asked to speak during the hearing to try to resolve this she said I could not. In contrast, my ex-husband was speaking several times freely and randomly to the judge, when he wanted to make points, and was not silenced.

After I presented that I felt he only saw the children 18 days a year, my ex-husband claimed it was because I had not been driving my children to meet him halfway. I asked if the judge would like to know why I did not drive them and to my dismay she curtly said "no." His words left open the interpretation that it had been during our entire divorce instead of the product of the only two recent years. I didn't get to discuss the impact of bills from my sons psychotherapy and medications for ADHD/ODD which had put undue stress on finances - making gas (and the physical toll driving given I became the sole caregiver during that time) impossible for me. Second, I could not afford the gas to drive them because he'd stopped providing \$540 of the \$840 due in support payments. Third, my primary car transmission went out so I had to repair an old car that was supposed to be \$1000 but ended up costing \$3000. Fourth and fifth, I had an old horse come in lame who had to be euthanized, and a young horse that had to be gelded due to our being next door to an exotic Arab breeding farm, both procedures summing to \$1200. Finally, I was unable in the failing economy to give my horses away, and hay costs spiraled from \$6 bale to \$18 a bale, raising my bill from \$200 a month to nearly \$600.

The important issue? I felt my ex had unfair advantage because I did not have the chance to reply to his statement. He went on record stating a defaming position about me to the court; I felt denied a response.

A key point of dispute between my ex and myself was the amount of back child support each of us claimed due. He said it was \$4000 when I had official records to show the amount was really almost \$9000 before interest. I had copies proving his delinquencies from August of 2005 to the present. Those payments were summarized by me in a document that I found to my great distress when looking at my papers was not printed by Alpha-graphics.

I discovered that they had not printed the most important documents to my case - the Order to Enforce, and the Summary of Child Support payments that I had spent five hours methodically going through to prepare for the courts.

The judge asked about the delinquency my paperwork showed and she heard from me what the summary was for each year. My ex again insisted that he was only \$4000 delinquent.

When she was summarizing she said that "since there was no motion to include any documents from the days proceedings none would be put into evidence." Immediately I asked the judge how I could do that, because I was worried my paperwork showing the amounts paid would not be on the record.

When filing my request for hearing I had asked a Clerk of Courts counter clerk how I could determine this amount and they said to contact the Clearinghouse. When I called them, they provided me the address and fax to request the evidence of payments from the Chase Credit Card Company---which I did. They provided the very records I brought to court.

When I requested the inclusion of my records the judge asked me to approach the bench. She asked "what is all this" indicating the presence of all charges to the card which was in the paperwork. I explained to her that the DES NON-IVD was the charge to look at. When she said that it should have been provided in a summary, once again I mentioned the document Alpha-graphics did not print for me. Trying to show her it (the summary), I stepped to my bench to gather my laptop, turning to show it to her. Suddenly a woman who'd been sitting on the side of the courtroom came up to me from the side and said "you need to leave now" very sharply and as if I were somehow a felon or dangerous or something. It frightened and confused me tremendously.

I was not being hysterical or mad. The woman physically rushed me, repeating her command very brusquely. Frankly it made me feel like I was a criminal. The level of intensity and the strange vibe was extreme – like I was the Unibomber or something very suspicious instead of an average middle-class woman. I was extremely embarrassed in front of not only my ex-husband but the others who'd by then appeared.

The hearing ended badly. All I can recall was the judge chastising me for being late and running the next hearing late, and my embarrassed attempt to gather my composure and belongings and to leave.

I am a citizen of the United States. I am a mother, and an engineer of repute in defense. I am not a threat to a judge or in any way as a person – and felt it extremely mortifying being treated as if I were. I felt very discounted personally that day.

I was at a hearing to present my side of things to an impartial person, hearing my side of what I felt a fair child support obligation. I am not a felon and yet at the end of that hearing felt treated like one. If we were running late I don't know why she couldn't have suggested we continue the hearing at a later date.

I did not feel able to submit my point to the court. I felt cut off and stifled as the hearing went on. The end action by this woman who herded me (whomever she was) led me to feel like I was trash. To my amazement the judge never said anything to her about what she was doing. I was treated like I was an unsafe person. It was extremely humiliating.

During the hearing I felt like I was being treated like a spoiled rich white woman and he the poor put-upon 'poor' man. Although white, my ex-husband looks Hispanic. He has constantly dealt with people thinking that is the case in his life. In Court I wondered if he was being empathized with by the judge and staff because they thought he was Mexican. I felt railroaded for race and income. There were literally no other white people in the entire area of interaction both in the courtroom and lobby.

When I left the room and went downstairs feeling traumatized. I asked the sheriff people there in a booth how I can file my papers that the judge had refused to let me enter into evidence. They said to ask at the Clerks office. I did so, explaining what had happened. I was so distressed. The Clerk said I could go retrieve my papers from Alpha-graphics and then submit them to the court.

When I returned to the copy shop, I told them what had happened and how very key papers were missing. The clerk said he didn't know where my memory stick was. I told him when he'd stepped outside an older woman had taken it and he'd drawn only one document off it when he'd printed my papers so it must still be in the computer. He then printed the papers, but strangely took my stick around the corner to a back office area before bringing it back to me.

After getting the copies, I returned to the court-house. During my conversation with the counter clerk, two armed officers caught her attention upstairs and she nodded as if to say "it's okay" to them. They were communicating something unspoken. I cannot even begin to tell you how deeply troubling and embarrassing this was. I was attempting to explain how distressing the courtroom incident was and there the same exact kind of thing happened again.

I spent the past six days sick to my stomach over what happened, literally waking up from sleep with starts, and experiencing the same when awake. I've not been to work all week. My bronchitis has taken a horrible downturn. This traumatized me.

I suspect that in the "average" case is extremely violent and that much hardening has taken place amongst the staff there to lead them not to see how horrible their behavior is. I am deeply upset and horrified at how badly and "criminally" I was treated. Given the lack of white people on staff and in the populace, I felt alienated and unsafe.

When I mentioned to a hispanic guard who said he recognized me from that I had felt railroaded that day and traumatized by the way I was treated, his response was to grin. I felt totally disempowered that entire day, and purposely humiliated.

I almost did not bother to contest my ex-husband's modification request because of past experience with the Court in Years before during our divorce he had chosen not to work for six to seven months while I had to continue paying all of our bills alone. His purposed manipulation forced me to exhaust my funds and ruin my credit, and eventually led to a foreclosure (which I had to pay \$10,000 to get out of) and a Chapter 13 bankruptcy. I believe he wanted me to lose the house. My ex-husband had a restraining order against him for inciting a fist fight with my then fifteen year old son as he held my days old infant daughter in his arms "because my son didn't move when he wanted to pass by." He endangered not only my sons life but my newborn infant daughters. Despite both of these things, the judge at that time did not hold my ex-husband accountable for not paying his share of bills; instead he only ordered him responsible for one month back child support and to pay forward a few months of spousal maintenance. I felt it ridiculous that the judge let his financial strong-arming continue as long as it did particularly given the court was aware of my hardship.

I don't think is the right location for family law cases. It certainly isn't the right place for me: a traditional blonde haired, fair skin, green-eyed white woman. I think there is a lot of prejudice towards me for several reasons that lead to not being able to obtain a fair and equitable hearing. I do make good money, that is not a crime. I also pay a lot for my family to live in

My experience has led me to the conviction that I can no longer expect justice despite being part of a middle to upper class town for anything concerning my family law case. I am mortified at how I was treated in court in front of my ex-husband, and can't even imagine ever facing him again. I am terrified to ever go down there again after what happened to me.

Second, on Googling I uncovered her citation and charge for domestic violence. I am left doubly questioning my treatment in the courtroom thinking perhaps she is perhaps an abuser who is insensitive towards victims.

I would really suggest that Arizona consider what I am saying honestly. I think it would be very prudent for citizens of and to move these cases to the court house in The judges and general staff in are way too hardened from dealing with violent and criminal "border town" elements and criminals – it's very clear.