

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-141

Complainant: No. 1353310211A

Judge: No. 1353310211B

ORDER

The complainant alleged that a superior court judge demonstrated personal bias against her in several ways.

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 all of the information provided by the complainant and the judge's response, the commission found no evidence of ethical misconduct and concluded that the judges did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: August 16, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on August 16, 2012.

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

MAY 29 2012

SILK LAW OFFICE

8012-141

May 24, 2012

Mr. George Riemer
Executive Director
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

**Re: Judicial Complaint against Superior Court
 Judge**

Dear Mr. Reimer:

As required by Ethical Rule 8.3(b) of the Arizona Rules of Professional Conduct, I am informing the Commission on Judicial Conduct that Superior Court Judge has violated the Rules of Judicial Conduct that raise a substantial question as to his fitness for office. As demonstrated by the audio records as well as the written record submitted with this Complaint, Judge has repeatedly violated Canons 1.1, 1.2, 1.2, 2.2, 2.3, 2.5, 2.6, and 2.8 of the Arizona Code of Judicial Conduct.

1. Canon 1.1 "A judge shall comply with the law, including the Code of Judicial Conduct"
2. Canon 1.2 "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."
3. Canon 2.2 "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."
4. Canon 2.3 (A) "A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."
5. Canon 2.3(B) "A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or

engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so."

- 6. Canon 2.5(A) "A judge shall perform judicial and administrative duties competently, diligently, and promptly."
- 7. Canon 2.6(A) "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."
- 8. Canon 2.8(B) "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control."

Judge requires a Judge's copy of all proposed exhibits at every hearing. I have personally witnessed Judge reviewing exhibits before they are admitted, including exhibits that do not get admitted.

Judge also has an "Exhibit Protocol" that is found on the Court's website. Such "Exhibit Protocol" is inconsistent with the Rules of Family Law Procedure, and changes without notice. See Exhibit A.

Following are just a few examples of Judge hostility, intemperance, demeaning conduct, and bias that Judge has exhibited towards me and/or my clients, in no particular order.

, DO-2010- , Evidentiary Hearing June 7, 2011

This hearing started at 9:02 am and recessed at 12:00. The hearing reconvened at 1:51 pm. During the hearing just prior to 3:00 pm, I had offered an exhibit for admission. Opposing counsel stated he needed to find his copy of the exhibit as they were not individually tabbed. Judge inquired as to why opposing counsel's exhibit copies were not tabbed, to which I explained that I do not tab opposing counsel's exhibits for them. I was told by Judge that I needed to tab opposing counsel's exhibits from that point forward. I then explained that

it was not my, nor opposing counsel's practice to provide exhibit books, at which time opposing counsel said that I had received a tabbed set of exhibits from him. Judge stated that I would provide an exhibit summary sheet (which I had) so that opposing counsel could track what I was doing.

I tried to clarify that my exhibits were divided by colored paper, but was interrupted by Judge to inquire as to whether they were tabbed. The conversation went on when Judge said that it seemed that opposing counsel always have difficulty in tracking my exhibits. Judge made a specific directive just to me that I would tab opposing counsels' exhibits. Then Judge abruptly stated he was going to take a recess and left the bench.

After the break, I showed Judge that the exhibits that I had received from opposing counsel (that he previously said were tabbed) were in fact not tabbed. Opposing counsel admitted then that his exhibits were not tabbed, even though he previously informed Judge that they were tabbed. Opposing counsel then explained that he thought his exhibits were more easily ascertained because he had less exhibits (even though less exhibits does not necessarily equate to less pages). Judge agreed with opposing counsel and made reference to professionalism. When I attempted to respond to opposing counsel, Judge abruptly stated that he had heard enough and told me to take up my examination. Transcript of the aforementioned is attached, along with the minute order, As Exhibits B and C.

At the conclusion of the hearing, Mrs. started crying as she was upset by the proceedings. At that time, Judge made various insulting and humiliating personal comments about my client, which upset her even more. Such remarks were unnecessary and unprofessional, and can be obtained from the audio recording.

Violation of Canons 2.2, 2.3(A), 2.3(B) and 2.8(B)

DO-2011- , Order to Appear Hearing
September 23, 2011

Mother filed a Complaint for Paternity, Child Custody, Parenting Time and Child Support on March 2, 2011. I represent the father. This case was assigned to Judge on April 6, 2011. On June 2, 2011, I filed a petition to establish temporary parenting time for my client. On June 13, Judge ordered that he would not set a hearing on my client's request for parenting time until after submission of a formal acknowledgement of paternity or a certified copy of the child's birth certificate (Mother

failed to do so previously and the case was set to be dismissed on July 7, 2011). On June 14, 2011, Father filed a certified copy of the child's birth certificate.

On July 19, 2011, I filed a request to set a hearing on temporary parenting time, as no hearing had been set within 30 days of receipt of the motion (and/or proof of paternity) pursuant to Rule 47H of the Arizona Rules of Family Law Procedure. On July 25, 2011, Judge set the hearing for September 16, 2011, which was reset to September 23, 2011.

At the beginning of the hearing, Judge took up opposing counsel's motion to strike my exhibits pursuant to Arizona Rules of Family Law Procedure 47G, that was filed the previous day. Rule 47G states in part the parties shall exchange any exhibits to be offered at the hearing at least three days prior to the hearing, and a list of the names, addresses and telephone numbers of all witnesses who may testify. Opposing counsel stated that she had received my exhibits the morning of the hearing (which was not true. She actually received a second copy of the documents that were previously disclosed to her, and the list of documents had been provided to her three days prior to the hearing). I informed Judge that I had exchanged my exhibits for the hearing during the disclosure process (that had previously taken place weeks prior to the hearing). I had provided a list of my exhibits three judicial days before the hearing. Judge granted opposing counsel's motion and prohibited the use of all my exhibits.

This was a child custody hearing, so I proceeded to argue that the exhibits were properly disclosed weeks, if not months before; that there was no element of surprise as opposing counsel had the exhibits in her possession, that it was prejudicial and unfair to my client, and that Judge could not determine the child's best interest without the use of my exhibits. Judge told me to have a seat and that his ruling stands. Transcript of the aforementioned is attached as Exhibit D.

On or about September 26, 2011, Judge issued his ruling on child custody and parenting time, granting my client less than County Guideline parenting time, and denying my client the first opportunity to provide care when the mother is unavailable. Judge cited concerns he had of Father, that would have been controverted had Judge allowed me to use the exhibits.

On October 12, 2011, I filed a Motion to Reconsider and Request for A New Hearing, requesting, among others, that Judge reconsider his order precluding my exhibits and grant a new

hearing in order to allow Judge _____ to obtain all relevant evidence in order to make a ruling as to the child's best interest.

On November 2, 2011, Judge _____ issued an Order (that was filed on November 7, 2011, almost 4 weeks after filing), denying my Motion to Reconsider and Request for a New Hearing, as I failed to sign the second page of the motion (although I did sign the 14th page of the motion). I filed a second identical motion on November 9, 2011. On December 6, 2011, Judge _____ issued a one sentence Order: "Respondent's Motion to Reconsider (Second) is ORDERED denied." Such ruling is counter to case law.

The final trial in this matter was scheduled for December 14 and 15, 2011. Before the hearing commenced, counsel for both sides negotiated a settlement that took approximately two hours. The agreement was placed on the record and confirmed by the parties. Opposing counsel was to prepare the Order. Judge _____ set a status hearing for March 16, 2012, due to the failure by opposing counsel to submit an Order. I lodged a proposed order on February 7, 2012. Opposing counsel lodged her own proposed order on February 17, 2012. Objections to both orders were filed on both sides. Opposing counsel filed motions to strike my pleadings on March 14, 2012. At the status hearing on March 16, 2012, Judge _____ set the matter for a status hearing/Resolution Management Conference on April 4, 2012. As the time to respond to opposing counsel's motions to strike had not passed, Judge _____ did not make a ruling on either proposed orders, but proceeded to set future hearing dates, including a two day bench trial.

At the Resolution Management Conference held on April 4, 2012, Judge _____ stated he considered both sides proposed orders moot since he had previously set the matter for a two day bench trial. Judge _____ did not state why he did not sign either one of the proposed orders embodying the parties' agreement as stated on the record on December 14, 2012. Petitioner had also recently filed a petition to relocate. Judge _____ set the matter for a one hour trial limiting the scope of the temporary relocation hearing to the economic benefit and reasons Petitioner wants to relocate and Respondent's opposition. Only Petitioner and Respondent were allowed to testify. Reducing the scope of the hearing does not adequately address the child's best interests.

I filed a Request for Ruling setting for the above and asking for a ruling as to why Judge _____ declined to enter one of the proposed forms of order and instead set a two day bench trial. See Exhibit E. On April 20, 2012, Judge _____ issued an Order

denying my Request. See Exhibit F. It should also be noted that although Judge _____ states he determined my paragraph 8 was inaccurate after speaking with his judicial assistant and striking said paragraph, said paragraph is accurate and practically verbatim of my conversation with his judicial assistant.

This matter is currently on appeal, adding additional extraordinary expense for my client.

Violation of Canons 1.1, 1.2, 2.2, 2.3(A), 2.3(B), 2.5(A) and 2.8(B)

DO-2010- _____, Trial September 28, 2011

During this trial, I was asking for the admission of an exhibit. Judge _____ asked me if I had marked the judge's copy of exhibits. I explained that I thought that my assistant had numbered them and apologized if she did not. I offered to number the judge's copy at the next break. Judge _____ said I would number them at that time and announced that he would take a recess and take up the admission of my exhibit when the "exhibits are properly marked." He took a two minute break. The truth of the matter is that Judge _____ clerk did not provide my office with the exhibit numbers before the trial, even though my assistant had requested the numbers. I did not want to make the clerk look bad so I took the blame. Regardless, there is no reason that the judge should take a break during a trial and make me mark his personal copies of the exhibits. It was embarrassing, unprofessional and discourteous, to say the least. Transcript of the aforementioned is attached as Exhibit G.

Violation of Canons 1.2, 2.2, 2.3(A), 2.3(B), 2.5(A), 2.6(A) and 2.8(B)

**DO-2011- _____ Order of Protection hearing
October 28, 2011**

During this hearing, I had been cross examining the Plaintiff, who represented himself. Judge _____ asked the Plaintiff what he wanted to say about an alleged threat that he was not permitted to talk about during my examination. The Plaintiff started to discuss a previous settlement negotiation that I had with him pertaining to a different matter. When I objected, Judge _____ stated that he was asking the question and overruled my objection. He allowed the Plaintiff to not only discuss the settlement negotiations, but also allowed hearsay

testimony. Transcript of the aforementioned is attached as Exhibit H.

Violation of Canons 1.1, 1.2, 2.2, 2.3(A), 2.5(A) and 2.8(B)

, DO-2011- , Motion To Compel, Motion to Withdraw hearing, October 6, 2011

I filed a Motion to Compel discovery/disclosure and the hearing was held on October 6, 2011. Judge granted my Motion to Compel, but denied my request for attorney's fees in having to file the motion. When I was asked if I had anything else, I asked if the issue of attorney's fees was reserved for final hearing. Judge again stated he ordered the denial of attorney's fees. When I asked if my client was not entitled to her attorney's fees for having to file a motion to compel disclosure, Judge stated "Do you have a question with my ruling?" I started to make a statement when Judge said that he had heard enough and that he was not going to grant attorney's fees. When I confirmed that he was not going to hold the issue for final hearing, Judge stated "What part did you not hear of my earlier response?" I stated I was just clarifying, and Judge responded "I've already said it. I'm not gonna repeat it." Transcript of the aforementioned is attached as Exhibit I.

I filed a Motion to Reconsider. Pursuant to Rule 65 (A) of the Arizona Rules of Family Law Procedure, it states that:

4. *Expenses and Sanctions.*
 - a. If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay the moving party the reasonable expenses incurred in making the motion, including attorneys' fees, . . .
(Emphasis added).

The correlating rule, Rule 37(a) of the Arizona Rules of Civil Procedure, states:

When the party who requested an admission under Rule 36, which was denied by the other party, is forced to prove the matter at trial and does so, such party may apply to the court under Rule 37(c) for attorney's fees and costs incurred in making the proof. The court

must then, under Rule 37(c), order the payment of such fees and expenses unless the court finds: "(1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit." Ariz.R.Civ.P. 37(c), 16 A.R.S. (Supp.1990).

Judge _____ made no findings that would substantiate the denial of attorney's fees pursuant to the Arizona Rules of Family Law Procedure, nor offered any when asked for clarification. The payment of attorney's fees by the non-moving party is mandatory when a motion compel is granted. On October 18, 2011, Judge _____ ruling consisted of one line: "The Court summarily denies Petitioner's Motion to Reconsider."

Violation of Canons 1.1, 1.2, 2.2, 2.3(A), 2.3(B), 2.5(A), 2.6(A) and 2.8(B)

_____, DO-2010-_____, Order to Appear Hearing, April 24, 2012

During the hearing, opposing counsel was conducting his redirect examination of his witness. I objected to opposing counsel's questions on the grounds that he was leading the witness. Judge _____ overruled my objection stating he was allowing leading questions due to the manner in which I conducted my cross examination and impeaching the witness. Isn't that what cross-examination is for?

Violation of Canons 1.2, 2.2, 2.3(A), 2.3(B) and 2.5(A)

_____, DO-2011-_____, Order of Protection Hearing and Status hearing, April 4, 2012

Mrs. _____ filed a Petition for Dissolution, pro per, on April 29, 2011. Ms. _____ originally retained a different attorney. I filed a motion to substitute counsel on April 3, 2012. On April 4, 2012, a hearing on an Order of Protection obtained by Mr. _____ was held, which was followed by a previously scheduled status hearing. Mr. _____ Order of Protection was modified to an Injunction Against Harassment. During the 5 minute status conference, the discussion pertained to the issues discussed during the Order of Protection hearing. Judge _____ told the parties that if there was an agreement reached he would place said agreement on the record. After discussing the matter

for approximately 20-30 minutes, counsel and the parties reached an agreement. When we requested the agreement be placed on the record, we were informed by Judge [redacted] judicial assistant, [redacted], that we were to put the agreement in writing. Immediately afterwards, I prepared a stipulation and order, and Mr. [redacted] backed out of the agreement.

Mrs. [redacted] was appalled by Judge [redacted] conduct and requested a change a judge, which I filed on April 30, 2012. Judge [redacted] stated that I had violated Rule 31 of the Arizona Rules of family Law Procedure, but nevertheless, referred the Notice of Change of Judge to the Presiding Domestic relations Judge, [redacted]. Judge [redacted] denied the motion on the basis that the Court had conducted a status hearing. Just recently, Judge [redacted] issued a Notice setting a Resolution Management Conference, stating that he would also address sanctions, if any, that should be imposed on me for any violation of Rule 31. In the almost 10 years that I have been practicing domestic relations, I have never seen anything of the like before. See attached Notice dated May 18, 2012, Exhibit J.

Violation of Canons 1.2, 2.2, 2.3(A), 2.3(B), 2.5(A), 2.6(A) and 2.8(B)

DO-2011- [redacted], Final Hearing, May 18, 2012

On May 18, 2012, this matter came before Judge [redacted] for trial on the issues of spousal maintenance, child support and attorney's fees only, as all other issues had previously been resolved by stipulation of the parties. Prior to the commencement of the trial, the parties reached an agreement as to all issues. One of the items agreed upon by the parties was that Mr. [redacted] would pay his child support and spousal maintenance obligations directly to Mrs. [redacted]. While I was placing the direct payment aspect of the parties' agreement on the record, Judge [redacted] interrupted, saying "No, that will not happen. It's mandated by the federal government and the state that all payments be made through the Clearinghouse. There will be no payments made outside the Clearinghouse. It's mandated and I won't deviate from that". I stated I was under the awareness that if the parties were both agreeable, payments could be made directly. Judge [redacted] simply responded "Nope." Transcript of the aforementioned is attached as Exhibit K.

After the hearing, I sought to obtain Judge [redacted] citation for the federal mandate informally through his judicial assistant, without success. See Exhibit L. I had to file a formal Motion for Clarification, of which no response has yet been received.

in spousal maintenance, and her Affidavit of Financial Information (AFI) on May 13, 2011. I also served Mr. with disclosure requests. Upon receipt of Mr. disclosure the week before the hearing, I discovered that he had not produced all documents requested. At the conclusion of the hearing on June 29, 2011, Judge denied Mr. request to modify spousal support and stated he did not have the ability to ascertain that Mrs. has demonstrated a basis for an increase in spousal maintenance at that time due to the lack of credible and accurate financial information.

I filed a petition to modify spousal maintenance on November 7, 2011. I also later served Mr. with disclosure requests. On April 26, 2012, I filed an amended AFI, as my client's expenses had increased since she last filed in May 2011. During my opening statement, Judge interrupted and asked me where the amount of my client's requested spousal maintenance was in the pleadings. There was discussion that my pleadings asked for a minimum amount for an increase, but that since filing the original AFI in May 2011, my client's expenses had increased. Judge questioned me as to whether the AFI was to be used as an exhibit, which it was not. Then he asked me if it would be used as a basis for evidence, and I stated my client would testify to the contents. Judge took a 20 minute recess, from a two hour hearing.

Upon his return, Judge ordered that my client's AFI could not be entered into evidence (even though it was previously filed), nor any of the information contained in said document, pursuant to Rule 91 (P) (5) and 91(Q). When I asked how my client would be able to present her case, Judge said "That's her problem, because you failed to disclose, counsel. It's not her problem, it's yours." I tried to explain that there was no timeframe under the Rules to file an amended AFI. Judge interrupted me, telling me to sit down. I had to ask him if he was not allowing me to make my record. He told me to make my record and that he'd already entered his ruling. I said two words, and he interrupted me again, making another statement. When I tried to respond to his statement, he interrupted me again. A Transcript of the aforementioned is attached as Exhibit L.

At the conclusion of the hearing, Judge denied my client's request to increase spousal maintenance on the grounds that she failed to meet her burden of proof. The end result is a duplication of effort and substantial waste of resources that result from requiring my client to file another petition to modify spousal maintenance at a later date.

Rule 91 (P) (5) of the Arizona Rules of Family Law Procedure states:

P. Disclosure.

5. The provisions of this rule do not preclude any party from requesting additional documents or information through discovery procedures.

Rule 91(Q) of the Arizona Rules of Family Law Procedure states:

- Q. Sanctions.** If a party or attorney fails to obey a scheduling or pre-hearing order or any provision of this rule, or if no appearance is made on behalf of a party at a post-decree or postjudgment conference, an evidentiary hearing, or other scheduled hearing, or if a party or a party's attorney is substantially unprepared to participate in the conference or hearing, or if a party or party's attorney fails to participate in good faith in a conference, hearing, or in the preparation of a resolution statement or joint pre-hearing statement, the judge, upon motion or the judge's own initiative, shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, without limitation, those listed in Rule 76(D).

Neither of these Rules support Judge _____ preclusion of the use of my client's AFI. A form of order is pending, and this matter will be appealed, again at great cost and expense.

Violation of Canons 1.1, 1.2, 2.2, 2.3(A), 2.3(B), 2.5(A), 2.6(A) and 2.8(B)

In addition, there is a microphone in the courtroom that is left on when court is not in session. This allows for Judge _____ to hear informal conversations between attorneys in addition to conversations between attorneys and their clients. I believe that this is not only unprofessional, but unethical, as the Judge is privy to private discussions. At the very least, a sign should be posted informing all occupants that their conversations are subject to being overheard.

The above referenced cases are just examples of Judge _____ conduct and behavior in the courtroom. There are more of the same that I am prepared to discuss with you at any time, as are numerous clients of mine. Judge _____ courtroom demeanor

and communication, as well as his conduct are reprehensible and I request that this matter be addressed expeditiously due to his erratic behavior towards counsel and litigants. Judge [redacted] rulings are unsound and not founded in law, causing numerous unnecessary pleadings, delays, additional excessive expenses and appeals. Such conduct also does not promote public confidence in the judiciary.

Judge [redacted] has denied me, on more than one occasion, the right to make my record. He is discourteous to counsel and litigants, and lacks patience in general. Judge [redacted] is abrupt, hostile, and belittling. His bias and prejudice is so patently obvious at every single proceeding I am involved in which results in immediate prejudice and bias against my clients. I have practiced in front of virtually every Superior Court Judge in [redacted] County over the past 10 years and have never been treated with such disdain and disrespect as I have been treated by Judge [redacted]. [redacted] County employees as far as [redacted] have commented on Judge [redacted] habitual intemperance towards me. What is most egregious is that Judge [redacted] bias and prejudice negatively impacts people's lives and the lives of their children.

Judge [redacted] has embarrassed both himself and the judicial system by his conduct, which is most certainly prejudicial to the administration of justice that brings the judicial office into disrepute. His demeanor is rude and abusive and he treats both myself and my clients inappropriately. Most clients listed above, in addition to several more, are aware of the filing of this complaint, and have endorsed such filing. They are more than willing to discuss this matter in depth with you, and would like an investigation of Judge [redacted]. I have also had consultations with others who are unable to afford representation but have had similar experiences in front of Judge [redacted]. It is very difficult to put into words Judge [redacted] courtroom demeanor. However, many of these traits will be brought out by obtaining the audio recordings of his hearings, which I was unable to obtain.

I would very much like to speak with you in more depth on this matter, and can be reached at [redacted] at your convenience.

Sincerely,