

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-278

Complainant: No. 1453410684A

Judge: No. 1453410684B

ORDER

The complainant alleged that a superior court judge erred in awarding sole custody of three of her children to her ex-husband.

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 information provided by the complainant and the electronic court records, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: November 15, 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 November 15, 2012.

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

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Dear Sir, Madam:

I am writing this letter to inform you of the injustices in my custody case which were brought before Judge [redacted] in AZ Superior court, Santa Cruz County.

My ex-husband, [redacted] and I have three minor children together; [redacted] age 11, Justice [redacted] age 10 and [redacted] age 7. Judge [redacted] awarded me sole legal custody in 2009 after a lengthy divorce and custody proceeding which took 3 years. We both filed for divorce in September of 2006. At that time Judge [redacted] and our two lawyers stated that my ex-husband was unreasonable and would not cooperate with them. He was an abusive husband and dangerously physically abuse the children while angry and still is an abusive father. He would terrify the family by driving erratically. He spent the night in jail for threatening my fiancé,

Since that time I have married [redacted] and we have two more children. On several occasions my children expressed a growing desire to not visit their father in Patagonia because they were afraid of him and other family members there. I encouraged them to go as not to interfere with his visitation. I regret not calling CPS.

[redacted] and I made a home for ourselves and our children in Sierra Vista, Az. My husband worked with a construction company on Fort Huachuca. In September of 2011 he was laid off from that company and started doing side jobs while looking for employment. In December 2011 our landlady told us we had to vacate her house by the end of the month due to her need to move in herself and get it ready for sale. We had nowhere to go except to Kansas where my family could help support us.

I sought counsel from a lawyer, Laura Cardinal, who informed me that I only needed to write a letter to the children's father and go ahead with the move. I would only need to return to Arizona for a review hearing pertaining to the custody of the children. I followed her advice since I only had two weeks to pack up a household and leave.

A hearing was set for February 1, 2012. I was not informed until one week before the hearing and I did not have counsel and only had three days to prepare for this hearing and 3 driving days away from AZ. I was 7 months pregnant at the time and had to appear telephonically. Judge [redacted] denied my request for a continuance and awarded temporary custody and for the children to see a custodial evaluator. In the February 1 trial I expressed my concern for the children's safety when they are in their father's care. My son disclosed to me an incident when we were moving to Kansas. His uncle, [redacted] brother, pulled

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a knife out and cornered him threatening to cut off his penis. After Judge made the ruling, I asked him how he was going to guarantee the safety of my children when they are with their father and his family members. He stated that he would hope that their father would have a talk with his brother. That isn't good enough for me. I regret not calling CPS at that time.

 picked up the children in Wichita, KS on February 4th, 2012. This incident is on video and shows the children under much stress and fear. My son had to be forcibly pulled off of me and tried grabbing everything in reach as his father drug him out to the car.

On or around February 26, 2012 I drove back to Arizona and rehired Randy Bays as my lawyer. We petitioned the court on several occasions as to the severity of this case. My children were dealing with so much stress being taken away from the mother who has nurtured and cared for them since birth with no help from the abusive father that now is claiming rights to them and treats them like objects and not human beings. Meanwhile I kept in contact with the children's school. I tried to get appointments with the custodial evaluator, Frank Bejarano. Several times I tried to contact his office and each time was told that Dr Bejarano was not seeing the children. I showed the children a picture of Dr. Bejarano and they in fact confirmed to me that he was the evaluator. Dr. Bejarano only spoke to my son twice and never spoke to the girls. After a long wait (luckily I had friends in Sierra Vista that I, my 3 year old and my mother were able to stay with) the court date was finally set for April 10, 2012. It seems strange that was able to have a hearing immediately set without my being involved in the plan and yet I had to wait for nearly 2 months before the hearing that I requested was set.

After presenting Judge with video footage, letters from the children and explanations of threats and abuses from the children's father, he still decided to have another custody evaluation. He gave me parenting time the first half of the summer break and their father the second half. After the evaluator was picked, I scheduled an appointment with him right away. I was to see him when picking up the children for the summer break. The Evaluator, Dr. Michael German, passed away suddenly a week or so before my scheduled appointment with him. The other custodial evaluator who was able to do the evaluation also died suddenly.

 is a ruthless man and I am not accusing him but my gut tells me that this is no coincidence. So instead of trying to find someone else to do a custodial evaluation, Judge made a ruling on September 7, 2012, with the evidence that was already presented to him. (This decree is attached along with this letter.) He gave custody to the children's father and made comments in the decree on things that were presented back in 2009.

Eye witnesses to the terrified and emotional display of my children when they were picked up by were not counted as important. Yet, the witnesses were all responsible citizens.

In the decree there is mention of me having a history of mental illness and that I did not do the follow up they had required. This is untrue. I gave them a letter from the person that

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administered my medication that stated I was off of all medications and doing well. When [redacted] left me in 2006 so did my mental problems. My mental anguish was due to living with him and fearing for my life and the lives of children at all times. I watch my children freeze in fear every time their father is near them. I have not had any mental problems since then and am healthier now than I have ever been. I regret not calling CPS sooner.

I believe that Judge [redacted] upon seeing custodial evaluators suddenly die may be in fear for his life. I believe that I am in danger as well as my children. My ex-husband's violent temper has put men in the hospital before and he bragged about it. I do not understand how Judge [redacted] could rule in this case the way he did and not take into consideration the video footage of the children crying out for me or the letters they have written pleading with him to let them come home. He does not take into account the threats made to the children by their father that they will somehow be placed in foster homes if they don't stop crying for me.

In the decree Judge [redacted] writes "it seems" a lot. He should know that things are not always as they seem.

In the decree, Judge Soto [redacted] that I have been coaching and manipulating my children. This is a lie as responsible witnesses will tell you. I have only encouraged my children in love by telling them that I love them and they should only tell the truth concerning issues and abuses with their father. I never speak about their father in their presence. My children told me last year that they never want to come back to Arizona and visit their father. Many times when we were living in AZ, the children begged my husband, [redacted] to adopt them so they wouldn't have to go to their father's house even for a visit. No one suggested this possibility to them. There is obviously a reason for their desires that Judge [redacted] does not take into consideration. Now they are forced to live with the father they fear. Again, I regret not getting CPS involved back then.

Judge [redacted] stated that I appeared to lack background, training and expertise to home school my children. As mentioned earlier, things are not always as they seem or appear. I have a background of knowing each of my children's learning styles and what their interests are. At the same time I am able to give them much more one-on-one tutoring time than a teacher and a teacher's aide in a class room full of 30 children. I have an education up to one year in college and not only do I enjoy reading and mathematics, I enjoy facing the days challenges and learning interesting and new things right along with my children. They were exposed to more hands on training and able to go on several field trips. We had a schedule for much socialization and extra-curricular activities. Just read the letters they wrote attached to this. They did not learn cursive writing or those writing skills in public school. Yes, they could use more individual attention and more training, but realize that they always returned from their father's home after a weekend there in such emotional states that it took part of that Monday to get them back in gear for productive study. The day before they left to go with their father was always a traumatic one, with little productive education. Then when ordered to return to AZ,

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there was still time lost. Yet, with all that they are still learning well. needs glasses, has need for an appointment also with the doctor concerning her heart murmur. She has headaches and is very sensitive and allows the stress and strain of living there to get to her emotionally, crying a lot. no longer wants to be called but rather because he is so angry at his father. We notice he has developed a "tick" in his facial muscles again. is better about things, but doesn't understand when her father yells at her and threatens her. She is OK for the moment and then soon after breaks down in tears and takes a long time to come back to "normal". They all complain that they do not eat well and have to live on ramen noodles and anything else they can find. School lunches are the only real food they get.

Once again Judge did not take into consideration that the children enjoyed being home schooled and were thriving in it. He also never gave me the option of putting them back in school and keeping sole custody of them. I would like to know the home school cases which are inappropriate to which Judge refers. It is perfectly legal for parents to home school their children and national statistics point to the children learning more and being more socially adjusted than under the public school system, which is not a good example of excellence in AZ, which I believe still has the lowest scores in the nation. We were just beginning to help Justice with her learning problems when our home was interrupted by the court case.

My children were already behind academically when I took them out of public school. We had begun to receive help from a professional tutor, Stilwell's Learning Center, LLC, and were beginning to see major improvements before the children were placed with their father. stated emphatically to me that he would not be helping the children with any of their school work after I started to home school. Recently they complain about him yelling at them when forced to help with their homework.

Judge also stated that has played a significant role in the children's lives. The only significant role he plays is instilling them with fear and anxiety. His alcoholic mother and sisters take them to school, doctors' appointments and extra curricular activities. has never provided primary care for the children. When we were married, he would shove them out of the way if they got in the way of his favorite television program and not even one time took them to a doctor's appointment or any other appointment. He still has not attended any of their parent-teacher conferences. He also told me my showers better be fast because he couldn't handle taking care of the children. I would often times hear him yelling at them and took most of my showers after the children were in bed. I have disclosed these things to Judge He must not care. I hope he doesn't get reelected.

I have travelled back to Arizona for a visit with my children and have finally called CPS on the case, which is something I regret not doing sooner. Since being here, the children's father has threatened to take away my weekend visit with them and has not allowed me to have telephone contact. The only reason I didn't call CPS before now was that I had expected Judge to do

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something and rule in the children's favor but he has not and the abuse seems to be getting worse. has a short fuse and cannot handle the stress of raising children. I have also enclosed letters from my two oldest children where they have stated their wishes. There have been similar letters from them given to Judge I am having a difficult time trying to understand what evidence exactly a judge needs to keep the contact with a dangerous parent to a minimum or have the visits be supervised. I personally believe Judge has seen enough disturbing evidence and the only thing he has kept refusing to do is to speak to the children. He claims it would be an added stress for them. What does he call taking children away from a loving nurturing parent and a wonderful and loving step-father and placing them with the angry vindictive abusive parent? I believe that this is an added stress and not wanting to hear the children's wishes in an in-chambers interview makes him out to be just as mean and cowardly as their father.

Please take this into consideration and investigate this case as well as others held in Nogales, Az. I hope and pray that justice will come about in my case as well as others that Judge has ruled upon. It is possible from my vantage point that there might be some misconduct or blatant oversight with his judgments.

Thank you for your immediate attention to this matter. I look forward to hearing from you soon. I am scheduled to return to Kansas on Monday and am very worried about my children's emotional and physical safety.

Respectfully,