

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-293

Complainant: No. 1454610922A

Judge: No. 1454610922B

ORDER

The complainant alleged a superior court judge is incompetent and unfit to serve on the bench because she was biased against him in his dissolution proceeding and made false statements about him in her decision.

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 several minute entries in the case, 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: December 6, 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 December 6, 2012.

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

Judge _____ has displayed conduct in the identified case detrimental to the upholding of the principles of the United States Legal System. _____ behavior in the June 12, 2012 trial of this dissolution case reflected her inability to give the appearance of propriety. A reasonable person would have perceived _____ conduct throughout the June 12, 2012 trial as an individual that had determined the outcome of the case prior to the day long trial. Her conduct was averse to displaying an appearance of honesty, impartiality and a level of competent fitness for her position.

_____ repeatedly, quoted Defense counsel's accusatory statements made throughout the trial in her August 13, 2012 ruling. _____ did not even bother to take the time to write her findings in her own words. The perception by a reasonable person is one of _____ having Defense counsel write her judgment for her. _____ actions have definitely not promoted confidence in the Arizona judiciary. _____ conduct is a definite display of bias and partial prejudice.

_____ conduct of "rubber stamping" Defense Counsel's June 12, 2012 allegations as fact and quoting Defense counsel's allegations verbatim in her August 13, 2012 written Order is a clear indication of her inability for independent thinking, lack of judiciary integrity, and incompetence. _____ has manifested bias and prejudice in her conduct throughout her handling of the above referenced case. Her conduct pronouncedly impaired the fairness of the judicial process and has brought the judiciary into disrepute.

_____ knowingly made an untruthful statement on page 13; first bullet point of her August 13, 2012 decision when she stated, "Mr. _____ advertised that he is a licensed attorney with a specialty in family law." This is a false statement purposefully made by _____. Based on the submitted evidence and Plaintiff's testimony, Plaintiff's advertisement did not indicate that he had a "specialty" in family law. *A complete and true copy the Decree of Dissolution of Marriage authored by _____ is annexed as **Exhibit "1"** and made a part hereof by this reference. Also, a true copy of Plaintiff's advertisement entered into evidence at the trial is annexed as **Exhibit "2"** and made a part hereof by this reference.*

Again, _____ knowingly makes an untruthful statement on page 13; second bullet of her August, 2012 decision when she stated, "Mr. _____ failed to respond to discovery as required by the Arizona Rules of Family Law Procedures." The truth is that _____ did respond to discovery in accordance with the Arizona Rules of Family Law Procedures, but Defense counsel did not like _____ response and thus complained to the court that _____ had not responded and _____ displaying her bias against _____ took Defense counsel's complaint at its face value without conducting appropriate research into the matter. _____ failed to identify a single discovery response that was not timely filed in accordance with Arizona Rules of Family Law.

Once again, _____ knowingly makes an untruthful statement on page 13; third bullet of her August, 2012 decision when she stated, "Mr. _____ engaged in inappropriate questioning during Ms. Cook's deposition, designed simply to harass Ms. Cook." The fact of the matter was that _____ was not allowed to ask many questions all as Defense counsel objected to every question and at one point displayed his violent temper by rising out of his seat to stare me down and physically coming within an inch of touching my face. Defense counsel objected to basic questions nearly 100 times and then justified his behavior by misrepresenting the truth to _____ saying that the questions were inappropriate. _____ did not identify a single question that was inappropriate. Based on _____ regurgitation of defense counsel's exact wording, I strongly speculate that _____ did not read the transcript of the deposition.

Once again and again, _____ quotes Defense counsel's allegations as her actual ruling in her Order without giving any credence to the submitted evidence or to the Plaintiff's testimony. _____ filed a Motion to Compel on a dispute regarding the assignment of mobile telephone numbers. _____ was willing to assign one of 'his' mobile telephone numbers to the Defendant provided Defendant offset the transfer costs. Defendant refused to pay any of the transfer cost, thus leading to _____ motion. _____ entered a Minute Entry taking the position to NOT RULE on the matter, but in her August 13, 2012 Order ruled that _____ must pay \$2,500.00 in punitive damages for refusing to transfer one of the mobile telephone numbers to the Defendant. _____ Dissolution Order wrongly punishes the Plaintiff for her failure to rule on the matter when it was before her in October 2011, eight months prior to the trial.

On September 30, 2011, Plaintiff, _____ informed Defendant's legal counsel of his willingness to resolve the dispute regarding Plaintiff's two mobile phone numbers and his willingness to transfer one of the numbers to Defendant. *A true copy Plaintiff, September 30, 2011 letter is annexed as **Exhibit "3"** and made a part hereof by this reference.*

Plaintiff made numerous efforts to resolve the dispute regarding the mobile phone number. Defense counsel repeatedly refused to make any effort what-so-ever to resolve the matter. On October 7, 2011 Plaintiff filed a Motion for Order to Compel with _____ Court in order to resolve the mobile phone matter before her. *A true copy Plaintiff, October 7, 2011 Motion For Order to Compel is annexed as **Exhibit "4"** and made a part hereof by this reference.*

Defense counsel filed his Response to Motion for Order to compel on October 24, 2011 in which he stated that he would not make any effort to resolve the matter and insisted on litigating the matter. *A true copy of Defendant's, October 24, 2011 Response to Motion For Order to Compel is annexed as **Exhibit "5"** and made a part hereof by this reference.*

On October 27, 2011, Plaintiff filed petitioner's Reply in Support of Motion for Order to Compel with _____ Court. In Plaintiff's Reply, he pleaded for _____ intervention to resolve the mobile phone number dispute. *A true copy of Plaintiff's, October 27, 2011 Reply in Support of Motion For Order to Compel is annexed as **Exhibit "6"** and made a part hereof by this reference.*

On November 17, 2011, _____ DENIED Plaintiff's Motion for Order to Compel, thus completely neglecting her judicial responsibilities. *A true copy of _____ November 17, 2011 Minute Entry, in which she DENIED Plaintiff's Motion to Compel is annexed as **Exhibit "7"** and made a part hereof by this reference.*

Then on August 13, 2012, _____ punished Plaintiff for not resolving the mobile phone dispute with the uncooperative Defendant by assessing punitive damages against Plaintiff in the amount of \$2,500.00. _____ lack of action generated considerable harassment toward Plaintiff from Defense counsel, which continues to this very day.

And again, _____ ignored Plaintiff's testimony and documents submitted into evidence during the June 12, 2012. In the fifth bullet point on page 13 of _____ order, she again quotes

Defense counsels untruthful allegations when she states,” Mr. [redacted] refused to agree that Ms. Cook could take a loan against her portion of her 401k during the pendency of the litigation.” This statement is a blatant lie! Entered into evidence is an email from my attorney addressed to Defense attorney that informed him that “My client [redacted] is agreeable to your client taking a \$50,000.00 loan against her 401k provided my client receives one-half as a credit towards the ultimate division of assets and debts.” *A true copy of an April 16, 2012 email sent from Plaintiff’s legal counsel, Zalena Kersting to Defense counsel, Joel Milburn is annexed as Exhibit “8” and made a part hereof by this reference.* [redacted] conduct clearly shows that she has no concept of promoting confidence in the Arizona Judiciary.

And again and again, [redacted] refused to listen to Plaintiff’s testimony made during the June 12, 2012 trial. [redacted] states in her order that, “Mr. [redacted] dropped his spousal maintenance claim at the time of trial without providing notice to Ms. Cook.” On May 23, 2012 during a discussion with my legal counsel, Zalena Kersting, I informed her that I wanted to drop my spousal maintenance claim. At trial, I informed the court that my legal counsel informed me on May 23, 2012 during our discussion that she would inform Defense counsel. Ms. Cook was represented by her legal counsel, I could inform either Ms. Cook or her legal counsel of my decision. It was the responsibility of my attorney, yet [redacted] misrepresents the facts in this matter because she did not acknowledge my testimony makes an untruthful statement in her order.

And again and again, [redacted] reveals her inability to display independent, unbiased, impartiality toward the Plaintiff [redacted]), in her last bullet point on page 13. [redacted] states,

“At trial, Mr. [redacted] attempted to allege that his dyslexia caused him to confuse his business phone number with the personal phone number of Ms. Cook that he literally called thousands of times during their marriage. The Court found Mr. [redacted] testimony lacked credibility.”

[redacted] lack of integrity is irrefutable. The actual testimony by [redacted] consisted of the fact that, “due to my dyslexia I mixed up the telephone numbers as the number [redacted] being ‘my’ mobile business number and the number [redacted] being ‘my’ mobile personal number, when actually ‘my’ business number is [redacted] and ‘my’ personal cell phone number is [redacted] totally ignored Plaintiff’s testimony regarding Dr. Mary Sweet-Darter’s diagnosis of dyslexia. *A true copy of [redacted] diagnosis of [redacted] is annexed as Exhibit “9” and made a part hereof by this reference. THIS EXHIBIT IS PROTECTED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT of 1996 (HIPPA) and is NOT TO BECOME PUBLIC INFORMATION.* [redacted] conduct is consistently incredulous to the evidence submitted to the court and the testimony given before it.

[redacted] selectively utilized existing case law to determine community funds contributed toward the equity in the Plaintiff [redacted] sole and separate property citing specific case law in her following ruling:

“Mr. [redacted] owned a home prior to the marriage located at [redacted] and is Mr. [redacted] sole and separate property. Community funds were used to pay the mortgage on Mr. [redacted] sole and separate during the parties’ marriage. *See Exhibit 10.* The marital community can claim an equitable lien against a party’s sole and separate property when community funds have contributed to the equity in the property. *See Drahos v. Rens*, 149 Ariz. 248, 249, 717 P.2d 927, 928 (Ct. App. 1985);

Barnett v. Jedynak, 219 Ariz. 550, 553, 200 P.3d 1047, 1050 (Ct. App. 2009); see also *Valento v. Valento*, 225 Ariz. 477, 240 P.3d 1239 (Ct. App. 2010). The Court finds based on the credible evidence and testimony, that the community is entitled to claim an equitable lien in the amount of \$43,200.00 on the home located at

Ms. Cook's one-half share is \$21,600.00. Mr. [redacted] is awarded, as his sole and separate property, subject to any liens or encumbrances thereon, the residence and real property located at "Paragraph number 9 on page 7 of Exhibit "1."

However, [redacted] applied absolutely **no** law in determining the amount of community funds contributed toward the equity in Cook's sole and separate property failing to reference any statute or applicable case law. Again [redacted] revealed her bias and partiality toward the female Defendant over the male Plaintiff in her ruling as follows:

"Ms. Cook owned a home located at [redacted] Arizona prior to the marriage and is Ms. Cook's sole and separate property. During the marriage, Ms. Cook's first husband and Ms. Cook's special needs child lived in the home during the parties' marriage. Ms. Cook did not receive rental income as a result of this arrangement. Ms. Cook incurred debt associated with the home during marriage to pay expenses associated with Mr. [redacted] home located at [redacted] Mr. [redacted] sought an equitable lien associated with the home, arguing that community funds were used to pay the mortgage. The Court finds based on the credible evidence and testimony that the community is entitled to claim an equitable lien in the amount of \$18,022.00 on the home located at [redacted] Mr. [redacted] one-half share is \$9,011.00. Mr. [redacted] also claimed that Ms. Cook wasted community funds by allowing her ex-husband and special needs daughter to live in the home rent-free during the marriage. The Court finds no legal support for Mr. [redacted] waste claim." Paragraph number 10 on page 8 of Exhibit "1."

Furthermore, [redacted] accepted Defendant's allegation without the admission of a single piece of evidence to support Defendant's claim that her 30-year old daughter, named Sarah Cook, who is gainfully employed and a bonded and insured Notary Public with the State of Arizona is a special needs child. *A complete and true copy the Decree of Dissolution of Marriage authored by Gates was previously annexed as Exhibit "1."*

[redacted] complete disregard of the law is pronouncedly evident when she ruled that Plaintiff [redacted] personal and sole property obtained three-years prior to his marriage to Cook is community property and awarded the property consisting of "Mitchell" the cat and "Brownie" the cat to Defendant Cook, a female.

"Mitchell" the cat along with her one brother and two sisters were discovered as kittens by _____ dog in May of 2002 in _____ wood pile on _____ sole and separate property owned exclusively by _____ for 14-years years prior to his marriage to Cook on July 23, 2005.

"Brownie" the cat, a stray, was discovered on _____ sole and separate property in 2003 owned exclusively by _____ for 14-years prior to his marriage to Cook on July 23, 2005. "Brownie" has been a companion to "Mitchell" the cat, and "Sparky" the cat and, "Beep" the cat and, "Smokey" the cat for the past 9-years. _____ 6-year marriage to Cook spanned from July 23, 2005 through July 3, 2011.

Plaintiff, _____, has a tremendous respect for the law, but such respect is extremely difficult to maintain when a Judge, such as _____ shows absolutely no respect for the law that she is to uphold.

There is still more; _____ incompetency and unfitness to be on the Bench was further displayed within the content of her August 13, 2012 written Decree of Dissolution of Marriage. Her ineptness resulted in escalating attorney fees for both parties due to numerous errors in her written Order. The parties, through their legal counsel had to file a Stipulation for Entry of Order to Correct Decree of Dissolution of Marriage as a result of _____ inability to proof read her own work. _____ continues to show the public that she is not capable of complying with the Code of Judicial Conduct. *A true copy of the parties Stipulation for Entry of Order to correct Decree of Dissolution of Marriage is annexed as **Exhibit "10"** and made a part hereof by this reference.* Also, *a true copy of September 24, 2012 Order to correct Decree of Dissolution of Marriage is annexed as **Exhibit "11"** and made a part hereof by this reference.*