

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-304

Complainant: No. 1455510699A

Judge: No. 1455510699B

ORDER

The complainant alleged a superior court judge engaged in bad faith and fraud in his custody case by making erroneous rulings that were unfair to him.

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 various minute entry orders 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 decision. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: December 12, 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 12, 2012.

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

NOV 13 2012

November 2, 2012

State of Arizona
Commission on Judicial Conduct
1501 W. Washington St Suite 229
Phoenix, AZ 85007

Subject: Judicial Complaint ICO Judge [REDACTED]

Dear Commissioners:

Please accept this letter as a formal complaint against Judge [REDACTED] for his violating the Judicial Canons, failing to uphold the integrity and independence of the judiciary, failing to perform the duties of his office impartially, and displaying conduct that brings the judiciary to disrepute.

The following violations have been observed:

Judicial Canon 1 (rule 1.2) A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY AND IMPARTIALITY OF THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Judicial Canon 2 (rule 2.2) A JUDGE SHALL PERFORM THE DUTIES OF THE JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY AND DILIGENTLY.

On February 8th, 2012, I presented my case for a modification of parenting time and child support before Judge [REDACTED]. Judge [REDACTED] made questionable rulings on the following arguments:

1. During the argument for more parenting time, I had explained that with my current duties in the U.S. Naval Reserves, my workload and schedule is extremely flexible to where I can pick when I will perform my duties and for what lengths of time, as to accommodate and provide consistency for my children's schedule. I presented that I work approximately 90 days/year (non-consecutively) with the Naval Reserves. Judge [REDACTED] determined that with the number of days I would be gone on Reserve duty, I would be expected to miss 30% of my parenting days, thus reducing my parenting time credit (for child support calculations) from 145 days to 125 days. His ruling showed discrimination based on my choice to serve in the Naval Reserves and allowed no flexibility where there was before. Reducing the number of parenting days for child support calculations increases the amount of child support owed and is, in a sense, a monetary penalty for my choice to continue to serve my country. To date, I have only missed 3 of my parenting days.

2. Judge [REDACTED] calculated child support based off of an imputed income of \$72,500/year when I testified to the fact that since I was Honorably Discharged from active duty, I have been unable to obtain full time employment. I have been sustaining

myself on my Naval Reserve income of \$26,000/year and the remainder of my savings. Opposing counsel charged and failed to prove that I had willfully chosen not to work full time in order to avoid paying child support. Testifying that I could earn a higher income through opportunities outside the state of Arizona, I made it very clear that I will not leave my children in order to earn a higher paycheck, especially given that Mother testified to the fact that she asked me to move to Arizona to help her and be closer to the children. When pushed by opposing counsel to hold me accountable for a higher income, Judge [redacted] had stated that to impute a high income for me would only set me up for failure. During the ruling, Judge [redacted] imputed a higher income of \$72,500 a year. The Court considered this a deviation pursuant to ARS 25-320 (with no explanation). Per ARS 25-320, Judge [redacted] failed to consider the financial resources and needs of the noncustodial parent (section D, line 5), and the standard of living the children would have enjoyed had the marriage not been dissolved (section D, line 3). Even if the marriage would not have been dissolved, my current employment situation would have been the same. Judge [redacted] also failed to consider the Self Support Reserve Test, as outlined in the Arizona Child Support Guidelines, 2011; section 15. If the Self Support Reserve Test and needs of the noncustodial parent were considered based on the imputed income, this is highly unrealistic and unreasonable. This decision should have been made based on actual income at the time. Per ARS 25-320, Section N, "The court shall presume, in the absence of contrary testimony, that a parent is capable of full-time employment at least at the applicable state or federal minimum wage, whichever is higher". Because of Judge [redacted]'s ruling, I have been put in a position where I can no longer sustain my financial obligations and have been forced to file for chapter 7 bankruptcy.

3. Judge [redacted] failed to make an impartial judgement in taking Mothers testimony as to my daughters alleged sensory issues when deciding parenting time and scheduling. Mother testified that our daughter suffers from sensory processing disorder yet had no proof or explanation as to why this only happens in her house and not at mine or at school. There was no clinical backing to this claim and Judge [redacted] failed to see that the problem of any 'disorder' is confined to the dynamics at the Mothers house.

4. Judge [redacted] ruled that no parent has unilaterally withheld parenting time from the other. I had testified that upon filing for this modification in parenting time and child support, mother immediately retaliated by reducing my access to my children. We exercised a very workable and flexible parenting schedule and since Mother reduced my time with my children, behavioral problems with the children began to surface. Judge [redacted] failed to take this into consideration and dismissed my allegation of unilateral behavior on part of the Mother.

5. Judge [redacted] omitted evidence submitted on my behalf. I had submitted witness statements from credible sources that address specific concerns regarding Mothers behavior with children and the questionability of Mothers character. The observations in these letters support fact and would have only helped in finding the truth.

6. Judge [redacted] failed to provide impartiality and fairness to both parties when settling a dispute regarding cost of pre-school. Mother and I had made a verbal agreement that I would cover the full tuition for pre-school costs. After spending over \$43,000 in pre-school costs, my funds were depleted and I informed mother I could no longer pay as of September, 2012. Judge [redacted] ruled that I was to reimburse Mother half of the pre-

school expenses retroactive to September 1st, 2012 even though I had no means to pay at that time, yet she was not ordered to reimburse me for any of the \$43,000 I paid when she chose not to share that expense. I remind the commissioners that this was predicated on a verbal (non-binding) agreement.

Based on information and belief, Judge _____ is motivated by bad faith with a conscious desire to injure my family and myself using numerous, multiple and repeated instances of unprofessional and unethical behavior, fraudulent willful and contrived misrepresentations acting with oppression, malice, and fraud with the conscious and willful desire to deceive the court to purposefully harm and deny my due process.

cc: Honorable John McCain
Governor Jan Brewer