

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-001

Judge: No. 1459010878A

Complainant: No. 1459010878B

ORDER

The complainant alleged a superior court judge demonstrated bias against him and was unfair by improperly setting aside a default judgment he obtained from another judge.

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 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: January 31, 2013.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on January 31, 2013.

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

ALLEGED VIOLATIONS**VIOLATION OF RULE 1.2. Promoting Confidence in the Judiciary****VIOLATION OF RULE 2.2. Impartiality and Fairness****VIOLATION OF RULE 2.3. Bias, Prejudice, and Harassment**

On August 28, 2012, the parties appeared at the Resolution Management Conference scheduled in the matter. The Court heard oral arguments on Respondent's Motion to Compel and concluded that since Petitioner-Mother was present in court, she would be directed to forward proof of her income and home address to Respondent. The Court then dismissed Respondents Motion to Compel. *It should be noted that the court failed to reinforce its directive that Petitioner forward proof of her income with a court order, and to date the documents have never been produced.*

The Court then directed its attention to custody, parenting time, and child support in the matter. Respondent informed the court that he filed a Petition to Establish in the matter due to Petitioner-Mothers unwillingness to facilitate visitation since the birth of the minor child. Further, that Petitioner-Mother as evidenced by the docket, failed to participate in past proceedings or comply with any court orders.

Despite, evidence that Petitioner-Mother had not cooperated in past proceedings and failed to facilitate visitation since the minor child's birth; the court illogically orders the parties to meet after the proceedings to agree on a visitation schedule. Respondent plead with the court to issue a court order for custody and visitation instead of leaving it to the parties to no avail.

The Court then proceeds to order Respondent to pay Child Support in the amount of \$200.00, despite the Honorable [redacted] issuing a Judgment Order stating that child support in the matter be waived until such time as Petitioner-Mother produce documentation of her income. The Court felt it unnecessary to issue a custody or visitation order despite Petitioner-Mother's inability to facilitate visitation. Then failed to order Petitioner-Mother to produce proof of her income, yet ordered child support even though the court previously ordered that child support would be suspended until Petitioner-Mother produce proof of her income.

On November 27, 2012, Judge set aside the Default Judgment without, (1) Respondent receiving a copy of Petitioner's Motion to Set Aside Default Judgment, (2) [1] one day after the Motion to Set Aside Default Judgment was filed (3) actually reviewing the "Default Judgment", (4) the parties receiving notice of oral arguments on Petitioner's Motion to Set Aside Judgment, and (5) the record providing substantial evidence to support its findings.

On November 27, 2012, Judge _____ advocated for Petitioner creating an in-sequential error by the court to set aside the judgment when it became apparent after questioning that evidence and testimony were insufficient to set aside the judgment.

On November 27, 2012, Judge _____ set aside default alleging that the court erred by not determining custody and visitation prior to referring the matter to a IV-D Commissioner. Proceeds to hear testimony that the parties have been exercising the visitation outlined in the Default Judgment and both parties agree that it was therapeutic to the minor child. However, declines to issue custody and parenting time order. Which was the alleged reason he set aside the judgment.

For a complete background of the entire history of proceedings please see attached Motion to Set Aside Minute Entry Order dated November 27, 2012.

If the Commission reviews the allegation not in part but in whole Judge _____ actions at minimum suggest the appearance of impropriety.