

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-177

Judge:	No. 1064814719A
Complainant:	No. 1064814719B

ORDER

The complainant alleged a superior court commissioner was not fair and impartial in conducting a settlement conference in a dissolution proceeding.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the commissioner 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 review, the commission found no evidence of ethical misconduct and concluded that the commissioner 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 1, 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 August 1, 2013.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2013-177

COMPLAINT AGAINST A JUDGE

Your name: _____ Judge's name: _____ Date: 07/11/2013

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

Regarding the Mediation/ Settlement Conference conducted on June 21, 2013 and presided over by _____ I offer the following comments:

According to Arizona Rule of Family Law Procedure 66 (B) (4), Mediation means a voluntary confidential process in which parties enter into one or more private discussions with "a neutral third party" to resolve the dispute.

Commissioner _____ did not fulfill the requirement to act as a "neutral party". During the mediation, Commissioner _____ spoke first with my wife, _____ before speaking with myself and my lawyer.

After speaking with her, he proceeded to discuss the spousal support issue. During this time, he stated several times (at least 4-6) a monthly spousal support amount that he insisted was "fair".

In fact, he expressed this in such a forceful manner that I was fearful that he would not even accept a counter offer for a lesser amount. In this situation, I think one has to ask,

was Commissioner _____ was truly "neutral" or did he favor one party in this mediation? In addition, I note that he did not even present my counter offer to _____ or her consideration.

Second, he refused to even present a portion of the points that I had submitted for mediation with _____ When I affirmed my right to enter the aforementioned mediation points,

as this was not a court hearing but a mediation, Commissioner _____ abruptly terminated the session even though there were other areas for which agreement was possible. This shows

absolute judicial misconduct and a complete inability to negotiate properly as a mediator should. I consider this action to be unconscionable. Inasmuch as he stated

at the beginning of the mediation session that he had a sore throat and wanted to cut short the proceedings, his action seemed to fit his agenda.

I was absolutely shocked and request a firm reprimand for this uncalled for behavior.

It should be pointed out that my wife provided no Pre-Mediation Statement to my knowledge as required under Rule 67 (B) (6) or Rule 67 (D) (2) requiring a Settlement Conference Memoranda and,

in fact, attended without a lawyer of her own present. Again, I ask, could this have influenced Commissioner _____ who conferred with her first?

As a result of Commissioner _____ action and the premature ending to the session, there was no agreement reached. Pursuant to Rule 67 (B) (7) and Rule 67 (D) (7),

the mediator/ settlement conference judge shall not report the positions of the parties and shall not comment upon or offer any opinion about the position of any party.

If Commissioner _____ onwards any biased statements to the divorce court judge in this matter, I request further disciplinary action and attachment of this complaint to said document.

I waited close to 5 months for this mediation session, which was my first opportunity to directly work with my wife to resolve some of our issues.

To have the court assigned mediator simply scrap it at the first negotiation was unforgivable.

(Attach additional sheets as needed)