

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-356

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge wrongfully removed his counsel and forced him to represent himself with no notice.

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 review, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: February 2, 2015

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on February 2, 2015.

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

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

To Whom It May Concern:

This document is intended to accompany the complaint form titled "How to File a Complaint Against a Judge" found at the internet URL: www.azcourts.gov/azcjc. This letter is referenced in the narrative section of page two (2) of the form.

INTRODUCTION

The nature of my complaint against the Honorable _____ originates with a scheduled child support hearing dated _____. At this hearing Judge _____ removed my attorney without notice and forced me to represent myself, in spite of my repeated protestations regarding my preparation and competence to self-represent. The Judge suggested that a child support hearing could be completed in 30 minutes, yet the hearing was scheduled for all day. The hearing's actual duration, and my forced self-representation in court, was approximately six hours. Additionally, contrary to the Court's stated intention to expedite resolution of a long-standing case (by removing my counsel, forcing my immediate and unprepared self-representation, and denying a continuance), the Court has elected to continue the case on multiple occasions for less compelling reasons than originally requested Medical Stay of Proceedings.

The hearing was for Case No. _____ – a paternity, custody, parenting time and child support case related to the minor child _____. I am _____ and I am the Petitioner in the case, represented by _____ of the _____. I retained _____ during the spring of _____ (prior to Judge _____ assignment to the case) and through _____ representation have resolved paternity, custody, and parenting time. Child support is the only remaining issue.

//

COUNSEL MEDICAL EXCUSE

As the hearing date approached, it became apparent that my attorney, would be unable to appear due to ongoing medical issues. On [redacted] emailed to the Court, opposing counsel, [redacted], and myself, a “Request for Stay of Proceedings Based on Medical Necessity” due to [redacted] unexpected, emergency, hospitalization (attached). The request was a total of 18 pages and contained detailed information about [redacted] medical condition, including medical records and a doctor’s note directly addressing the Court. No response was received prior to the [redacted] hearing and my attorney advised that my appearance would be the best course of action, in the event that the Court had not had the opportunity to review the Request for Stay of Proceedings.

At the beginning of the hearing Judge [redacted] indicated that the Court had received no communications from [redacted], or me, regarding the [redacted] hearing nor had the Court received ordered communication regarding a previous hearing. The Judge then ordered [redacted] withdraw upon the Court’s own motion. This is reflected in the Court’s Minute Entry (attached). I repeatedly expressed surprise and confusion at the Court’s indicating that they had no documentation in the record regarding documents I had understood to have been previously filed regarding the case.

FORCED SELF-REPRESENTATION

Unexpectedly finding myself stripped of counsel at the beginning of a hearing I fully expected to be continued, I was then immediately forced to represent myself during the hearing despite my clear and repeated assertions as to my lack of preparation and lack of competence to do so in the matter. Judge [redacted] emphasized that establishing child support was straightforward with nothing complicated about it, was a matter of doing a calculation, and typically could be done in about half an hour. In actuality the hearing lasted from approximately [redacted] until approximately [redacted] with a [redacted] break for lunch. During this time I was obligated to respond to questions from the court and opposing counsel, cross-examine the respondent, testify, and undergo a cross-examination from the Court and respondent’s counsel, as well as make a closing statement. Throughout, I continued to protest to the Court my lack of preparation to represent myself and statements regarding my lack understanding of the proceedings. While the Court did note for the record my objection to self-representation, the Judge is on record stating: ‘I can’t say that I agree that you do not understand’ (Hearing Transcript attached). I assert that my lack of understanding came directly from my understanding and reliance on the fact that I was represented by counsel until the Court ordered otherwise. Arriving in the Court room that day I was unfamiliar with opposing counsel’s exhibits. I did not prepare or have evidence or exhibits of my own to present. While I was allowed [redacted] minutes during a morning break to review and familiarize myself with these documents, I still did not have court-room experience or context with which to understand how such documents might be used to argue a point, let alone a case for child support. My lack of understanding and expertise in these matters is exactly why I had retained counsel – of which I was denied by the Court.

//
//

INCONGRUITY BETWEEN COURT STATEMENTS AND ACTIONS

The case this hearing dealt with has been ongoing since the spring on [redacted]. The only remaining issue before the Court is child support. There has not been a child support order from the Court to-date and the respondent and I share equal parenting time of our, now almost [redacted]. While I am interested in resolving this remaining issue, it seems incongruous that the Court would suddenly want to expedite the process through my being denied counsel (who was temporarily unavailable due to legitimate and documented medical issues).

Furthermore, the Court stated that there was a need to move forward at that stage and that it did not find sufficient justification to continue the case. The Court noted multiple continuations to the case and acknowledged its culpability in allowing the continuances. The Court also stated 'these proceedings are very, very important' and contended that it had 'no choice but to go forward.' Judge [redacted] further specified "I want to make it clear I can't get you back on the calendar until [redacted]. And that's just not going to happen. I'm not going to wait that long on a case filed in June of [redacted] It's more likely [redacted] because my [redacted] is full. I'm thinking [redacted] for a full day hearing." (Hearing Transcript, attached, pages 44 and 45.) With all respect due to the Court, I'll further note the contradiction between the Judge's previous statement that the hearing was simple and typically took about 30 minutes and the above quoted statement contemplating a "full day hearing."

During the course of the [redacted] hearing Judge [redacted] did repeatedly state that would allow me to supplement the record. At multiple points I requested clarification as to what this entailed and how much time would be allowed for the preparation of this documentation. Given that I did not understand the proceedings, I asked about the process and timeline to obtain a transcript of the hearing. The Court discouraged this based on how long it might take to prepare (due to the Court's schedule and the reporter's other obligations) and based on the potential cost. At the end of the hearing the Judge reviewed the specific supplemental documentation it was ordering and initially set the due date for 30 days (in-part relative to my intent to secure a transcript of the hearing). **However, when opposing counsel stated that he would be [redacted] for 18 of those 30 days, the Court, without objection or additional discussion of the already numerous delays and continuations in the case, extended the deadline for submitting supplemental information by two weeks to [redacted].**

[redacted]. I then submitted extensive supplemental information consistent with the Court's orders and statements in the transcript by the [redacted] deadline (Notice of Filing Supplemental Support Discovery attached). The Respondent failed to comply with the Court's orders, in that [redacted] failed to provide the Court, or Petitioner, with ANY supplemental information, AND then objected to the supplemental information that I had submitted.

In response, Judge [redacted] issued a Partial Under Advisement Ruling, ordered the setting for an additional two hour trial during [redacted], and ordered the me (the Petitioner) to submit further additional information. (Partial Under Advisement Ruling attached.) I filed the ordered information, and due to a work-related conflict with the trial set for [redacted] filed a

Motion to Continue (attached), which was granted. The Court subsequently reset the trial date for (attached).

IN CONCLUSION

Prior to and throughout my petitioning of this case with the Court, I have endeavored to move the process forward in a timely fashion. I have retained counsel at great personal expense to assist with this goal. I have fully complied with all orders of the Court, been consistent with my original intent to establish paternity, custody, parenting time and child support. I have timely supplied full and complete information to the Court and the respondent, as well as initiated and participated in both ordered and voluntary mediations, counseling, and settlement negotiations. I have been more than satisfied with the representation provided to me by and believe that has fully complied with the Court's orders and procedure. Aside from the Court's complaints on and reflected in the Minute Entry of the same date, I am unaware of any other complaints, current or past, regarding . While it is accurate that there have been delays, those leading up to the hearing, and subsequent events are material, compelling, and definitely worthy of the Court's accommodation and understanding of the medical documentation. To deny an attorney and client this accommodation and understanding is unfair and unjust to not only the attorney, Petitioner and Respondent, and it is NOT in the best interest of the parties' minor child,

requested a Stay of Proceedings due to medical issues under doctors' orders. The Court did not find this "sufficient justification...to continue this matter" and elected to force me to represent myself during an all-day hearing in spite of my protestations of lack of preparation and lack of understanding regarding the proceedings. Furthermore the Court appears to have materially contradicted itself by allowing multiple continuations since the hearing for much less substantial reasoning.

I would like to see formal restoration of as my counsel on this case, so that we may efficiently resolve the outstanding issues in a timely fashion. Please don't hesitate to contact me with any questions or requests for additional information. This matter is of the utmost importance to me, as it has a direct impact upon the best interests of my daughter, – the primary reason for initiating this case from the start.

Sincerely,