

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 18-220

Judge:

Complainant:

ORDER

The complainant alleged a superior court commissioner engaged in disparate treatment in his case by showing favoritism to the other party and made improper rulings in a family law matter.

The responsibility of the Commission on Judicial Conduct is to impartially determine if a judicial officer 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.

The commission does not have jurisdiction to review the legal sufficiency of a judicial officer's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judicial officer did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

Commission members George H. Foster, Jr., Diane M. Johnsen and J. Tyrrell Taber did not participate in the consideration of this matter.

Dated: November 7, 2018

Copies of this order were distributed to all appropriate persons on November 7, 2018.

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

In [redacted] I filed a Petition to Modify Parenting Time on Case No. [redacted]. In [redacted] our case was referred to mediation, where an agreement was originally met. Many months after this, Respondent retained an attorney, who filed a Response. At trial in [redacted] Respondent's attorney argued that my petition should be dismissed because it was not served on the Respondent within the allotted time, and because the Petition itself argued no substantial changes. This was mostly understandable; however, Respondent's response was also filed way past the allotted time to file a response. Judge [redacted] stated that he did believe there were substantial changes warranting a change but dismissed my petition, while granting her requests from her Response.

On [redacted] I filed a Petition to Modify Parenting time, this time citing all substantial changes and serving all documents in a timely manner.

On [redacted] before the next hearing, Respondent's attorney filed a Request to Appear Telephonically for the pre-trial conference. I filed a Request to Deny because Respondent and her attorney reside in neighboring towns. The Judge granted her request, and at our hearing on [redacted] stated that he had signed the order granting it the same day that he received my request to deny, and laughed it off. However, on [redacted] before our trial, I filed a request to testify telephonically for a crucial witness that was expected to testify about alleged domestic violence and substance abuse. I filed this request because the witness lives [redacted] away and could not afford to travel or miss work to travel for this trial and stated such on my request. This request was uncontested; however it was denied for not being timely filed.

[redacted] at our pre-trial conference, I requested our case be referred to mediation, because we have reached agreements multiple times while utilizing mediation. This was denied. Also at this hearing, I requested that Judge [redacted] designate a parenting time supervisor, because my parenting time was being withheld from me. Our order at the time stated that Respondent was responsible for designating a supervisor, and I let the judge know that she was refusing to do that, which had resulted in [redacted] without parenting time. He denied my request. Lastly, at this same hearing, Respondent's attorney requested that, in lieu of mediation, she would attempt to facilitate an agreement between the parties. This was granted.

On [redacted] a status conference was held. I had filed a request for mediation beforehand, stating that Respondent's attorney has not even told me their stance, let alone try to facilitate an agreement. I informed the Judge that I had sent a proposed parenting plan and never heard back about it, and that a supervisor still had not been designated, therefore I still had not seen my child. He denied my request for mediation again. Further, I requested that he appoint a supervisor through the state for parenting time because I had still not seen my child, due to the other party refusing to appoint a supervisor like the order told her to do. He denied this request and advised me to contact the Respondent's attorney to arrange for a supervisor to be paid for by me.

Also, before [redacted] I filed "[redacted]" which was proof that the Respondent committed perjury by inconsistent statements, to mislead the court to grant the order that was current. At our status conference, before I could request conclusions of fact and law, the Judge said he hadn't gotten around to reading it yet, but would by the next hearing (Trial)

I had also filed an Expedited Petition to Enforce Parenting Time, since my parenting time was being withheld from me. This "[redacted]" Petition was set to be addressed at Trial, many months out. I included text messages from the Respondent, proving that she would deny my parenting time simply because "[redacted]" and a series of other excuses, including [redacted] not being sufficient time to plan my parenting time.

Judge [redacted] dismissed my petition to enforce at trial based on the idea that "[redacted]" despite this being an ongoing occurrence since [redacted] where my parenting time is withheld [redacted] because she would not appoint a supervisor.

Or [redacted] our Trial Hearing was held. Judge did not address the paperwork that was turned in before our status conference. I disclosed vital and detrimental evidence to the Respondent's attorney as I received it. The judge had previously ordered that Pre-Trial Statements be turned in by [redacted] My original pre-trial statement was turned in on time. However, because I was continuing to receive important and relevant information and evidence, I continued to disclose and amend my Pre-Trial statement. The Respondent's attorney continued to disclose and amend hers as well, until [redacted] On [redacted] both parties disclosed information and amended pre-trial statements. I went on to submit disclosures on [redacted] Despite the fact that my disclosures included police reports, Supervised Parenting Time Reports, and other extremely reliable and important information, Judge [redacted] threw out all of my Pre Trial Statements except for [redacted] while allowing all of Respondent's, which consisted mainly of partial text messages and questionable proof of collusion.

Judge [redacted] ordered me to complete the most extensive drug testing possible through [redacted] on the suspicion of me using marijuana. Judge [redacted] was informed that I already drug test as part of my probation, yet he questioned if "[redacted]"

" Further, the Judge considered Respondent's partial text messages to determine most aspects of the order. Judge [redacted] ordered me to an [redacted] domestic violence class on the suspicion of domestic violence, despite credible witness testimony arguing it. Had he allowed my witness to testify telephonically, there would have been another testimony arguing the same. Both witnesses, who lack any reason to be deemed not credible, one who testified and the other who didn't, witnessed the supposed domestic violence first hand.

Judge [redacted] was given evidence that proved that Respondent had been put on probation for drugs, violated probation [redacted] for drugs, and lost custody of the child to [redacted] because of drug use, since evidence was last litigated on this case, yet refused to order even a one time drug test to ensure sobriety.

Witness testimony alleged child abuse towards our child and domestic violence towards me by the Respondent yet was not addressed.

Judge [redacted] found that the child had substantial relationships with [redacted] or [redacted] in Respondent's care, however child does not have

Despite the abundance of evidence showing that Respondent committed perjury to the Courts in order to get the order that was being modified, Judge [redacted] did not find that she was misleading the Courts. Instead, because I did not remember a series of incomplete text messages, it was found that I attempted to mislead the court.

Respondent admitted during testimony that her fiancé has a more violent and extensive criminal history than I do and admitted to leaving the child with him alone. This was not addressed.

Judge [redacted] lowered my parenting time, modifying the order from [redacted] of supervised visitation to [redacted] to be exercised on a [redacted] based on the idea that I moved [redacted] so offering [redacted] was not in the best interest of the child. Ordering me to less parenting time was not requested by either party.

Judge [redacted] has made it financially impossible for me to see my child. Again denying my request to appoint a supervisor through the state, he ordered that [redacted] was a suitable supervisor, however I could deviate from them if I find a supervisor that the Respondent approves of. Judge [redacted] was made aware that Respondent has denied all of the proposed supervisors including members from both of our families, therefore leaving me only able to see my son by paying [redacted] through [redacted]. For me to exercise [redacted] of parenting time it would cost [redacted] which is more than my average gross weekly income. Further, he ordered me to pay [redacted] to submit to [redacted] drug testing, as well as the cost of a [redacted] Domestic Violence Class, [redacted] in child support and arrears, and the cost of finding transportation as I have no drivers license or vehicle.

After stating his orders, Respondent's attorney requested that the judge reconsider ordering arrearage on back child support. At that point, Judge [redacted] changed his orders to reflect arrearage as of [redacted]. Following this, my attorney requested that the Judge reconsider leaving my parenting time in the hands of the Respondent as she had continually refused to appoint a supervisor. Judge [redacted] said that if we didn't agree, we can file a request for reconsideration.

Further, Judge [redacted] presided over a case involving my girlfriend, [redacted] and her child, including the same text messages that had been submitted in my case. Judge [redacted] had made a ruling against [redacted] in the case, that was being heard on a Petition for Emergency Custody. Before [redacted] could file a response or have a trial hearing, the opposing party stipulated to dismiss the case, leaving Judge [redacted] having heard and ruled on only one side of the story. This case went on from [redacted] until [redacted] closing by stipulation less than [redacted] before my trial, which I feel resulted in a bias causing him to discredit [redacted] valuable witness testimony in my case, without validation.

Further, Respondent was served with a subpoena to produce the rest of the text message conversation that she turned in as evidence, as I felt that the messages that were turned in showed some type of collusion that could have been proven with the entire conversation. Respondent did not file any appeals

or pursue any action to be exempt from the subpoena, however she failed to comply, and Judge refused to do anything about it.

Judge continually allowed Respondent's attorney to interrupt and disruptively end witness testimony and maintain an extremely hostile and unprofessional environment for my witnesses to testify in.

It was requested in my Petition that was filed on that if the Honorable Judge did not find unsupervised visitation to be in the best interest of the child, that a supervisor be appointed by the court and through the state so that I am able to exercise my parenting time. It has been brought to Judge attention multiple times on multiple occasions that Respondent was withholding my visitation by refusing to appoint a supervisor.

After incurring over in attorney's fees, Judge virtually refused to consider anything that happened before including my parenting time being withheld without just reason and Respondent constantly interfering with my parenting time when she did allow it, from

The judge did consider my past criminal history from but refused to make any findings regarding the Respondents criminal history, losing custody of the child to probation violations for refusing to test with etc. I am in the same situation that I was in when filing my petition; Respondent continues to refuse to appoint a supervisor, therefore I am unable to deviate from using like the Judge ordered I be allowed to do.

As of now, I have not been able to exercise my parenting time for and my attorney has said multiple times that she does not wish to return to