

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-070

Complainant: No. 1305400091A

Judge: No. 1305400091B

ORDER

The commission reviewed the complaint and DVD recording of the hearing in this matter and found no ethical misconduct on the part of the judge.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: June 11, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on June 11, 2007.

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

I was initially introduced to Honorable [redacted] when scheduled to appear in February [redacted]. Prior to that, Honorable [redacted] presided over our matters. There have been a series of events that have occurred, orders set forth and although ordered to both parties, only followed by myself, the Petitioner.

I have been in the courtroom on many occasions with regard to my ex-spouse and his disregard to the judicial system and the safety of our minor daughter. Although properly and formally documented by professionals whom have been ordered to participate in investigations and interviews, each properly filed court report and opinion has been disregarded with reference to my ex spouse refraining from the consumption of alcohol. In each event, documents are filed court appearances are scheduled and no matter what the record reflects, [redacted] is always awarded for bad behavior and his CHOICE to deliberately ignore court orders; after so long he KNOWS nothing will happen to him.

Honorable [redacted] granted my Motion to Obtain Supervised Access by respondent, [redacted] and our minor daughter. This was too take affect [redacted]. The remaining part of [redacted] the orders were deliberately ignored resulting in no visits.

[redacted] - I filed a Notice of Non-Compliance with court orders and Honorable [redacted] issued a minute entry stating, "The court suggests Petitioner ignore Respondents outbursts and allow the supervisor to effect the exchange" of our minor daughter. The part Honorable [redacted] dismissed was the respondent was not complying with the court orders. He was not seeing our daughter due to being ordered to have supervised visits and his refusal to abide with the rules. He refused to consult with anyone and obtain the assistance of a supervisor.

There was no access between our daughter and respondent between [redacted] and [redacted] however; respondent retained counsel, requested a hearing based on the claim I was not abiding with court orders. I was not allowing "full" access. He was granted a hearing however; failed to disclose the incident where respondent showed up at our daughter's Christmas pageant in a [redacted] school intoxicated and attempted to take her against her will. [redacted] we appeared before Honorable [redacted] I presented evidence and had witnesses appear and Honorable [redacted] reprimanded me for not allowing the access. She gave respondent the chance to speak, he denied everything and claimed he "just wanted to see his daughter." Meanwhile he was still to have supervised access.

The respondent threw accusations about me and my lifestyle. Together with his legal counsel, Honorable [redacted] ordered we BOTH be interviewed and our homes be investigated by a Guardian Ad Litem. [redacted]

[redacted] - Minute entry posted stating [redacted] will be contacting BOTH parties and what his duties were.

[redacted] filed a report regarding his findings after interviewing myself and our daughter. [redacted] appeared in our home and conducted the interview and left positive reviews about myself. However; [redacted] filed a disturbing report about Respondent and his attitude to further discuss the long history of alcoholism by Respondent. [redacted] opinion(s) was disturbing and ignored.

[redacted] - We again appeared in front of Honorable [redacted] at which time, she was too discuss the reports and opinion of [redacted] There was still an order of protection in place. In this hearing, Honorable [redacted] together with Respondent's counsel pressured me to dismiss the order of protection stating it was not best for the situation of our daughter and exchanges could be possible at the curbside of father's residence. This is disturbing to me as nothing ever happened to Respondent for NOT meeting with the Guardian Ad Litem (GAL), for being belligerent, uncooperative and for fighting with the GAL. He refused to comply with the court order and got away with it. The findings and the opinion of the GAL are disturbing and although a report was filed with the courts, it was a waste of time. This leaves me bewildered as to the motive behind Honorable [redacted] Why did she ignore the report and why does she find it the respondent's behavior acceptable? Several reports have been filed regarding Respondent and his alcohol consumption. I KNOW it is not illegal however; he violates and ignores court orders and is awarded for bad behavior while contributing emotional distress to our daughter.

For a period of time in [redacted] Respondent was ordered to partake in random testing through TASC. He tested positive and failed to appear on a few occasions. According to the court order, "failure to appear deems it would have been a positive result if he had gone." Nothing happened to him however; he refused to cooperate and visit with our daughter for his access. Even though Respondent was told he would forfeit access if he failed to comply, I got reprimanded for not allowing proper access.

[redacted] I requested a hearing to modify parenting time which resulted in a hearing with Honorable [redacted] During our appearance before Honorable [redacted] in [redacted] we were scheduled to appear before Conciliation Services to establish a Parenting Plan. Nothing I said was considered which was the foundation for the meeting. During this hearing, Respondent was ORDERED to weekly TASC tests - every Monday after seeing our daughter and he was still to refrain from the consumption of alcohol forty - eight (48) hours PRIOR to seeing our daughter. This order was in effect for a period of six (6) weeks. His first test was positive and his second test was diluted. Which means he tested positive for the entire period of six (6) weeks - per the court order, "any time you fail to appear it will be deemed a positive result." He REFUSED and FAILED to appear for the other weeks yet, maintained access to our daughter and

nothing happened to him for non compliance of a court order. Judge [] also stated, "forty eight (48) hours prior to access to not consume alcohol was "too much" even though that is stated in our FINAL divorce decree. She then changed the order to state twenty four (24) hours. It has ALWAYS been forty eight (48) hours just like the order not to consume alcohol. Why did she change it? The Respondent is the one who agreed it to be unfair however; IF he were to exercise his access during the week, the days which he can see our daughter are a selection of three (3) days. The timeframe should have never been changed.

The report submitted by Conciliation Services was the compilation of what we discussed and agreed upon. [] recommended the court seek means of monitoring the consumption of alcohol by Respondent and also stated an assessment would be valuable.

We appeared before Honorable [] in [] and confirmed the Parenting Plan. I also brought forth the TASC results and Respondent's failure to appear while explaining to Honorable [] Respondent stated "he doesn't like to be told what to do." Honorable [] asked Respondent to confirm this which he did. He did not lie. She told him she doesn't appreciate him not listening and that apparently my accusations are valid because his actions prove it. She told him, "If you choose to drink alcohol INSTEAD of seeing your daughter, which is what will happen because you will have to pay to see your daughter after you drop a urine sample while at an arranged location through the court." She continued to tell him how very important it is that he obey orders and he cannot do things differently unless he "walks the walk" of what he says. She gave him the chance to apologize and then went on further to tell him "these are not new orders." "It has always been this way and she won't change it." She told him, "It is in your final decree and you just cannot disobey orders."

Honorable [] then went on to tell me she believed the weekly tests were expensive and a waste of time because they are not accurate. To this she was referring to Respondent claiming he returned our daughter home early and then drank which resulted in his first positive test result. She also stated, "The tests also take up a lot of space in our file which is large enough." I went on further too again ask for the right to conduct random tests by using a portable breathalyzer that I have based on the fact it is not the job of a [] year old to baby-sit her father or worry about whether or not he has been drinking. I was granted this again however; completely aware Respondent would be absent more than he would appear for access for fear of getting caught.

Honorable [] reminded Respondent that I have been patient and very flexible by not enforcing his minimal access schedule and allowing him more time with our daughter. She reminded him our daughter is old enough to see and smell alcohol. Honorable [] told him I have the right to file papers to appear in front of her again if he does not comply.

[redacted] our daughter stayed with her father and was caught consuming alcohol. This was reported by our daughter who was extremely upset when she returned home. Based on his practices and his history, I have learned children don't lie. The details our daughter provided are not details from a little girl who is just trying to get her way. I filed for an Emergency Hearing in front of Honorable [redacted] to request Supervised Access, Alcohol Assessment and until further notice NO overnight access or after school pick-ups. I also requested an interview with the child. Honorable [redacted] DENIED my request and has since referred me back to Conciliation Services based on, "The parties were just here twenty one (21) days ago and these issues were addressed."

After my conversation with Conciliation Services I learned per [redacted] "we do not know why Honorable [redacted] is sending you here because we do not address issues such as this however; we have to have you here because we have a court order." "If you do not show up then you will be assessed a fee of two hundred dollars (\$200.00). I cannot afford to go which results in a day off of work and I cannot afford not to go.

This entire case and the issues about my daughter's father and his long history of alcohol have been an on-going matter and evidenced along the way. His consumption of alcohol damaged our marriage and his attitude partnered with his alcoholism has damaged the relationship with our daughter. I have always supported the relationship between our daughter and her father and have taken him back to court recently to GIVE him time not take time away.

However; with that being said, I am protecting our daughter from his poor choices - the choice to drink instead of seeing her and the choice to drive an automobile with her as a passenger after drinking. The trail of documents on file is disturbing. Professionals have seen his anger, his own attorney suggested the portable breathalyzer, Conciliation Services testified on my behalf initially and helped me establish sole custody stating it was in the best interest of the child and test results have been reported. Honorable [redacted] ordered [redacted] interview both parties and in his report, he writes in detail the incidents with Respondent and his opinion about father's STABILITY and parenting ABILITY however; Honorable [redacted] ignored it.

Per Canon 1 of the Code of Judicial Conduct, "A judge shall uphold the integrity and independence of the judiciary."

"Judges must comply with the law and provisions of this code." "A judicial decision later determined to be incorrect as a matter of law or as an abuse of discretion is not a violation of this code unless done repeatedly or intentionally."

Judge [redacted] repeatedly passed over the documents that have been presented to her therefore allowing bad behavior be acceptable. The actions of Respondent consistently reflect his disregard to court orders and his relationship with our daughter.

As stated in Canon 3 of the Code of Judicial Conduct, *"A judge shall perform the duties of judicial office impartially and diligently."*

I do not believe Honorable [] has rendered her decisions impartially - she has been fair to the Respondent however; extremely unfair with regards to me as the Petitioner and as a Mom who obliges her every order with high amount of respect for our judicial system. I have documented reports of how well I try and what my intentions are with my biggest goal as a parent, to love and protect my child from danger or intentional harm. I believe if I were anyone else she would listen to their concerns and not disregard them as if they were trying to keep a father and daughter away from each other. There is a permanent order in place (previously mentioned divorce decree) and the documents won't change however; if given the proper attention and consequences, maybe the Respondent will. Honorable [] has been unfair to our daughter who has witnessed her father's instability, belligerent behavior and defiance of following rules on the pre-tense of not getting caught or punished. Father has been absent for years and inconsistent due to his choices and disregard to recognizing our daughter as an individual and a young girl who has feelings that become hurt. Respondent's behavior and decisions are intentional and Honorable [] has awarded him for bad behavior and has allowed him the right to access and speak because he is her Father. Our daughter has a voice and wishes for someone to listen to her and recognize the emotional upset she challenges when told she HAS NO CHOICE and HAS to visit her father. Honorable [] has not put forth the diligent effort required to rectify the issues that are repeatedly coming before her. Due to these issues arising again and again, Honorable [] is frustrated she keeps seeing us in her Court.

Per Canon 3 B1 of the Code of Judicial Conduct, *"A judge shall hear and decide matters assigned to the judge except those in which disqualification is required."*

Honorable [] is assigned to my case after Honorable [] had the matter. Judge [] denied the request for an emergency hearing due to "the parties just being in her courtroom." I have known [] for years and together with mutual parties including professionals, have documented his track record therefore making my claims valid. I am not making false accusations however; making claims in an attempt to provide our daughter with emotional stability and consistency. Judge [] has passed me by again in my attempt to affirm both parties are responsible for our actions as parents in the best interest of our daughter. Honorable [] referred us back to mediation after I filed for an Emergency Hearing completely aware of the duties and the roles of those individuals. The individuals in mediation are ONLY to address access and decision making. That is NOT the problem. I spent time out of work which takes money out of my check which in turn takes away from my daughter. I should be reimbursed for the money I have lost - [] KNEW they wouldn't address the issues.

Per Canon 3 B7 - "A judge shall accord to every person who has a legal interest in a proceeding, the right to be heard according to law."

Professionals from the court system, legal counsel(s) together with the court liaison of TASC have presented supporting evidence of non-compliance of court orders and documented belligerent behavior on behalf of the father however; not on me. Judge [] has failed to address any of these reports and never sought the physical presence or testimony from [] whom she assigned.

I am requesting a review of the documents on file and reconsideration of the Courts as to the consequences of not complying with numerous court orders and endangering a minor child. If Honorable [] is unable to review the documents and render a decision that is appropriate and in the best interest of our daughter, I ask that another Judge be given the opportunity. I have had to file numerous documents and each filing has cost me more than sixty dollars (\$60.00). I believe my fees should be waived as if the Respondent abided with court orders and the Judge took them seriously, I wouldn't be in Court repeatedly.