

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-135

Complainant: No. 1419210781A

Judge: No. 1419210781B

ORDER

The complainant alleged that a superior court judge set unreasonable time limits to hear testimony and was generally biased, rude, and unfair through the proceeding. After reviewing the allegations and the supplemental information provided by the complainant along with various minute entries reflecting the orders of the court, the commission found no evidence of ethical misconduct on the part of the judge. Both parties were represented by counsel; therefore, the judge did not act improperly in precluding either party from making personal requests to the court, and no specific evidence was provided as to the judge's rudeness. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: September 2, 2011.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed
to the complainant and the judge
on September 2, 2011.

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

A Settlement conference was scheduled for May 4, 2010 at the Maricopa County Court House. Mrs. [REDACTED] and I flew to Phoenix for this conference. I had received permission to be present with Mrs. [REDACTED]. Judge Pro Tempore Irwin Bernstein presided. Little to nothing was accomplished at this hearing as Mrs. [REDACTED] became very emotional. Judge Bernstein told Mrs. [REDACTED] Ronald [REDACTED]

Thomas, attorney for the Petitioner, and me, no decisions would be made at that time due to Mrs. [redacted] mental status. Divorce proceedings were scheduled for June 2, 2010. Arrangements were made with Respondent to allow Mrs. [redacted] access to their home in Litchfield Knolls for 2 weeks effective June 2, after the divorce proceedings, allowing Mrs. [redacted] time to pack her personal belongings and household goods.

Mrs. [redacted] and I drove to Phoenix, arriving June 1st. Our cell phones were on during the two day trip. We went to court on June 2nd at the appointed time and no one showed up. We questioned an employee of the court who informed us the case had been canceled. We promptly called Ronald Thomas, Petitioner's attorney who informed us, Mr. [redacted] had arranged a telephone conference with Judge [redacted] Tom Morton, Respondent's lawyer and Ronald Thomas, attorney for Petitioner. Mr. [redacted] requested again that Mrs. [redacted] release her medical records and that Trudy Soncrant, MSW, LCSW, LISAC, not be allowed to testify as an expert witness. Judge [redacted] refused, stating Mr. [redacted] had given up his rights to the records and would allow Ms. Soncrant to testify. Judge [redacted] changed the date of the divorce hearing to September to give Mr. [redacted] more time to look for a job. Mr. [redacted] a former attorney with Gallagher and Kennedy had been terminated from Gallagher and Kennedy on July 31, 2009. Mr. Thompson began his solo law practice August, 2010. Ronald Thomas, Petitioner's attorney had attempted to contact Mrs. [redacted] and me by phone regarding the cancellation, however, neither of our cell phones responded. Mrs. [redacted] was able to gain access to her home the day after the requested date of entrance because Mr. [redacted] had assumed we had turned around in the middle of the desert and returned to Denver. He was not ready for us to gain access to the house..

September 8, 2010, the scheduled date for the divorce proceedings, Judge [redacted] held a pretrial conference with Tom Morton, attorney for Respondent, Mr. [redacted] and Ronald Thomas, attorney for the Petitioner, which lasted approximately 20 minutes to discuss parties positions, agreements and issues for trial. I had received permission to be present during the proceedings. Court started at 2:00pm. Judge [redacted] explained each side would have 1 hour 20 minutes. I calculated time from the digital transcripts as recorded time checks were barely audible. Ron Thomas, attorney for the Petitioner, used sixty minutes of time. Tom Morton, attorney for the Respondent used one hour, twenty six minutes. Judge [redacted] used eleven minutes to question our expert witness, Mr. Kelman. Judge [redacted] questioned Mrs. [redacted] nine minutes and Mr. [redacted] five minutes in addition to answering the various motion for objections, etc. Mark Kelman of Kelman Rehabilitation Consultants, our expert witness, summarized Mr. [redacted] job applications, job availability, etc. Judge [redacted] questioned Mr. Kelman regarding legal advertisement, hiring trends of the legal market, solo practice earning capacity, the effect of over-experience versus three to five years experience, how an applicant can be petty good while others are pretty bad at how they present themselves: effort versus skills, etc. After Judge [redacted] questioned Mr. Kelman, the clerk of the court told Judge [redacted] he had used fifteen minutes of time to question Mr. Kelman. This notation was not in the transcripts, however, I was taking notes throughout the proceedings and I noted the clerk's comment to Judge [redacted] Judge [redacted] questioned Mrs. [redacted] for nine minutes asking such questions as how big are your dogs, what do you feed them, referred to Mrs. [redacted] mental health problems and whether she should be drinking alcohol with her medications, did she really need \$150.00 per month for car expenses, how much did Mrs. [redacted] pay for an oil change, was she and Mr. [redacted] living within their means, etc. Judge [redacted] questioned Mr. [redacted] for five minutes regarding debts incurred, did Mr. [redacted] feel the couple was living within their means, etc.

Time ran out. It is time to close the courthouse. Trudy Soncrant, our second witness, had been dismissed because of lack of time. This was the second time Ms. Soncrant did not testify as she had

made arrangements to testify June 2nd, which was canceled as stated above. Judge told Ronald Thomas, attorney for the Petitioner he had one minutes to question Mr. Respondent. Judge gave his rulings. Tom Morton, attorney for the Respondent asked the divorce be made final that day and Judge granted the request. Judge had acted more as a prosecuting attorney than a judge.

Ronald Thomas, attorney for Petitioner, filed Clarification and Continuance on September 10, 2010. asking clarification from court regarding how each parties allotted time was counted. November 11, 2010, the Court responded "The Court notes that there is no reason for clarification with regard to this matter since the Court had advised both parties prior to the trial in this matter than any time utilized by the Court in examining a party's witnesses would be deducted from the time allotted to the party calling said witness." Judge used twenty five minutes of Ronald Thomas' time. Not being able to cross examine Mr. Respondent, altered the divorce decree content constituting an unfair trial, in my opinion.

November 17, 2010, Ronald Thomas filed Motion to Alter or Amend the Judgment/decre. Petitioner and I had requested amendment to the decree as #1. The dissolution Decree states "Petitioner/Wife will still have health insurance through military benefits at no cost to her." This was not correct as Mrs. is responsible for monthly premiums to TriCare Prime, provided through military benefits. #2. The decree did not cover judgment against Jerel Walton for the sum of \$11,000.00. #3 The decree did not stipulate dividing joint financial and investment accounts, #4 nor dividing Respondents 401 Ks and retirement assets from Gallagher & Kennedy, Parker & Thompson.

I had also asked Ronald Thomas, attorney for Petitioner, to clarify Mrs. as beneficiary to Mr. Veterans Group Life Insurance policy and that Mr. not act to voluntarily decrease benefits. Mr. Thomas replied the insurance policy was "Term" coverage and therefore could not be included in the Motion to Alter or Amend. During the divorce proceedings Mr. Thomas did ask if Mrs. needed the Survival Benefit Package to remain in place and she replied "Yes." Unfortunately I dropped that point and Mr. subsequently changed the beneficiary to his adult children and dropped the Survival Benefit Package. This was a mistake on our part.

In the "Under Advisement Ruling" dated 11-01-2010, I personally feel prejudice was shown in rulings such as: Mr. is living with his son and does not have sufficient income to obtain his own residence. There was no mention of Mrs. living with her mother since July, 2009, because of lack of funds. Judge did not pay attention to Mr. financial statement of 1-13-10 showing Mr. monthly expenses of \$9,659.25 minus house payments, which he did not pay but lived in the Litchfield home free, resulting in expenses of \$6,085.81. This included the \$1,600.00 paid to Mrs. from Mr. military retirement. That meant Mr. monthly living expenses were \$4,485.81, which included a \$900.00/month car payment on his Cobra Shelby. Mrs. gave an Estimate of \$4,000.00 expenses IF she were renting a home.

In that same ruling, Judge statement that Mark Kelman was not credible was unfair as Mr. Kelman was hired to review and evaluate Mr. resumes, job applications, follow-up, job availability, etc., not to find Mr. a job.

I felt it should be noted Mrs. worked full time to put Mr. through Law school, not just "Petitioner/Wife worked some during the marriage but primarily cared for the parties' children while respondent/Husband furthered his education and legal career."

Judge continued, "Petitioner/Wife has requested an award of attorney fees and costs against Respondent/Husband. Normally with such a disparity of income such an award would be granted. However, in this case Petitioner/Wife has maintained so many unreasonable positions that Petitioner/Wife unreasonableness offsets the disparity of income in this matter. Petitioner/Wife has been unreasonable with regard to discovery issues, namely her unjustifiable opposition to release of her medical and mental health records after claiming she could not work due to medical and mental health reasons. Petitioner/Wife's position attributing \$160,000 a year in law practice income to Respondent/Husband was unreasonable and not supported by her own expert witness. Petitioner/Wife's alleged reasonable needs were inflated and her insistence that the Court not consider her portion of Respondent/Husband's pension as income was also unreasonable and lead to further inflation of her spousal maintenance request. Petitioner/Wife's spousal maintenance position was equally unreasonable considering the parties' current financial status. It should be noted that the above is only a partial list of Petitioner/Wife's unreasonable stances in this matter. It was apparent to the Court that Petitioner/Wife's position were influenced by her obvious antipathy towards Respondent/Husband."

My daughter, Petitioner, is not an unreasonable person. She was faced with formidable opponents: her husband/Respondent, an attorney himself, Tom Morton, attorney and friend of Respondent and a prejudiced Judge. Yes, she had an "emotional outburst" during the Evidentiary Motion to Compel hearing over releasing mental health records she knew contained her inner-most thoughts, fears, and discovery of "Dissociative Disorder", which Mr. paid for for seven years. She also went through moments of upset and fears during the Settlement hearing but regained her composure quickly once moved to another room, separating her from Mr. which she had requested happen before the hearing. Petitioner maintained her composure very well during the divorce procedures even when badgered by Tom Morton, attorney for the Respondent. It is my opinion Judge was very judgmental and the language unwarranted.

Mr. Thompson revealed during the divorce proceedings he had accumulated a debt at Luke Air Force Base BX of \$2,193.08, to be recovered from Mr. military retirement fund. This was the first time Mr. had made this revelation but Judge had no comment.

February 16, 2012, the Evidentiary Hearing regarding Petitioners motion to alter or amend the Judgment/decreed was held at the Maricopa County Courthouse with Mrs. included via telephone. Judge Ron Thomas, attorney for Petitioner, Tom Morton, attorney for Respondent were present. Mr. Thompson was ten minutes late and the procedure was started without him. Judge had arrived irritable and with his opinions set before hearing any testimony. I, am paraphrasing the following from the digital transcripts. Judge stated he had reviewed everything, that he was the only one who had watched the divorce hearing again. He commented that Petitioner had testified she could not go on base for medical care, therefore had to go to Out of Network providers. Mrs. commented that was not true. (Mrs. saw only "In Network" Physicians.) Judge said "well that's what you said twice under oath and I don't want you jumping in there Ma'am ." Tom Morton said "actually she discussed one base. There are actually three bases there." No comment from Judge Judge continued stating Mrs. had talked about her copays for physicians, prescriptions but never said anything about health insurance premiums. Ronald Thomas brought up the point Mrs. listed insurance expenses on her financial statements and therefore that statement was contestable and there was not time to cover every point. Judge said "We're not going to trial twice." He made his findings based on the trial and he's not going to change the findings therefore he denied the motion because the factor basis is supported by record and supported by law and the records so I'm not

changing the spousal maintenance. There is nothing that says there is additional cost for insurance premium so that is denied. Mrs. [redacted] Petitioner, interrupted asking if there was a possibility she could speak. Judge [redacted] said, Ma'am, don't speak. You have counsel. Mrs. [redacted] said, I'm here also. Judge [redacted] replied, Ma'am, if you violate my order again, I will cut off your phone and then you won't know what goes on the rest of the day. He continued; the only other issue is attorney fees. "Petitioner's attorney erred such that he should be responsible for Respondent's attorney fees." Judgment, March 31, 2011 awarded judgment for attorney's fees against Petitioner and her counsel Ronald V. Thomas, jointly and severely in the amount of \$700.00 Mr. Thomas had the jointly and severely statement removed. I paid that fee of \$700.00 to Tom Morton, attorney for the Respondent.

It is my personal opinion Judge [redacted] did not handle the Petitioner's divorce settlement in a fair and diplomatic manner. I have written this complaint in the hopes future Petitioner's will receive a fair trial.

Sincerely,

cc: Hon. Harriet Chavez
14264 Tierra Buena Ln.
Surprise, Arizona, 85374

cc: Commission On Judicial Conduct
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Phoenix, AZ 85007