

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-286

Judge:

Complainant:

ORDER

The complainant alleged that a superior court commissioner used an abusive demeanor toward him, used inappropriate facial expressions, was biased against him, and did not afford him the opportunity to be heard in a family law matter.

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.

The commission does not have jurisdiction to review the legal sufficiency of the commissioner's rulings. In addition, 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(a).

Dated: January 29, 2018

FOR THE COMMISSION

/s/ Margaret H. Downie

Margaret H. Downie
Executive Director

Copies of this order were distributed to all appropriate persons on January 29, 2018.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2017-286

COMPLAINT AGAINST A JUDGE

Name: _____ Judge's Name: _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

I am a _____, and a Judge with the _____. I am familiar with Arizona's Code of Judicial Conduct (henceforth "ACJC") and my duty to report violations of the Code pursuant to Rule 2.15 ACJC.

On _____ and again on _____, I appeared before Judge _____. The appearances were based on my pleadings to enforce parenting time exchanges, medical expense reimbursement issues, a demand for the tax dependency exemption form, for violations of the communication parameters, etc., and for contempt. I also asked for an expedited hearing in order to secure make up parenting time on a specific weekend. I filed an Amended Petition to enforce along with Notice that I was requiring strict compliance with the Arizona Rules of Evidence (henceforth "ARE"), per Rule 2(B) of the Arizona Rules of Family Law Procedure (henceforth "ARFLP") on _____.

On _____, in the beginning of both proceedings, I demanded strict compliance with the Rules of Evidence. I explained that I needed to be protected against self-serving hearsay that could not be corroborated. I specifically warned Judge _____ that care needed to be taken regarding any attempts by the opposing party to use hearsay, and I advised that I wanted to be protected from such misuse as it had been misused in the past. My request was denied, despite all of my warnings that allowing hearsay would unfairly prejudice me, confuse the issues, and that the hearsay lacked reliability as I had the evidence and witnesses, including rebuttal witnesses, to prove otherwise. I reminded Judge _____ of my right to confront hearsay witnesses. When I did, Judge _____ expressed agitation, engaged in brow-beating with her words and facial expressions, and both allowed and participated in the harassment. I sent an email to Presiding Judge _____, asking specifically for the video recordings be preserved as the video recordings will corroborate my concerns over facial expressions and shouting. I am afraid that other litigants will be victimized by the judicial temperament that I was victimized by--see below.

During the _____ hearing, more so _____, when the orders were being fashioned, Judge _____ expressed verbal and physical hostility toward me. She articulated that I did not need to be heard on my contempt pleadings. Judge _____ showed facial expressions and used words that expressed extreme agitation and disgust that I would maintain my right to be heard. Judge _____, in addition to making her disappointment with me clear, commented about _____, and insinuated that I was litigious. I respectfully reiterated that all I wanted was for the opposing party to follow the orders, and peace. I again reiterated my request for strict compliance with the Arizona Rules of Evidence. I was directed to file a motion regarding strict compliance.

On on _____, Judge _____, pursuant to an in chambers order, set the contempt hearing to _____, I called the _____ and reminded her that my pleadings requested relief regarding the _____, and the _____, Judge _____ accelerated the hearing to _____ This placed my filed request for strict compliance at issue because the time from the _____ order to the hearing was less than 60 days.

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I nevertheless asked the Court for strict compliance as part of my Amended Petition to Enforce. Judge _____ nevertheless _____ my request for strict compliance even though the Notice was filed on _____. The Notice was actually served on the Respondent on _____. However, due to my _____, I was unable to personally file it with the Court until _____. Even if I had, Judge _____ stated that I had to file it 60 days before the hearing. Judge _____ ignored the law as Rule 2.1 ARFLP reads: "If a hearing or trial is set upon less than sixty (60) days prior notice, the notice provided for in this paragraph will be deemed timely if filed within a reasonable time after the party receives notice of the hearing."

On _____, I reiterated my request for strict compliance with the Rules of Evidence, and warned that the Respondent had historically misrepresented to the Court and that I wanted the Court to avoid hearsay or allow me to confront non-party allegations by cross examining the alleged speakers.

I then made an _____ to bifurcate the hearing _____ I could have the _____ addressed before the _____, and then give the Respondent time to disclose witnesses and exhibits if she needed to. _____ Judge _____ rulings were unfriendly, and she expressed resentment in her voice and tone, and facial expressions. The Judge expressed clear bias against me and in favor of the Respondent due to _____.

I as the Petitioner was denied the right to present my case or to call any witnesses or present my case. I insisted that I wanted to call _____ as a witness. The Respondent admitted that I disclosed _____ as a witness. The Court nevertheless verbally chastised me for wanting to present my evidence. I was instead forced to sit at _____ and was asked direct questions from my pleadings. My answers were continually interrupted and I was subjected to verbal character attacks by the Respondent. As the hearing progressed, so did the hearsay and harassment, and the Judge also joined in on the harassment and allowed the opposing party to use the hearsay, never disclosed text messages, and personal attacks based on my gender _____ marital status _____, and socioeconomic status _____. Judge _____ not only participated in the harassment, she shouted at me " _____ " when I insisted on reading the text message that was read into the record over my objection. The shouting and expressions made toward me by the Judge were degrading, embarrassing and uncalled for, and showed bias. The text message read into the record was prepared in anticipation of litigation, was never disclosed, and was between _____ and _____. I could not see the text message as the Respondent was tilting the phone away from me and toward _____ who was sitting silently witnessing this onslaught of my character. When I asked to see the phone and commented about my _____ and _____ being a contributing factor, Judge _____ flew off the proverbial handle and shouted at me.

There is more, and I will cooperate. But to summarize: Judge _____ allowed and participated in the opposing party's harassment of me, and I was degraded based upon my _____ and _____. Judge _____ conduct, violated my right to be heard. She violated Rules 2.3(B), 2.5(A), 2.6(A), and especially 2.8, ACJC. Judge _____ words and demeanor (words, hand and facial gestures) are apparent from the video recordings and the digital recordings. The public and litigants deserve protection from similar future conduct.