

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-291

Complainant: No. 1404510658A

Judge: No. 1404510658B

ORDER

An out-of-state attorney alleged that a superior court judge demonstrated gender-bias in a divorce case involving her niece by unfairly requiring her to comply strictly with court orders while allowing the opposing party considerable leeway on compliance orders. After analyzing the allegations and reviewing the judge's response, the commission found no evidence of bias. The fact that the judge gave one party a second chance when the other was consistently compliant does not demonstrate that the judge is biased. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: March 10, 2011

FOR THE COMMISSION

/s/ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on March 10, 2011.

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

2010-291

October 27, 2010

NOV 04 2010

Executive Director

Arizona Commission on Judicial Conduct

1501 West Washington Street

Phoenix, Arizona, 85007

Re: Judge

Dear Executive Director:

I was referred to the Arizona Commission on Judicial Conduct by the Arizona Supreme Court Chief Justice Rebecca Berch's office after sending this correspondence. As an out of state resident, I found it extremely difficult to locate your office address information that is why I forwarded this matter to the Supreme Court Office. The website I have been provided with is <http://azcourts.gov/Default.aspx?alias=azcourts.gov/ethics>.

In any event, the purpose of this letter is to express my growing concern over Judge (who serves in the Peoria District Court) seeming gender bias in his approach of rulings relative to the enforcement of his own orders in a ongoing domestic (child custody/visitation) case involving my niece, Mallory Noel who resides in Peoria, Arizona, the 1 year old daughter, and her father, Mr. Jahrelle who resides in the area.

The intent of this letter is not to complain about the actual determinations or rulings by the Judge which have been made in the various hearings that have taken place because, as an attorney (in the State of Michigan), I certainly understand principles of judicial discretion. I respect the role of a judge and the difficult task they have handling cases. I am also keenly aware of the scope of authority judges have in adjudicating these types of disputes which I believe is made more complex with young parents. Thus, to the extent my niece (and her mother-my sister Suzanne) have disagreed with the actual rulings of the Judge I have advised them they will need to hire an attorney in the future to appeal substantive rulings of law by the judge if they believe his decisions are flawed.

Rather, the primary purpose of this letter is to raise a concern over their belief and perception that Judge is increasingly exhibiting an inherent gender bias against the female litigant in the dispute relative to equal enforcement and compliance with his own rulings. Early on when they conveyed such sentiment and concerns about Judge I tried to allay their fears that such was probably not the case. However over time, particularly with their recent experiences in court this summer, I myself am concern that their perception of a double standard over strict enforcement of his rulings being applied (negatively towards the female litigant- my niece) than the male litigant involved has become more apparent.

As a brief background note, it is my understanding that in February 2010, Judge established paternity, ordered temporary custody to the mother with weekly visitations for the father and temporary child support to be paid by him. Subsequently it is my understanding that neither the child support schedule or the weekly visitation schedule requirements were complied with, which caused significant hardship on the mother for obvious reasons. Due to the uncertainty, and only sporadic compliance with the Court's order, my niece's was unable to make a reasonable personal schedule. Further, Mallory's situation was additionally complicated by the fact that in the rare situations when the visitations would occur, my niece indicates she was refused any address information (after he had moved from his known address in April 2010). This left her with no emergency contact information of the whereabouts/location of her daughter during such visitation periods. So, in May 2010, she petitioned the Court before Judge seeking relief and compliance with the Judge's previous Order. It is my understanding that despite substantial evidence of dates and facts to support her claims of noncompliance, the judge did not enforce compliance with his rulings relative to the father. This despite the fact that, he had previously reprimanded the father for his non compliance and threatened to reduce his parental rights if he consistently failed to abide by them. Moreover, it is my understanding that on July 16, 2010 during the final hearing, Judge favorably granted all of the father's request with the caveat of putting him on "parental probation" for shunning his previous orders.

Yet, contrast, in a motion held June 2010, when my niece in compliance with Judge original custody Order properly and timely petitioned the Court for permission to take the daughter out of state on a business/vacation trip with her mother (my sister) as required, the request was granted with very strict restrictions, "to keep things fair for the dad", so that such vacation would not interfere with the child visitation schedule rights of the father. According to both my niece and her mother, the Judge announced to her that there would be severe consequences imposed upon her if she did not meet the strict returned date. This occurred despite evidence substantiating such visitation schedule had apparently rarely been consistently followed by the father. In fact it was my understanding that the father was not present for this Court date. But again, the Court did not address the continued non compliance with his rulings by the male litigant so she left there with no relief of enforcement.

Another incident that causes concern of biasness is revealed in the following scenario. Apparently sometime within the month of April 2010, events had occurred surrounding the visitation transfers, wherein my niece apparently became fearful of violent threats and harassing conduct surrounding each time when transfer of the child visits would occur with the father (in the rare situations when they did happen). So much so, that on June 8, 2010, she filed a petition seeking court protection. Based on the evidence received from the Court a personal protective order was issued. Interestingly enough, the Judge hearing the petition, a different judge, Judge Ireland found sufficient evidence to issue such order. Transfers thereafter were ordered to occur on or at the Peoria Police Department property. A week or so later, in an effort to get some minor changes i.e. pick up time, changed on the Personal Protective Order for the mutual benefit of both parties, a petition was filed before the Court seeking a logistical amendment. This petition apparently was heard by Judge I have been told that Judge automatically responded, "No" there will be no such order granted because my niece had not supplied the court with sufficient evidence that one should be granted. It is my understanding that my niece

explained to him that she had sought the PPO because she had received threats, and harassing text messages and that was why she'd received the PPO. According to her, Judge refused to even read them, he did not ask for any facts to justify the request, he had no absolutely no understanding of the fact that she wasn't seeking a PPO just a modification of the one already issued by the other judge. My sister relayed, that the judge, just automatically stated, he "would not" be granting any kind of Personal Protection Order. They found this conduct to be incredulous and more proof of his gender bias. They further indicate that after Judge repeated he was not granting any such order **it took his own clerk to clarify for him that they were "Not", asking him to grant one because one had already been order by another judge, Judge Ireland.** His clerk explained to him that my niece (and her mother) were merely seeking his permission to amend the pickup time on the Personal Protective Order **already in place.** Further, my sister reports that Judge declared that apparently he and Judge Ireland disagreed on what is considered "threatening" conduct or no, however he would not grant any modifications or amendments to the existing order. Clearly, Judge Ireland who listened to the facts impartially believed there was a preponderance of evidence to substantiate such order, yet Judge by his by his instant negative response without any review of any facts on the issue, demonstrated a total disinterest and seeming gender bias, in addressing the female petitioners concern. To them this incident underscored their belief of Judge predisposition of clear biasness towards the female 'litigant'. Quite frankly, it is this incident which caused me to rethink that their ongoing perception of his gender biasness may in fact be accurate.

So the reason for this communication is to raise the gender bias concern with Judge revealed the unequal enforcement of his rulings, which seem to differ based on the gender of the litigants. This is not to challenge the substantive aspects of his rulings as earlier stated. Whether I agree or disagree with his rulings based on the law, is not the point here. I certainly understand judicial discretion. But such discretion does not permit biasness which results in unequal enforcement. If my niece the female litigant is held to strict enforcement compliance, then so should the male litigant. The Court of law should be a place where legal issues and disputes are addressed fairly and all are held to the same standard of protection and compliance. When that equal enforcement breaks down due to an apparent/possible unfair bias -gender bias of the Court, it destroys the fundamental credibility of the fair and impartial adjudicator.

At the time of sending my original letter I had dissuaded my sister and niece from filing a formal complaint on this issue against Judge by indicating that this particular concern can be communicated to the Commission and handled as an informal concern. However, the Supreme Court representative has advised me that such matter will have to be filed as a formal complaint. The information has been referred to my niece who has indicated she will do so.

Thank you for your time and attention.

Sincerely