

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-121

Complainant: No. 1442010973A

Judge: No. 1442010973B

ORDER

The complainant alleged that a superior court judge engaged in improper ex parte communications with an attorney, ordered him to undergo drug testing, and suspended his parenting time, without probable cause.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge 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.

After reviewing the information provided by the complainant and the judge's response, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: August 16, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed
to the complainant and the judge
on August 16, 2012.

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

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

FOR OFFICE USE ONLY**2012-121****COMPLAINT AGAINST A JUDGE**

Your name: _____ **Judge's name:** _____

Date: 05/08/2012

- Administered court orders for follicle testing without probable cause and prior to hearing parties
- Entertained Petitioners counsels request for said follicle testing prior to his filing of Notice of Appearance. Respondent witnessed counsel talking with Judge _____ which is how Respondent became aware that Petitioner even had counsel. Respondent overheard the conversation of _____, Counsel for Petitioner, requesting follicle and Judge _____ approving prior to the hearing date. This lack of Notice of Appearance is evidenced in the Notice by _____ (attached) which orders both the follicle and _____ to file his notice of appearance.

- Removed children from custody of joint custodian without probable cause or substantiating evidence
- Placed minor children at risk by placing them exclusively with Mother who has history of Assault, domestic violence, false reporting, abuse of the parties minor children, and contempt
- Failure to follow judicial procedure and/or due process ---refused to review evidence submitted by me

After a highly contentious divorce proceeding and having paid greater than \$160k in legal fees I am once again being faced with malicious prosecution and/or vexatious litigation. Dating back to 2007 my ex-wife _____ has refused to comply with rules and/or orders of the court. Upon each legal infraction Ms _____ responds to her fear of legal prosecution for contempt of court by withholding my children and concurrently alleges that I use illicit drugs thus attempting to thwart additional charges of custodial interference. These deliberate and malicious actions were recognized by the court appointed child custody evaluator, best interest attorney assigned to the case as well as the children's appointed psychologist as is reflected in court documentation. As a result of the ongoing concerns being raised by both parents a court appointed Parenting Coordinator was assigned to the case to address any additional concerns by either party post decree. This document explicitly states there is to be no future litigation rather all issues should be addressed through the assigned Parenting Coordinator.

Now, I present the timeline of events:

- ❖ April 4th 2012 Mother contacts Father asking for his signature on passports for their children to enable them to travel to Mexico. ---Audio Evidence and email--- Father declines citing Mexico as being an unsafe environment for his children
- ❖ April 5th 2012 Mother refuses Father his parenting time (joint custodian)
- ❖ April 5th 2012 Father contacts Mesa PD for Custodial interference and mother evades police (police report attached)
- ❖ April 5th 2012 Mother files an Emergency Petition for Custody requesting sole custody with supervised visitation

For me (Father) on the allegation that I am once again using illicit drugs. To-date there has been no evidence submitted to the

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Court which would substantiate this claim. On the contrary significant evidence was submitted to the court demonstrating legitimate concerns for the children while in the Mother's care and custody:

- ❖ history of domestic violence (assault on an elderly woman at a church---photo and written supporting docs presented,
 - ❖ history of false reporting docs evidenced to the courts
 - ❖ evidence supporting legitimate concern for mother's drug use --audio of minor child witnessing moms drug use--
 - ❖ children demonstrating signs of abuse with mom---child self mutilating---pediatrician and psychologist reports
- citing the child states she feels safer with dad and "mom makes me say bad things about Daddy." Both professionals show concern for the child while in mothers care and custody. Mother has additional psychiatric illnesses (diagnosed personality disorder) which also concerns these professionals relative Mom's ability to care for the children.

Issues with Judge handling of this case:

1. Judge orders me to submit to hair follicle prior to court hearing and prior to reviewing evidence which demonstrated I should not have to submit to additional testing due and this case is not to be heard rather re-directed to the Parenting Coordinator.
2. Entertains Counsel request for follicle testing prior to Notice of Appearance as evidenced in attachments
3. I submitted to a urinalysis drug screen for the Emergency Custody Petition hearing (I submitted to 4 during the divorce proceedings), presented the aforementioned evidence citing the repeated false reporting, the courts explicit instructions disallowing future litigation and all of the aforementioned evidence relative the other pertinent issues in this case. At the time of the Emergency Petition Judge not only did not review any of the evidence submitted but disallowed the audio evidence which clearly undermines the allegation of the mom where the minor child talks about mommy "smoking something better than cigarettes and has a pipe and you light it with fire and mommy tells me to say you smoke it"
4. Judge granted the Petitioners action granting her emergency temporary full custody citing reasonable suspicion based solely on the lack of follicle testing. There was not enough hair on my body or head for the lab and/or TASC to collect. I presented evidence of no possible alteration of my hair between the time of court and testing. There is absolutely no additional evidence in this case.
 - The Petitioner's entire action rests on a statement that our child said that I "have red eyes and saw a pipe in the bathroom" there is absolutely no additional evidence being presented in this case.
 - Now that the Petitioner has heard the audio of our child incriminating her I have grave concerns for retaliation against my child. Judge in his willful negligence in the handling of this case has placed my children in grave danger both mentally and physically as they are now in the exclusive care and custody of their Mother who has a documented history of domestic violence and criminal conduct.
 - Prior to even hearing the case this judge mandated hair follicle without probable cause
 - In criminal court before someone can be charged with a crime there has to be substantiating evidence/probable cause. Neither of these elements exist in this case on my behalf

In the event of a Child Protective Services case, before CPS can obtain emergency custody of a child there must be some evidence that the person in question has placed in jeopardy and/or caused some harm against the child in question. If an officer of the law elects to pull over a vehicle there must be probable cause. My children have been ripped from me (joint custodian) based on a verbal accusation with no corroborating evidence to support it and happens to be the same allegation this Petitioner has made since 2007. Moreover, it is easily understood that this Petitioner filed this action as a manipulation of the courts to evade criminal prosecution for custodial interference. Judge may have understood this had he read or listened to any of the evidence submitted to the court.

This judge has failed to follow rules of procedure, irresponsibly assigned suspicion to my name as a possible drug user and consequently his failure to follow due process thus requiring probable cause and burden of proof standards before removing my children has placed my children in jeopardy as well as subject them to undue stress and hardship.

Attachments

Mesa Police Incident