

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-195

Judge:

Complainant:

ORDER

November 5, 2019

The Complainant alleged a superior court judge was biased against him, engaged in ex parte communication, failed to hear his matters, failed to timely rule, submitted false payroll certifications, made erroneous rulings, and allowed a staff member to practice law and issue rulings for him.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Rules 16(a) and 23(a).

Commission members Roger D. Barton, Barbara Brown, George H. Foster, Jr., and Diane M. Johnsen did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on November 5, 2019.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2019-195

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.

See attached.

Complaint of
Judge

Re:
Superior Court

Complainant (also referred to as "Petitioner") incorporates by reference his Corrected Motion to Alter or Amend the Judgment, (See, Exhibit A attached hereto¹), filed after Judge finally admitted his bias and recused himself in the dissolution. The below summarizes Judge many acts of bias, his failure to honor his oath, failure to follow the law and the judicial canons as set forth below.

1. JUDGE ' FAILURE AND REFUSAL TO HEAR COMPLAINANT'S DULY FILED APPLICATIONS, PETITIONS AND MOTIONS IN VIOLATION OF SUPREME COURT RULE 91 (E), AND CODE OF JUDICIAL CONDUCT RULES 1.2, 1.2, 2.2, 2.3, 2.5, 2.6, AND 2.7 CONSTITUTES "IRREGULARITY AND ABUSE OF DISCRETION" UNDER RULE 59 (A)

a. Judge refused to calendar and hear Petitioner's Applications for Contempt filed on and seeking to stop Respondent from selling, stealing, & disposing of the community assets. See Docket, Docket ID's and, Docket [no Docket ID assigned], Petitioner's Emergency Applications for to enforce the Court's automatic Preliminary Injunction and to stop Respondent from disposing of the community assets to the exclusion of Petitioner; and, Petitioner's Reply Brief, See, Docket, Docket ID

b. Judge failed and refused to timely calendar or hear Petitioner's meritorious Petition to Modify Support (See, Docket, Docket ID); his Supplemental Petition to Modify (See, Docket, Doc ID); his Affidavit ISO Petition to Modify (See, Docket, Doc ID); and, his Supplemental Affidavit ISO Petition to Modify, See, Docket, Docket ID; and his Proposed Amended Petition to Modify and Motion Seeking Leave to file Amended Petition (See, Docket, Doc ID), collectively sometimes "the Petition to Modify",):

1. First, Judge issued a Minute Entry dated (See, Docket, Order) seeking to recharacterize the Petition to Modify as a (factually and legally) fatally flawed Motion to Reconsider causing Petitioner to file, on, a Motion to Set Aside the Minute Entry, Docket ID

2. Then, on, Judge issued a Minute Entry (See, Docket,) titled "Oral Argument Set". Under that title, Judge actually buried his tardy ruling on Petitioner's Request for Findings of Fact, and delayed the adjudication of Petitioner's Motion to Set Aside the faulty Minute Entry until days after the filing of the Petition to Modify;

¹ The Motion to Amend the Judgment is provided; the balance of the Exhibits are available on the Docket, and the filing date and Docket description are provided.

3. Next, despite admitting that his Minute Entry *Id.*, was factually and legally deficient and "inexplicable" on his part at the hearing on the Motion to Set Aside on , Judge *still failed* to even calendar the Petition to Modify until his Minute Entry of (See, Docket,), when he set the Petition to Modify for hearing on *after the filing of the Petition;*

4. The Minute Entry (*Id.*) setting the Petition to Modify for hearing on was issued after Judge ruling that the Petition to Modify is indeed a Petition to Modify filed under ARS 25-327(A) and Rules 91 and 91.1, and that it is not a "Motion to Reconsider", and after the filing of the Petition to Modify, whereby Judge has exceeded the statutory mandates of Rules 91 and 91.1 by . Despite ruling that the hearing on the Motion to Set Aside had been occasioned *solely as a result of Judge own error* and through no fault of Petitioner, Judge refused to dismiss Respondent's request for sanctions and fees against Petitioner for Respondent having to respond to the Motion to Set Aside;

5. Less than prior to the hearing, Respondent had yet to file her financial disclosures, which were delinquent despite Petitioner's numerous requests to the Court and to Respondent and her attorney to produce same; accordingly, on , Petitioner filed an Ex Parte Motion to Compel Respondent to File all Required Financial Information (See Docket, Doc ID), and on , an Emergency Ex Parte Motion to Compel Response to Comply with Order to Produce Rule 49 Disclosures (See, Docket, Doc ID) in advance of the scheduled hearing on the Petition to Modify. Judge issued a Minute Entry (See Docket, Order Entered by Court) summarily denying Petitioner's Ex Parte Motions and denying Petitioner's request for attorney's fees and sanctions for Respondent's willful and prejudicial failure to provide the financial disclosures in time for Petitioner's review prior to the hearing;

6. On before the evidentiary hearing, Respondent sought Judge leave to file an untimely Motion in Limine See, Docket [no Doc ID], seeking to bar all of Petitioner's evidence of his medical conditions disclosed in the Petition, the Supplemental Petition the Supplemental Affidavit and the Second Supplemental Affidavit *Id.*, as well as evidence of Petitioner's payment of Judge Attorney's Fees Award. True to form, Judge granted Respondent's request and the Motion was served on Petitioner on Petitioner's Response to Respondent's Motion in Limine (See, Docket, Doc ID , and Affidavit ISO same, Doc ID) was ordered due to be filed on , before noon. Judge denied Petitioner's request for a hearing, indicating he would issue his order on the Motion in Limine at the hearing on all within the one hour Judge set for the entire hearing. Petitioner

timely filed and served his Response to the Motion in Limine on [redacted] and flew to Arizona for the hearing the next morning;

7. Judge [redacted] failed to rule on the Motion in Limine, failed to convene the [redacted] hearing and instead finally recused himself on [redacted] (See, Docket [redacted]), titled Disqualification), just hours before the hearing on the Petition to Modify, knowing very well that the parties had traveled to Arizona for the hearing, that Petitioner had been diagnosed with [redacted] and is/was suffering extreme financial duress as a result of Judge [redacted] orders;

8. The Petition to Modify was transferred to Judge [redacted], who set the matter for hearing on [redacted] then, on Respondent's Motion to Continue the matter for [redacted], set the matter to be heard on [redacted]; then, on [redacted], Judge [redacted] recused herself (without stating a reason or cause); now, the matter has been assigned to Judge [redacted], who has scheduled a [redacted] telephonic status conference for [redacted], fully [redacted] after the filing of the Petition to Modify. The hearing on the Petition has yet to be scheduled.

c. Judge [redacted] failed to calendar or hear Petitioner's corrected Rule 42.2 Motion to Disqualify and supporting Affidavit, respectively (See, Docket, [redacted], Doc ID [redacted] and Doc ID [redacted]), and never calendared or heard the Motion to Disqualify in violation of Rule 42.2 and Rules 1.1, 1.2, 1.2, 2.2, 2.3, 2.5, 2.6, 2.7 and AZ RULES OF THE SUPREME COURT OF ARIZONA, RULE 91(e).

d. Judge [redacted] failed to calendar or hear Petitioner's [redacted] Request for Findings of Fact Re: Attorney's Fees Award (See, Docket, [redacted], Doc ID [redacted]); the Petitioner's request was denied by Judge [redacted] Minute Entry dated [redacted] *Id.*; this order was also [redacted] LATE, and in violation of Rules 1.1, 1.2, 1.2, 2.2, 2.3, 2.5, 2.6, 2.7, RULE 91(e), and as noted above, buried in an order titled "Oral Argument Set", rather than call attention to his tardy ruling with a proper title that identified the late ruling on the Request for Findings of Fact.

In his Decree, Judge [redacted] made an award of attorney's fees to Respondent based on his stated view that petitioner had "delayed" the proceedings and based upon alleged "discovery abuse", without the benefit of any facts supporting those allegations, because they do not exist. Thereafter, Respondent's Motion for Fees, (See, Docket, [redacted], Application for Fees) failed to identify a single entry in her attorney's fees invoices that addressed any fees resulting from "delay" or "discovery abuse". They simply do not exist because it did not happen. In fact, Respondent and her counsel constantly complained that Petitioner was "rushing" the dissolution. Indeed, Petitioner was trying to bring the matter to conclusion to AVOID incurring fees. The only discovery abuse had been by Respondent, for her withholding of information, perjuring herself in discovery and on the witness stand at trial, all lost on Judge [redacted]. Petitioner invites the Committee to actually READ Respondent's woefully deficient Application for Fees and Petitioner's Objection to Fees (See, Docket, [redacted], Doc ID's [redacted]), where it is indisputably established that there is not a single entry that can be attributed to either of Judge [redacted]' bases for awarding of fees. He simply wished to do so to punish Petitioner. Respondent also redacted all totals, balance forward, payments, adjustments and credits, manipulating the invoices beyond reason and without

any explanation. She also redacted all payments, adjustments and balance forward to effectively eliminate the true evidence of what had actually been paid or adjusted/written off.² Nevertheless, Judge [redacted] Ordered that Petitioner pay [redacted] in fees.

Petitioner requested that Judge [redacted] issue *Findings of Fact*, given the fact that there was no possible basis for the amount of the attorney's fees award to be gleaned from the Respondent's counsel's bills, both due to her baseless redactions, and due to the substantive content. True to form and in an obvious effort to cover his tracks and keep up his biased attacks on Petitioner, Judge [redacted] denied the Request for Findings of Fact *Id.* His back-dated Decree had already precluded an appeal on the issue of fees; he clearly picked a number that he assumed would discourage further action, while still exercising his bias against Petitioner.

2. JUDGE [redacted] HAS FAILED TO TIMELY CALENDAR AND ISSUE TIMELY DECISIONS AND HAS ACTED IN VIOLATION OF THE RULES OF JUDICIAL CONDUCT AND ETHICS (See, Corrected Motion to Amend or Alter, *Id.*)

a. Judge [redacted] regularly "holds" motions and/or applications, refusing to allow the Clerk of the Court to enter them on the Docket as filed until he "decides" if he will entertain the motion/application (regardless of the statutory mandate), and fails to "promptly" calendar matters for his own convenience and without regard for the parties, effectively manipulating the calendar and his time within which to hear and issue a determination beyond that contemplated by the legislature or the Supreme Court.

In the course of the [redacted] dissolution matter, pending since [redacted], Petitioner [redacted] has filed several motions (including several cited herein, including the two [redacted], the Motion to Set Aside, the Request for Findings of Fact, the Corrected Motion to Disqualify and the Petition to Modify) that Judge [redacted] simply refused to be entered on the docket, calendar for hearing or ruling. Petitioner had many conversations with the various deputies of the Clerk of the Court as well as the Family Law Help Desk, who advised that they could not *make* Judge [redacted] allow them to file or calendar the matters; they also acknowledged that Judge [redacted] delays in calendaring Petitioner's matters was outside of the "norm" for the Court but that they did not know what to do.

b. Immediately prior to trial, Judge [redacted] engaged in prohibited *ex parte* communications with Respondent's counsel, and issued prohibited *ex parte* orders over Petitioner's objections and demands to be heard:

1. Judge [redacted] granted Respondent's counsel's *ex parte* request seeking to avoid the *Joint Pretrial* process, and to be allowed file a separate pretrial statement *after* Petitioner had already served his joint pretrial statement upon Respondent's counsel (in response to her demand that he do so) (See, Affidavit ISO Revised Rule 42 Motion to

² This is significant because Respondent states her fees as the same through the [redacted] trial as through the date of her [redacted], when there has been activity for which opposing counsel continues to make demands for "fees" incurred. So, despite the claim that Respondent incurred approximately \$ [redacted] in fees through trial, that cannot be true, but the redacted invoices precluded that finding and Judge [redacted] refused to require the redactions to be removed.

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PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**