

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 23-406

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Judge:

Complainant:

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**ORDER**

March 29, 2024

The Complainant alleged a retired superior court commissioner made improper rulings in a family law case.

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 Commission Rules 16(a) and 23(a).

Copies of this order were distributed to all appropriate persons on March 29, 2024.

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

**2023-406**

**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.

On \_\_\_\_\_, I appeared before the Hon. \_\_\_\_\_ a commissioner of the \_\_\_\_\_ County \_\_\_\_\_ Court on my motion to terminate my spousal maintenance order pursuant to a stipulated agreement of the parties from \_\_\_\_\_ years earlier. My spousal maintenance, which was \_\_\_\_\_ per month, was based on and paid from a \_\_\_\_\_ ( ) award in the amount of \_\_\_\_\_ per month. Virtually all of the rest of my income consisted of a service-connected disability award based on a \_\_\_\_\_ disability rating ( \_\_\_\_\_ award). This award was completely exempt from consideration in calculating spousal maintenance under Arizona statute and caselaw. See ARS Sec. 25-530; Dowling v. Dowling, 228 Ariz. 298 (App. 2011). The court had made this determination and adjusted my support to the present amount years earlier. This was, therefore, both Arizona law and the law of the case.

In \_\_\_\_\_, I was informed by the \_\_\_\_\_ that my \_\_\_\_\_ benefits were being retroactively terminated because I had, after many years, been determined to be ineligible to receive them. The SSA also ordered me to replay almost \_\_\_\_\_ in back payments. Thus, I was left only with my exempt \_\_\_\_\_ benefits. I attempted to appeal this decision administratively but was unsuccessful. I contacted my attorney in the family law case and he and the other party's attorney negotiated a resolution agreement. This agreement was reduced to a stipulation that was filed in court. The gist of the agreement was that my spousal maintenance obligation would be temporarily suspended, and I would attempt to restore my benefits, but that if I was unable to do so I would be relieved of my spousal maintenance obligation retroactive to \_\_\_\_\_, the time I lost them. If, however, they were retroactively reinstated, I would resume paying current spousal maintenance and would owe retroactive maintenance to the time they were effectively reinstated.

Over the next \_\_\_\_\_ years, I filed several administrative appeals and motions to reconsider with the \_\_\_\_\_ all of which were denied. I also consulted \_\_\_\_\_ attorneys who were benefits specialists. Both advised me that further appeals or the filing of litigation would be futile and likely counter-productive because it would prompt the \_\_\_\_\_ to take steps to enforce the \_\_\_\_\_ arrears assessment, which otherwise would be collected from my retirement benefits once I reached retirement age.

Alt of the above evidence, including documents from the \_\_\_\_\_, was presented to Judge \_\_\_\_\_ at the hearing. The other party added little of relevance, other than claiming I could work, even though that assertion had been repeatedly rejected by the court in several prior proceedings and evidence, including extensive medical records and evaluations, had been presented. My attorney referred the judge to those proceedings and records. After the hearing, both parties were ordered to submit financial affidavits. I submitted mine and provided additional detail regarding my circumstances. The other party filed nothing. Evidence at the hearing and in my affidavit also established that I had no savings or substantial property.

Judge \_\_\_\_\_ issued an under advisement ruling that not only denied my motion to terminate pursuant to the stipulation but ordered me to resume paying the \_\_\_\_\_ per month (as opposed to leaving matters as they were) and to pay arrears for the past \_\_\_\_\_ years. This result was outside the scope of the stipulation, the proceedings, and the court's jurisdiction. She based her ruling on a small stipend I received from my family's business and, apparently, a finding I was capable of work, despite my age, my \_\_\_\_\_ disability rating, my inability to work for the past \_\_\_\_\_ years, the prior findings of the court, and the extensive record in the case, developed in multiple proceedings showing my permanent and severe physical and mental disabilities.

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A letter admitted at the hearing from the business confirmed that the stipend was paid based solely on the fact that I was a family member and that I performed no services for the business. The judge ignored the fact my income, not including my exempt disability, was only a few hundred dollars per month and that any current or retroactive award would have to be paid from my exempt disability. Although she did not conduct a full hearing on spousal maintenance, which she should have, she had sufficient information in the record to know that she was violating Arizona law and treating me with gross unfairness.

I believe Judge \_\_\_\_\_ violated the Arizona Judicial Code of Conduct in the following respects:

1. She failed to act competently because she grossly misinterpreted or ignored the clear meaning of the stipulation by determining that even a minimal amount of income was sufficient to require me to pay spousal maintenance.
2. She imposed an unfair, unreasonable, and impossible standard on the term of the agreement that required me to seek reinstatement of my \_\_\_\_\_ benefits, thus violating her duties of competence and fairness.
3. She acted outside the scope of the stipulation, the proceedings, and her jurisdiction by not just denying my motion to terminate but requiring me to pay current and past spousal maintenance and did so without a full hearing or consideration of the fact that virtually all of my income was exempt under state law.
4. She failed to give fair and adequate consideration to the evidence presented at the hearing and in my financial affidavit or by setting a second hearing to determine my income and my ability to work.

This conduct on the part of Judge \_\_\_\_\_ violated Rule 1.1 (compliance with the law), Rule 2.2 (impartiality and fairness), Rule 2.5 (competence), and, with respect to her failure to hold a hearing on spousal maintenance before making orders that went beyond the scope of the stipulation, Rule 2.6 (ensuring the right to be heard).

Note: This matter is currently on appeal and my attorney can provide copies of the briefing and any ruling once received. My attorney can also provide some information from earlier proceedings in this matter and those are also summarized in prior appeals to the Arizona \_\_\_\_\_, including a published decision, *In re Dougall*, 232 Ariz 2, 316 P.3d 591 (App. 2013)