

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-131

Complainant: No. 1418910582A

Judge: No. 1418910582B

ORDER

The complainant alleged that a superior court commissioner failed to issue timely rulings and then lied about the circumstances in her minute entries. The commission reviewed the allegations, the commissioner's response, and several court documents and found no ethical misconduct. The delay occurred because the parties did not provide a copy of the filings to the commissioner, as required by court rules. The commission concluded that the delays were not unreasonable and decided to dismiss the complaint with a private comment to the commissioner pursuant to Rules 16(b) and 23.

Dated: July 26, 2011.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on July 26, 2011.

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

This complaint is against _____, a commissioner for the Maricopa County Superior Court. The complaint is based the Arizona law that requires that commissioners rule on pleadings submitted to them for timely decisions. The complaint is also based on the requirement that commissioners sign a written certification each month that they have no matters pending beyond the sixty-day limit in order to receive a paycheck. _____ failed to issue timely rulings, and _____ also therefore signed false certifications alleging that she had no matters pending beyond the sixty-day limit. Additionally, _____ made false statements in minute entries, after her failure to rule was brought to the attention of the Family Court Presiding Judge.

The facts are as follows:

1. This pertains to case number FC 2001-_____. I am the Petitioner in this matter and am represented by attorney Joel L. Brand. Mr. Brand has been my attorney on this case since July 2003. The facts of this case, and the minute entries referred to herein, are a matter of public record and are available at <http://www.superiorcourt.maricopa.gov> and at <http://www.clerkofcourt.maricopa.gov>.

2. In July of 2009 _____ was assigned as the child support commissioner on this case. During that same month Respondent filed a Petition to modify child support. The matter was set for hearing, with the initial hearing held before Madden on July 1, 2010.

3. Later that same month a Memorandum Decision was issued by the Court of Appeals pertaining to an appeal concerning a Petition to modify child support filed by Respondent in 2005. The matter was remanded to the trial court. There were now two matters pending before _____ the 2009 Petition to modify child support ("2009 Petition") and the 2005 Petition to modify child support ("2005 Petition").

4. By Minute Entry dated July 29, 2010, both the 2009 Petition and the 2005 Petition were set for hearing before _____ on September 23, 2010. The first day of hearing was held on September 23. At that hearing, another day of hearing on the two Petitions was scheduled for October 21, 2010.

5. By Minute Entry dated October 19, 2010, _____ added a further issue to the hearing date of October 21, 2010, scheduling an oral argument on Respondent's Motion for summary judgment regarding the Appellate Court's memorandum decision for the date of October 21, 2010.

6. At the hearing on October 21, 2010, Respondent dismissed the 2009 Petition. Also on that date, Madden denied Respondent's Motion for summary judgment. _____ granted an award of attorney's fees to me for both the dismissed 2009 Petition and the Motion for summary judgment. Mr. Brand was given ninety days to file a China Doll affidavit regarding those attorney fee awards.

7. Also at the October 21 hearing, _____ directed my attorney to file a response to Respondent's argument that the issue of his income for child support purposes was res judicata. _____ received evidence regarding the 2005 Petition, then took the matter under advisement. The purpose for taking the matter under advisement was to make a final determination as to Respondent's income and other issues (such as parenting time offset) in order to make a final determination of child support retroactive to 2005.

8. At the October 21 hearing, _____ set a hearing for November 22, 2010. That

hearing was to be for the purpose of child support calculation, which was to be based on her under-advisement ruling.

9. On October 26, 2010, Mr. Brand filed a response, as ordered by _____ to Respondent's argument that the issue of his income for child support purposes was res judicata. A copy was provided to _____ by hand-delivery by Mr. Brand's secretary, Carriena Mullins.

10. By Minute Entry dated November 16, 2010, _____ – on her own motion – rescheduled the November 22, 2010 hearing for December 6, 2010. At the time of the November 22 Minute Entry, _____ still had not issued her under-advisement ruling regarding the income issues raised in the 2005 Petition.

11. By Minute Entry dated December 3, 2010, and filed at 8:00 a.m. on Monday, December 6, 2010, Madden finally ruled on the matter that she had had under advisement since October 21, 2010.

12. On December 6, at 1:30 p.m. (beginning at 1:50 p.m.) a hearing was held, but the matter had to be continued until December 13 to allow the Attorney General's office time to make an arrearage calculation based on _____ December 3 ruling.

13. In spite of the fact that my attorney had filed a Request for Findings of Fact and Conclusions of Law on September 16, 2010, prior to the hearing on September 23, 2010, _____ failed, in her Minute Entry dated December 3, 2010, to make necessary findings of fact. These included findings regarding Respondent's alleged business expenses. Consequently, on December 17, 2010, Mr. Brand filed a Motion for Additional Findings of Fact and requested _____ to make those specific findings.

14. Mr. Brand's office is at 132 South Central Avenue, directly across the street from the Courthouse where _____ is employed as a court commissioner. The well-established practice of his office, therefore, is that a copy is hand-delivered to the assigned Judge or Commissioner on the same day a pleading is filed with the Court Clerk. If the original of a pleading is filed after-hours in the night repository, a copy of the pleading is delivered to the assigned Judge or Commissioner the next business day. Mr. Brand's secretary, Ms. Mullins, makes the hand-deliveries of copies to judges and commissioners.

15. The Motion for Additional Findings of Fact was prepared and time-stamped into the night repository on December 17, 2010 at 8:47 p.m. Mr. Brand made this filing. The copy for the Court was given to Ms. Mullins by Mr. Brand the next business day morning (December 20, 2010) and delivered to _____ that same day (December 20) by hand by Ms. Mullins.

16. On January 18, 2011, Mr. Brand prepared a China Doll Affidavit requesting attorney's fees in the amount of \$7972.14 for the dismissed 2009 Petition and the denied Motion for Summary Judgment. The original was time-stamped as filed by the Court Clerk at 2:17 p.m. in the Family Court Lobby on January 18, 2011. Ms. Mullins made this filing, and she provided a copy to _____ immediately thereafter, on that same date, by hand-delivery.

17. As of late February 2011, _____ had failed to rule on the Motion for Additional Findings of Fact. Therefore, on February 25, 2011, Mr. Brand prepared a

Notice of Non-Ruling and Request for Ruling. The original was time-stamped as filed by the Court Clerk at 4:00 p.m. in the Family Court Lobby on February 25, 2011. Ms. Mullins made this filing, and she provided a copy to immediately thereafter, on that same date, by hand-delivery.

18. continued to fail to rule on the matter of additional findings of fact. Therefore, on March 29, 2011, Mr. Brand prepared another Notice of Non-Ruling. This document was filed, by Ms. Mullins, with the Clerk with a time-stamp of 11:41 a.m. and a copy was hand-delivered that same day (March 29) to Madden and a copy hand-delivered to the Presiding Judge of the Family Court, Carey Hyatt, on March 29 as well. The Court copies were hand-delivered by Ms. Mullins.

19. In the Notice of Non-Ruling filed March 29, Mr. Brand included the fact that as of that date had not only not ruled on the Motion for Further Findings of Fact filed on December 17, 2010 (copy hand-delivered to her on December 20, 2010), but had also failed to rule on the China Doll Affidavit filed by Mr. Brand on January 18, 2011 (copy hand-delivered to on January 18).

20. On April 19, 2011, still having no ruling by on either the Motion for Additional Findings of Fact or the China Doll Affidavit, I called Judge Hyatt's division and spoke to her judicial assistant regarding the matter. Judge Hyatt's judicial assistant called my attorney's office the next day to obtain further clarification about the matter.

21. On April 22, 2011, finally entered a ruling on the Motion for Further Findings of Fact. In her Minute Entry, stated as follows: "The Court apologizes for the delay in ruling on this matter. However, the division copies of Petitioner

Motion Re: For Additional Findings of Fact (filed December 17, 2010) and Notice of Non-Ruling and Request for Ruling (filed February 25, 2011) were never provided to this division as required pursuant to Rules 3.2(a) and 6.2(a), Local Rules of Practice for the Maricopa County Superior Court. The Court reviewed and considered the Motion and attached Affidavit which was submitted pursuant to this Court's Order of October 21, 2010. No Response was filed."

22. Also on April 22, 2011, entered a judgment for attorney's fees on the China Doll affidavit filed on January 18, 2011. In her Minute Entry, stated as follows: "The Court apologizes for the delay in ruling on this matter. However, the Division copy of Petitioner Motion and Application for Attorney's Fees Re: China Doll Affidavit (filed January 18, 2011) was never provided to this Division as required pursuant to Rules 3.2(a) and 6.2(a), Local Rules of Practice for the Maricopa County Superior Court. The Court reviewed and considered the Motion and attached Affidavit which was submitted pursuant to this Court's Order of October 21, 2010. No Response was filed."

Mr. Brand has been my attorney on this case for almost eight years, and no Judge or Commissioner, other than has alleged that Mr. Brand failed to provide a copy of pleadings to his/her division, much less failed to provide copies of three separate documents all filed at different times. The fact that Mr. Brand's office is directly across the street from the downtown Courthouse, where is employed, particularly undermines such a claim. allegations that she did not receive these three

pleadings are not supported by the historical record in this case. Further, [redacted] would like it believed that my attorney did not provide her a copy of a China Doll affidavit requesting over \$7900 in attorney's fees. It boggles the mind that anyone would believe that an attorney would fail to provide a copy of a Motion for \$7900 of attorney's fees to the very entity in charge of signing such request into a legally enforceable Judgment. Additionally, [redacted] does not note in her two Minute Entries dated April 22, 2011, that a further Notice of Non-Ruling was filed on March 29, 2011. That pleading would no doubt have been ignored as well, had I not called Judge Hyatt's division about the situation. (Enclosed is a copy of the page from my cell phone bill for May 2011, with my call to Judge Hyatt's division highlighted.) In addition to failing to follow Arizona law to timely rule, [redacted] clearly signed false affidavits regarding the status of her docket, in order to obtain paychecks. Compounding her errors, [redacted] then made groundless allegations in her Minute Entries, blaming others when her failure to perform her job was brought to her attention.

Consequently I request that [redacted] violations of the judicial ethics code be investigated. Other individuals having knowledge of these events are Joel L. Brand and Carriena Mullins, at 132 S. Central Ave., Suite 262, Phoenix AZ 85004. Both may be reached at Mr. Brand's office phone of 602/712-0911.