

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 20-258

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Judge:

Complainant:

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**ORDER**

December 11, 2020

The Complainant alleged a superior court judge prejudged his case and issued erroneous rulings in a family law matter.

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).

Commission member Denise K. Aguilar did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on December 11, 2020.

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

2020 - 258

**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.

1) The current order, signed \_\_\_\_\_ orders the parents of the case to take appropriate steps to amend the birth certificate of the minor child (page \_\_\_\_\_). As such, on \_\_\_\_\_ I obtained a certified copy of the order for a scheduled appointment at Vital Records on \_\_\_\_\_

When I presented all necessary documents and the certified order to the Vital Records representative he, after reviewing the documents, stated, " \_\_\_\_\_ " and that the order is not written properly for Vital Records to amend the birth certificate.

2) In regards to the Holiday Schedule on page \_\_\_\_\_ it is written that for Thanksgiving holiday's parenting time, " \_\_\_\_\_ "

Given the facts and nature of the case, the Christmas Eve and Christmas Day Holiday Schedule is not practical given the long distance nature of the parenting time order, the expense of carrying out the parenting time order and the age of the child, especially when given orders should be periodically reviewed per A.R.S. 25-403.02(C)(6).

Additionally, the reference and use that the above holiday parenting time " \_\_\_\_\_ " when the child was \_\_\_\_\_ old at the time of the order, does not indicate an attention to detail or evaluation of the circumstances and facts of the case nor is A.R.S. 25-403.02(C)(4) addressed in the order.

3) In regards to Attorney's Fees and Costs outlined on page \_\_\_\_\_ The respondent in the matter, after rescinding paternity, and amending the child's name, absconded from \_\_\_\_\_ After being served legal process from this court then applied for an expedited passport for the child to return to \_\_\_\_\_ and filed pleadings in \_\_\_\_\_ to challenge jurisdiction. As referenced in the order, A.R.S 25-324 governs an award of attorney's fees. as written in the current order on page \_\_\_\_\_ "

However, it was written on page \_\_\_\_\_ paragraph \_\_\_\_\_ (A.R.S. 25-403(A)(7)) of the order that, ' \_\_\_\_\_ '

\_\_\_\_\_ " Such statement coincides with A.R.S 25-324(B)(2) and A.R.S. 25-324(B)(3). Such contradiction in the order does not indicate an attention to detail or evaluation of the circumstances and facts of the case.

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**COMPLAINT AGAINST A JUDGE**

Name: \_\_\_\_\_ Judge's Name: \_\_\_\_\_

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4) Due to the Respondent's actions and behavior in this matter, Temporary Orders were put in place. In reference to page \_\_\_\_\_ paragraph \_\_\_\_\_ of the Temporary Orders, it is written, "

"

While findings may not have been required for the Temporary Orders, the high degree of similarity between the current order, the Temporary Orders and the specific findings of A.R.S. 25-403(A)(1), (A)(2), (A)(3), (A)(6) on pages \_\_\_\_\_ of the current order, as they may dictate a parenting time order and relate to the current parenting time order, does not facilitate or promote any meaningful "

" and, "

" (A.R.S. 25-403(A)(2) and (A)(3) respectively) Especially since the parenting time order has father leaving his home and traveling to \_\_\_\_\_ for his parenting time.

5) At the trial hearing for this matter, held on \_\_\_\_\_ the court stood in recess at \_\_\_\_\_. The recess provided insight to Judge \_\_\_\_\_ position, as explained by my counsel, on what would ultimately become the current parenting time order. After the court reconvened \_\_\_\_\_ Judge \_\_\_\_\_ stated on record,

"

"

However, the recess provided an overview of the trial information, via counsel at the time, that Judge \_\_\_\_\_ already knew what he was going to issue for a parenting time order before the testimony of the parties and the presented facts and evidence.

Factor 1 does not instill confidence in this court's Competence and Diligence as it relates to **Rule 2.5(A)** of the Arizona Code of Judicial Conduct and comments 1, 2 and 3 of the same rule as the order has since been found to be insufficient and unable to be followed as written suggesting a lack of "...knowledge, skill, thoroughness, and preparation..." and a disregard to "...seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities."

Factor 2 does not promote Impartiality and Fairness as it relates to **Rule 2.2** of the Arizona Code of Judicial Conduct and comment 3 of the same rule as the failure to address A.R.S. 25-403.02(C)(4) begins to show a "...pattern of legal error or an intentional disregard of the law..." especially when placed in context of the other factors of this complaint and ruling in its entirety.

Factor 3 does not promote Impartiality and Fairness as it relates to **Rule 2.2** of the Arizona Code of Judicial Conduct and comment 3 of the same rule as this factor further shows a "...pattern of legal error or an intentional disregard of the law..." as Judge [redacted] wrote, as it applies to this case, on the appropriate and necessary factors relevant to award attorney's fees only to not uphold and apply the relevant factors presented.

Factor 4 does not promote Impartiality and Fairness as it relates to **Rule 2.2** of the Arizona Code of Judicial Conduct and comment 3 of the same rule as the findings that relate to A.R.S. 25-403(A)(1), (2), (3) and (6) further show a "...pattern of legal error or an intentional disregard of the law..." as this factor shows disregard for applying and issuing an order to promote factors related to A.R.S. 25-403(A)(1), (2), (3) and (6).

Factor 5 does not promote Impartiality and Fairness as it relates to **Rule 2.2** of the Arizona Code of Judicial Conduct and comment 1 of the same rule as the recess and subsequent statement made by Judge [redacted] does not infer objectiveness and open-mindedness to evaluate the evidence, testimony and factors relevant to the case to issue an order consistent with the findings of the matter.

Factor 5 does not coincide with Judicial Statements on Pending or Impending Cases as it relates to **Rule 2.10(A)** of the Arizona Code of Judicial Conduct as the recess provided insight to Judge [redacted] leanings on how he was going to rule in the matter and his subsequent statement promoted an affected outcome and impaired the fairness of the proceeding as such information and remarks were made before testimony and presentation of facts and evidence, at a minimum, coinciding with a predetermination going into the trial hearing.

In summary, the factors presented, as it relates to this matter, give, at minimum, the appearance of impropriety. In addition, these factors do not promote confidence in this judiciary in general or specifically as it relates to this matter.

ARIZONA  
COUNTY

HONORABLE

Case Number:

Petitioner

AND

Respondent

**TEMPORARY ORDERS**

The child was born in [redacted] By the time the child was born, Mother and Father had been residing in [redacted] for an extended period of time. Less than [redacted] after the child was born, Mother unilaterally moved to [redacted] with the child without Father's knowledge or consent. Father filed his Petition to Establish shortly after Mother moved to [redacted] and months before Mother filed a separate petition in a [redacted] court. Correspondence between Mother and her father strongly suggests that they have been contemplating ways to deliberately circumvent [redacted] jurisdiction including a plan involving Mother leaving the country with the child.

The Evidentiary hearing in this matter occurred on [redacted]. During the proceedings, the Court has considered the evidence which includes where applicable/presented, the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments and agreements.

As a preliminary matter, the Court notes that a temporary order is always subject to reassessment. A temporary order "[d]oes not prejudice the rights of the parties . . . that are to be adjudicated at the subsequent hearings in the proceeding." A.R.S. § 25-315(F)(1). A temporary order also "[t]erminates when the final decree is entered . . ." A.R.S. § 25-315(F)(4). Even before the final decree, a temporary order "may be revoked or modified . . . on a showing by affidavit of the facts necessary to revocation or modification of a final decree under § 25-327," (i.e. changed circumstances). A.R.S. § 25-315(F)(2). A temporary order "[d]oes not prejudice the rights of the parties or of any child that are to be adjudicated at the subsequent hearings in the proceeding," A.R.S. § 25-315(F)(1); *see* Ariz. R. Fam. P. Rule 47(M) ("Temporary orders become ineffective and unenforceable upon termination of an action either by dismissal or following entry of a final decree..."). A.R.S. section 25-403 findings are not required on temporary orders. *Gutierrez v. Fox*, 242 Ariz. 259, 268, 394 P.3d 1096, 1105 (Ct. App. 2017), *review denied* (Apr. 18, 2017).

The Court emphasizes that the rulings set forth herein arise out of requests for temporary orders. As such, these rulings are provisional only and should not be read as the Court's final determination regarding any issue. The rulings are based on the limited evidence presented in an abbreviated hearing and with the understanding that the parties might not have completed all of their discovery and disclosure. Consequently, the parties should be aware that, at a future hearing, additional evidence might be produced and that such additional evidence might compel different rulings than those made herein.

The Court makes the following findings and enters the following orders:

**JURISDICTION**

**THE COURT FINDS the following:**

- That [redacted] and [redacted] have a child in common.

**ARIZONA  
COUNTY**

HONORABLE

Case Number:

- was the child's home state on the date the temporary orders motion was filed or was the child's home state within before the filing of the temporary orders motion and the child is absent from this state but a parent or person acting as a parent continues to live in
- That the Parental Kidnapping Prevention Act does not apply and that no international law concerning the wrongful abduction or removal of children applies.

**PATERNITY**

**THE COURT FINDS** that based on the testimony and evidence presented, is parent of the following minor child:

born on to

**IT IS ORDERED** declaring that is the legal parent of the following minor child:

born on to

**IT IS FURTHER ORDERED** that the parties shall take all necessary steps to have the birth certificate of the minor child amended in accordance with this order if the correct information does not now appear on the original certificate. Information for amendment of a birth certificate may be obtained from the Office of Vital Records, Department of Health Services, 1818 W. Adams, Phoenix, Arizona 85007; Phone (602) 364-1300. A certified copy of this minute order may be obtained after ten days of receipt of same, and shall then be provided, together with all other required documents and fees, to the Office of Vital Records, so that the birth certificate can be amended or supplemented as ordered.

**TEMPORARY LEGAL DECISION MAKING**

Because the Court is addressing requests for temporary orders, the Court notes it is not required to make the type of detailed findings that would accompany final orders. The Arizona Court of Appeals has explained that the statutory requirement, set forth in A.R.S. § 25-403(B), for specific findings in disputed custody cases, "exists not only to aid an appellant and the reviewing court, but also for a more compelling reason—that of aiding all parties and the family court in determining the best interests of the child or children both current and in the future." *Reid v. Reid*, 222 Ariz. 204, 209, 213 P.3d 353, 358 (App. 2009). As to the latter reason, the specific findings "provide the family court with a necessary 'baseline' against which to measure any future petitions by either party based on 'changed circumstances.'" *Id.* By implication, this means that specific findings are not required for temporary orders. Thus, while the Court has considered all of the statutory requirements the Court declines to make detailed factual findings on each statutory factor on the various issues set forth below. However, the Court rules as follows:

**For**

**IT IS ORDERED** awarding and joint legal decision-making authority regarding as defined in A.R.S. § 25-401(2). For the purpose of this order,

"Joint legal decision-making" means both parents share decision-making and neither parent's rights nor responsibilities are superior except with respect to specified decisions set forth herein. Shared or joint legal decision-making authority does not necessarily mean equal parenting time (A.R.S. § 25-403.02(E)).

**Specific Terms**

**THE COMMISSION'S POLICY IS  
TO POST ONLY THE FIRST FIVE  
PAGES OF ANY DISMISSED  
COMPLAINT ON ITS WEBSITE.**

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