

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 24-118

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Judge:

Complainants:

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**ORDER**

June 14, 2024

The Complainants alleged a superior court judge improperly denied a motion for change of judge.

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 members Barbara Brown and Joseph C. Kreamer did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on June 14, 2024.

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

2024-118

**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.

We filed a Motion to see my granddaughter to be presented to  
we didn't ask for change of Judge for that would never happen  
handled the Motion instead  
does not know the case and does not care that we haven't seen this child for years

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COURT OF ARIZONA  
COUNTY

CLERK OF THE COURT

HONORABLE

Deputy

IN RE THE MATTER OF

AND

AG-CHILD SUPPORT- VALLEY  
OFFICE  
JUDGE  
JUDGE

**INTERVENOR'S MOTION TO SET ASIDE DENIED – NO CAUSE**

This court has considered Petitioner and Intervenor's *Motion to Have Judge Set Aside Her Personal Hatred Toward Plaintiffs* (filed \_\_\_\_\_) (hereafter, the "Motion"). The relief sought is phrased as follows: "FAMILY OF THE PLAINTIFF IS HEREBY ASKING FOR THE COURT'S MERCY AND BEGGING FOR THE COURT TO SET ASIDE THE HATRED, DISLIKE, PERSONAL EMOTIONS AND DISGRACE OF A HUMAN LIFE THAT WE HAVE SUFFERED THROUGH JUST SO THIS FAMILY AND PLAINTIFF CAN ATEND THE GRADUATION OF THIS CHILD FROM HIGH SCHOOL GRADUATION." Motion at 2.

COURT OF ARIZONA  
COUNTY

Judge \_\_\_\_\_ referred the motion to Family Department Presiding Judge \_\_\_\_\_ (this Court) because the pending Motion reflects that Petitioner and Intervenor believe that on account of the alleged bias, prejudice, or interest of Judge \_\_\_\_\_, they cannot obtain fair and impartial rulings. This Court finds it appropriate to treat the request as a request for a change of judge for cause under Rule 6.1. This approach serves as a safeguard, allowing for review of Petitioner and Intervenor's claims by a neutral judge. *See Plaza v. Leon*, 2 CA-CV 2022-0016-FC, 2023 WL 4832654, at \*9 (App. July 27, 2023).

**1. Legal Standard for Disqualification**

A party seeking a change of judge for cause must establish grounds by affidavit. *See* Rule 6.1(a). This Court finds that the declaration (Motion at 2) satisfies the affidavit requirement of Rule 6.1(a), ARFLP, and A.R.S. §12-409(A). "An affidavit... is a signed, written statement, made under oath before an officer authorized to administer an oath or affirmation in which the affiant vouches that what is stated is true." *Beatie v. Beatie*, 235 Ariz. 427, 432, ¶ 25 (App. 2014) (citation omitted). *See also* Rule 14(b), ARFLP (authorizing unsworn declarations made under penalty of perjury in lieu of a verification).

One of the grounds which may be alleged for change of judge is "that the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice, or interest of the judge he cannot obtain a fair and impartial trial." A.R.S. §12-409(B)(5). "The sufficiency of any 'cause to believe' must be determined by an objective standard, not by reference to the affiant's subjective belief." Rule 6.1(d)(5).

The ultimate question when addressing a motion for change of judge for cause or a motion for recusal is whether the judge harbors bias or prejudice toward a litigant. Ariz. R. Fam. Law P. 6.1(a); A.R.S. § 12-409(B); Ariz. R. Sup. Ct. 81, Canon 2.11(A)(1). Case law instructs that the presiding judge must begin her analysis with the presumption that the superior court judge "is impartial, and 'the party seeking recusal must prove bias or prejudice by a preponderance of the evidence.'" *In re Aubuchon*, 233 Ariz. 62, ¶ 14 (2013) (quoting *Carver*, 160 Ariz. at 172). "A change of judge for cause is not warranted if based merely on 'speculation, suspicion, apprehension, or imagination.'" *Costa v. Mackey*, 227 Ariz. 565, ¶ 12 (App. 2011) (quoting *State v. Ellison*, 213 Ariz. 116, ¶ 37 (2006)). Instead, the party requesting a recusal or change of judge must demonstrate an "extrajudicial source of bias or deep-seated favoritism." *Stagecoach Trails MHC, L.L.C.*, 232 Ariz. 562, ¶ 21.

"The presiding judge may hold a hearing to determine the issues raised in the affidavit or may decide the issues based on any affidavits and memoranda filed by the parties." Rule 6.1(d)(2). "The presiding judge must decide the issues by the preponderance of the evidence.... If grounds for disqualification are found, the presiding judge must promptly reassign the action." Rule

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6.1(d)(4). "If the court determines that the party who filed the affidavit is not entitled to a change of judge, the named judge may proceed with the action." Rule 6.1(d)(5).

**2. Legal Analysis**

Petitioner and Intervenor allege Judge \_\_\_\_\_ demonstrated bias based on the following: (1) Judge \_\_\_\_\_ has purportedly violated Petitioner's unspecified constitutional rights "from day one of this modification of child custody"; (2) "there has never been any partiality [sic] in making the decisions"; (3) hearings were one sided; (4) "every motion denying any type of parental rights and/or grandparent rights have not been fair"; (5) "When \_\_\_\_\_ objected to statements that were not true, he was sent out of the courtroom." No details or citations to transcripts, FTR, or record evidence has been provided.

As a threshold matter, the Family Department Presiding Judge notes this is a successive motion seeking similar relief. Nearly identical motions were filed and denied on \_\_\_\_\_ ;

To the extent that Petitioner and Intervenor's Motion refers to incidents that have occurred "for the past \_\_\_\_\_ years" (Motion at 2) and those alleged events occurred *prior* to the entry of the Minute Entry Ruling denying the request for change of judge for cause, the Court finds that those claims were addressed in previous rulings.

Following the \_\_\_\_\_ Minute Entry Ruling, Judge \_\_\_\_\_ denied multiple post-decree filings, including the following:

- Petitioner/Father's "Expedited Emergency Request for Hearing" (filed \_\_\_\_\_ ; denied \_\_\_\_\_ );
- Petitioner/Father's "Expedited Motion and Concerns Regarding Child and Violations (filed \_\_\_\_\_ ; denied \_\_\_\_\_ ); and
- Petitioner & Intervenor's "Expedited Petition for Enforcement and Request for Shared Custody" (filed \_\_\_\_\_ ; denied \_\_\_\_\_ ).

The Court finds that any allegations of bias arising from the denial of these post-trial motions has been waived as untimely because they were not asserted "within \_\_\_\_\_ days of discovering that grounds exist for a change of judge." *See* Rule 6.1(c).

However, even if the claim of bias based on these rulings were not time barred, Petitioner and Intervenor's allegations of bias in these rulings fails on the merits. "Bare allegations of bias and prejudice, unsupported by factual evidence, are insufficient to overcome the presumption of impartiality and do not require recusal." *Carver*, 160 Ariz. at 173. Although Petitioner and Intervenor argue that Judge \_\_\_\_\_ orders demonstrate "personal hatred" toward Petitioner and

**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  
IN WRITING TO THE  
COMMISSION ON JUDICIAL  
CONDUCT AND REFERENCE  
THE COMMISSION CASE  
NUMBER IN YOUR REQUEST.**