

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-088

Judge: Wendy Morton

Complainant: Scott Holmberg

ORDER

The complainant alleged a superior court commissioner failed to timely issue minute entry orders, failed to follow the law, and was biased.

Rule 1.2 of the Code of Judicial Conduct requires judges at all times to act in a way that promotes confidence in the judiciary and to avoid both impropriety and the appearance of impropriety. Rule 2.2 requires judges to uphold and apply the law. Rule 2.16 requires judges to cooperate and be candid and honest with the commission.

Based on the information presented by the complainant, obtained from publicly available court records including the recordings of relevant hearings and minute entry orders, and contained in Commissioner Morton's responses to the commission, the members of the commission determined the following:

1. Commissioner Morton clearly indicated that she would continue the December 20, 2012, hearing to January 3, 2013, because one party had a medical emergency and could not be present. She then improperly proceeded to accept testimony from the opposing party regarding an alleged amount of child support owed and then issued an order directing payment of that amount within a specified amount of time to avoid the issuance of an arrest warrant.
2. Although the commission does not find that Commissioner Morton was intentionally misleading, her responses regarding this matter were inconsistent, incomplete, and were initially provided without her having carefully reviewed the record and thereby demonstrated insufficient candor.
3. Commissioner Morton issued an arrest warrant for failure of the complainant to pay a purge amount despite the fact that the complainant did not receive notice and an opportunity to be heard on the issue. The

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

commissioner was apprised of this lack of notice on at least four occasions, but refused to quash the arrest warrant.

4. Her explanation that she lacked the authority to quash her own improperly issued arrest warrant is specious.
5. The commission considered as mitigation the difficult nature of the case.

Commissioner Morton's conduct as described above violated Rules 1.2, 2.2, and 2.16.

Accordingly, Superior Court Commissioner Wendy Morton is hereby publicly reprimanded for her conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judge's responses, and this order shall be made public as required by Rule 9(a).

Dated: February 3, 2014.

FOR THE COMMISSION


Louis Frank Dominguez
Commission Chair

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

Complaint Supplement

The following is attached to the completed Complaint Form and intended to provide certain supplemental information relevant to the complaint. Complainant ("Father"), is not seeking a reversal of any prior decision or order of Commissioner Morton.

I. Issues Presented for Review

Commissioner Morton has a responsibility to follow the law and to abide by the rules set forth in the Arizona Code of Judicial Conduct including but not limited to, a responsibility to promote confidence in the judiciary, to promote impartiality and fairness, to perform judicial and administrative duties and responsibilities competently, diligently, and promptly, to act without bias, to insure all parties' right to be heard, and to supervise her staff to insure that all staff members also comply with the law and the Arizona Code of Judicial Conduct. At issue is:

1. Whether Commissioner Morton issued timely Minute Entries in connection with certain hearings the Commissioner conducted.
2. Whether Commissioner Morton followed the law and proper court procedure by conducting certain hearings in Father's absence.
3. Whether Commissioner Morton acted with bias or in excess of her legal authority.
4. Whether Commissioner Morton (and/or her staff) generally acted appropriately and ethically pursuant to the law and the rules set forth in the Arizona Code of Judicial Conduct.

II. Statement of Facts

On or about August 16, 2012, the Honorable Commissioner Wendy Morton conducted a Review Hearing related to child support matters of Father. Commissioner Morton subsequently

scheduled another Review Hearing for December 20, 2012@1:30p.m. in order to review Father's child support payment history since the August 16, 2012 hearing.

On or about December 18, 2012, Father fell ill. Early morning on December 20, 2012, Father's symptoms significantly worsened and he was admitted to the Emergency Room at the Shea Medical Center in Scottsdale, Arizona where he was treated by Dr. Stephen Andersen, MD. Father was given IV fluids and Morphine among other drugs for his illness. Father was released from the hospital late morning on December 20, 2102 at which time he was specifically advised by hospital staff that the effects of his medications to include Morphine, would last at least 6-7 hours to include dizziness, sleepiness, weakness, confusion, and the like. Father was not allowed to be released from the hospital or to drive on his own and without assistance. Later in the morning on December 20, 2012, Father contacted Commissioner Morton's Division by way of telephone to advise her division staff of Father's illness and to seek guidance in advance of the scheduled Review Hearing. Father was instructed to file a Motion to Continue and to fax same to Commissioner Morton's Division at (602) 372-3018. At approximately 12:00pm, Father faxed a handwritten Motion to Continue to Commissioner Morton's Division together with several exhibits evidencing his illness, hospitalization, and confirmation he was treated with, and under the influence of, strong medications such as Morphine among other drugs.

On or about January 3, 2013 @9:00am, Commissioner Morton conducted a Review Hearing in connection with Father's Motion to Continue. Father did not attend this Review Hearing. During this Review Hearing, Commissioner Morton issued a child support arrest warrant against Father ex parte, with a purge amount of \$10,000.

On or about January 9, 2013, two separate Minute Entries (dated December 20, 2012 and January 3, 2013 respectively) were filed by Commissioner Morton's Division related to the

Review Hearings which were conducted by Commissioner Morton in Father's absence on December 20, 2012 and January 3, 2013 respectively:

1. In the Minute Entry dated December 20, 2012 but not filed by Commissioner Morton until January 9, 2013, the Commissioner ordered among other things, that Father pay a purge amount of \$1,399.50 by December 21, 2012 at 4:30pm. The order further stated among other things, if Father did not pay this purge amount as ordered, the purge amount would be increased to \$3,000. These orders were issued despite that this Review Hearing was conducted in Father's absence as previously stated, and continued to January 3, 2013 (see Exhibit "A").
2. In the Minute Entry dated January 3, 2013 but not filed by Commissioner Morton until January 9, 2013, the Commissioner ordered among other things, that Father's purge amount be increased to \$10,000 from the \$3,000 purge amount ordered during the Review Hearing which had been conducted (continued) on December 20, 2012. Commissioner Morton further ordered among other things, that a child support arrest warrant be issued against Father (see Exhibit "B").

Important to note, is that these two Minute Entries were not filed by Commissioner Morton's Division until six days after the Review Hearing was conducted on January 3, 2013, and some 20 days after the Review Hearing which was conducted on December 20, 2012, respectively. Moreover, and equally important to note, is that the Review Hearing scheduled for January 3, 2013 was not listed on the parties' online Family Court Docket nor was it indicated on Commissioner Morton's online Court Calendar prior to the Review Hearing date and time of January 3, 2013 @ 9:00am. Point of fact, the online Family Court Docket and the Commissioner's online Court Calendar did not reflect this Review Hearing until after the Review

Hearing already occurred. Subsequent investigation by Father by way of his discussion with a Family Court Administration Clerk revealed among other things, that this Review Hearing was inputted and the computer entry "time stamped" on the online Family Court Docket and Commissioner Morton's online Court Calendar on the afternoon of January 3, 2013, well after the Review Hearing had concluded. Consequently, Father had no notice of either Commissioner Morton's orders resulting from the Reviewing Hearing which was conducted on December 20, 2012, or the Review Hearing which was conducted on January 3, 2013 by Commissioner Morton wherein a child support arrest warrant was issued against Father with a purge amount of \$10,000, until after January 3, 2013.

On or about January 4, 2013, Father filed an "Emergency Motion to Quash Arrest Warrant/Request for Hearing". Father had learned of the Review Hearing that was conducted the prior day and the issuance of the child support arrest warrant by way of his ex-wife, during a highly contentious "discussion". In Father's emergency motion, Father among other things, motioned Commissioner Morton to quash the arrest warrant due to the fact that Father did not receive proper notice of the hearing during which the Commissioner issued the arrest warrant. Father further requested a hearing to address these matters in the courtroom (see Exhibit "C").

On or about January 28, 2013, Commissioner Morton denied Father's emergency motion and reaffirmed the child support arrest warrant in her Minute Entry dated that same date (see Exhibit "D").

On or about February 8, 2013, Father filed a "Motion to Reduce Child Support Purge Payment/Renewed Motion to Quash Arrest Warrant" wherein Father requested that Commissioner Morton lower the purge payment amount as being excessive, due to Father's dire financial circumstances. Father further motioned Commissioner Morton to quash the child

support arrest warrant for a second time, due to the fact that Father did not receive proper notice of the hearing during which the Commissioner issued the child support arrest warrant (see Exhibit "E").

On or about February 27, 2013, Commissioner Morton denied Father's motion in her Minute Entry dated that same date (see Exhibit "F").

On or about March 12, 2013, Father filed a "Notice of Purge Payment/Request to Quash Arrest Warrant". Attached to this pleading, was a printout from the Child Support Clearinghouse evidencing the fact that Father had paid \$10,106.36 to the Child Support Clearinghouse since January 3, 2013, pursuant to the Commissioner's orders issued that same date (see Exhibit "G").

On or about March 16, 2013, Father was informally advised telephonically by a staff member in Commissioner Morton's Division that Father's motion was denied without further explanation. Commissioner Morton's staff verbally suggested that Father file a motion to clarify the Commissioner's decision. Father's motion was formally denied without explanation on or about April 1, 2013 in a Minute Entry dated that same date (see Exhibit "H").

On or about March 19, 2013 and at the suggestion of Commissioner Morton's staff, Father filed a "Motion for Reconsideration/Request for Clarification" wherein Father motioned Commissioner Morton to reconsider her decision and to quash the child support arrest warrant because the purge payment had been made in full. Father further requested that Commissioner Morton clarify and provide Father with guidance in the event she did not quash the child support arrest warrant, so that Father may better understand why his motion(s) had been denied, and so Father could take steps to resolve the matter to the benefit of all of the parties involved (see Exhibit "I").

On or about April 3, 2013, Commissioner Morton denied Father's motion without providing any clarification regarding her decision(s) in a Minute Entry dated that same date. The Commissioner did however, order that the record reflect that Father "may resolve the Child Support Arrest Warrant by either paying the purge or surrendering to the Maricopa County Sheriff's Office". Father notes again that he has in fact paid the purge amount in full and provided Commissioner Morton with a statement from the Child Support Clearinghouse evidencing same (see Exhibit "J").

III. Law

Arizona Code of Judicial Conduct in its entirety.

Arizona Revised Statute 25-681 states in relevant text:

A. In any action or proceeding pursuant to section 25-502, on motion of a party or on its own motion the court may issue a child support arrest warrant if the court finds that all of the following apply to the person for whom the warrant is sought:

1. The person was ordered by the court to appear personally at a specific time and location.
2. The person received actual notice of the order, including a warning that the failure to appear might result in the issuance of a child support arrest warrant.
3. The person failed to appear as ordered.

B. The judicial officer shall order the child support arrest warrant and the clerk shall issue the warrant. The warrant shall contain the name of the person to be arrested and other information required to enter the warrant in the Arizona criminal justice information system. The

warrant shall command that the named person be arrested and either remanded to the custody of the sheriff or brought before the judicial officer or, if the judicial officer is absent or unable to act, the nearest or most accessible judicial officer of the superior court in the same county. A warrant that is issued pursuant to this section remains in effect until it is executed or extinguished by the court.

C. The court shall determine and the warrant shall state the amount the arrested person shall pay in order to be released from custody.

D. For the purposes of this article, "child support arrest warrant" means an order that is issued by a judicial officer in a noncriminal child support matter and that directs a peace officer in this state to arrest the person named in the warrant and bring the person before the court.

VI. Argument

Commissioner Morton continued the Review Hearing scheduled on December 20, 2012 to January 3, 2013. Despite continuing the Review Hearing on December 20, 2012, Commissioner Morton proceeded to effectively conduct the Review Hearing in Father's absence, and certain orders were issued related to Father's child support obligation. Commissioner Morton did not issue a Minute Entry ordering the new hearing date of January 3, 2013 or enter the new hearing date of January 3, 2013 on the Family Court Docket until after said Review Hearing had already occurred. Consequently, Father did not receive "actual notice of the order, including a warning that the failure to appear might result in the issuance of a child support arrest warrant".

During the Review Hearing conducted on January 3, 2013, a child support arrest warrant was in fact issued against Father in Father's absence, with a purge amount of \$10,000. This represented an arbitrary increase in the amount of the prior purge amounts of \$1,399.50 and \$3,000 respectively, ordered at the Review Hearing conducted on December 20, 2012 in Father's absence which as previously stated, had been continued.

A warrant that is issued pursuant to ARS 25-502 remains in effect until it is executed or extinguished by the court. The court shall determine and the warrant shall state the amount the arrested person shall pay in order to be released from custody. In her Minute Entry dated January 3, 2013, Commissioner Morton ordered that Father pay \$10,000 to the Child Support Clearinghouse in the form of a purge payment. Father has paid the purge amount of \$10,000 to the Child Support Clearinghouse in accordance with Commissioner Morton's orders dated January 3, 2013. Father has provided Commission Morton with evidence of these payments. Commissioner Morton has denied Father's motion to quash the child support arrest warrant despite Father having paid the purge amount and the Commissioner has provided no significant clarification regarding her decision or findings that would support that the child support arrest warrant should remain active. Father's only option it seems, is to surrender himself to the Maricopa County Sheriff's Office and to subject himself to an arrest, which is respectfully and in Father's humble opinion, punitive, heavy handed, and not consistent with Commissioner Morton's order dated January 3, 2013.

Father respectfully submits that Commissioner Morton did not issue timely Minute Entries in this matter, a fact which is easily verified, and indisputable. Father respectfully submits that Commissioner Morton proceeded in excess of her legal authority by conducting the

Review Hearing on December 20, 2012 in Father's absence and issuing certain orders related to Father's child support obligation, because this Review Hearing had arguably been continued. Father further respectfully submits that Commissioner Morton proceeded in excess of her legal authority by conducting the Review Hearing on January 3, 2013 and by issuing a child support arrest warrant with a \$10,000 purge amount because the Commissioner did not provide Father with advanced notice of said Review Hearing in accordance with ARS 25-502 and ARS 25-681. When Commissioner Morton was notified of her division's failure to issue timely Minute Entries or to schedule the January 3, 2013 Review Hearing on the Family Court Docket in a timely manner, Commissioner Morton failed to exercise discretion which she has a duty to exercise when she denied Father's motion(s) to quash the child support arrest warrant. Moreover and after Father paid the purge amount ordered by Commissioner Morton on January 3, 2013, the Commissioner's decision to deny Father's motion to quash the child support arrest warrant was not only in excess of her legal authority and a failure to exercise discretion which she has a duty to exercise, but also arbitrary, capricious, and an abuse of discretion.

MAY 10 2013

May 9, 2013

State of Arizona
Commission on Judicial Conduct
1501 West Washington Street
Suite 229
Phoenix, Arizona 85007

VIA US MAIL

**RE: Supplement to Complaint against a Judge
Complaint Number 13-088**

Dear Sir or Madam:

I wish to submit the following narrative as a supplement to my Complaint.

On or about April 18, 2013, I filed a complaint with the State of Arizona Commission on Judicial Conduct against the Honorable Commissioner Wendy Morton. At issue, was a certain child support arrest warrant which Commissioner Morton issued the circumstances of which, are best described in the complaint itself. Important to note, is that in filing my complaint, I was not seeking a reversal of any decision made by Commissioner Morton but rather, sanctions and other disciplinary remedies for her judicial misconduct. I felt then and I feel now, that Commissioner Morton acted with bias, she did not follow proper court procedure, she abused her discretion, she was unprofessional in the execution of her duties, and she did not meet the high standards set forth in the Arizona Code of Judicial Conduct among other things.

On or about April 18, 2013, I also filed a Petition for Special Action with the Arizona Court of Appeals, Division One, wherein I was requesting that the Court vacate Commissioner Morton's orders and quash the child support arrest warrant due to legal error among other reasons.

On or about May 6, 2013, the Arizona Court of Appeals found in my favor, and issued an Order directing Commissioner Morton to quash the child support arrest warrant. In its decision the Arizona Court of Appeals agreed that I was not provided with proper notice of the hearing(s) during which Commissioner Morton issued the child support arrest warrant the circumstances of which, are detailed in my complaint. The Arizona Court of Appeals further agreed that the improper issuance of the child support arrest warrant notwithstanding, Commissioner Morton should have quashed the child support arrest warrant immediately after I paid the purge amount of \$10,000 in accordance with Commissioner Morton's own orders.

Finally, I am respectfully requesting that the Commission on Judicial Conduct give my complaint its full consideration regardless of the fact that the Arizona Court of Appeals found in my favor. While the findings of the Arizona Court of Appeals resolves the child support arrest

warrant and is in my personal opinion, a form of vindication, it should not diminish the inconvenience, stress and potential damage that I have personally experienced, or would have experienced, had I been unnecessarily arrested pursuant to an improperly issued child support arrest warrant. This is a serious matter that had serious consequences and Commission Morton should be sanctioned and disciplined for her actions. The matter is not "moot" because the Arizona Court of Appeals found in my favor and the child support arrest warrant has been quashed. During the many months during which she served as Commissioner in my family court matter, Commissioner Morton was incompetent and negligent in the issuance of numerous Minute Entries, arrogant and non-responsive in her rulings, and she clearly did not follow proper court procedures and the law, among other things. How many other litigants have been affected by Commissioner Morton's incompetence, or will be affected by same in the future? This is just one of the questions I hope the Commission on Judicial Conduct will consider when it meets to consider my complaint.

Please accept this letter and enclosures as a supplement to the complaint I filed against the Honorable Commissioner Morton on April, 18, 2013. Thank you in advance for your consideration of my complaint. If you have any questions or concerns, please do not hesitate to contact me directly,

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Holmberg", with a stylized flourish at the end.

Scott Holmberg

MAY 29 2013

May 23, 2013

State of Arizona
Commission on Judicial Conduct
1501 West Washington Street
Suite 229
Phoenix, Arizona 85007

VIA US MAIL

**RE: 2nd Supplement to Complaint against a Judge
Complaint Number 13-088**

Dear Sir or Madam:

I wish to submit the following narrative and enclosure as a 2nd supplement to my Complaint.

On or about April 18, 2013, I filed a Petition for Special Action with the Arizona Court of Appeals, Division One, wherein I was requesting that the Court vacate Commissioner Morton's orders and quash a certain child support arrest warrant which she issued against me.

On or about May 21, 2013, the Arizona Court of Appeals issued its Decision Order in that case wherein it agreed to accept jurisdiction of the case and grant the requested relief. In its Decision Order, which I have attached, the Court stated among other things, that the state conceded that I had not received proper notice of the child support enforcement hearing(s) during which Commissioner Morton issued the child support arrest warrant. The Court further noted that the record indicated I had paid the purge amount which was ordered by Commissioner Morton. On all counts, the Arizona Court of Appeals found in my favor and the child support arrest warrant has been quashed.

SEPERATE That said and as stated in my complaint, it seems clear that Commissioner Morton was not diligent in the timely issuance of her minute entries. In this case, there were not one, but two ~~spate~~ minute entries of the Court that were improperly issued namely, the Minute Entries issued on January 9, 2013 related to the December 20, 2012 and January 3, 2013 hearings.

Of much greater concern, is the fact that I subsequently filed numerous pleadings with Commissioner Morton, wherein I brought both the matter of the untimely issuance of her minute entries and the fact that I had paid the purge amount as previously ordered to her attention in support of my request to quash the child support arrest warrant. In all cases, my pleadings were denied out of hand with no explanation or clarification given by the Court. I attached copies of all of these pleadings and orders of the Court with my complaint filed with the Commission on Judicial Conduct on or about April 18, 2013.

It is my firm belief, that Commission Morton was negligent in the issuance of the minute entries in question. It is also my firm belief, that Commissioner Morton acted with bias, prejudice, and outright arrogance, by repeatedly denying my numerous requests to quash the child support arrest warrant without explanation, after she was informed of the obvious errors she had made. Clearly, these errors were "black and white" and very obvious by simply looking at ~~the~~ the filing dates of the respective minute entries relative to the dates of the child support enforcement hear(s), and it is indisputable that proper notice was not given. Moreover, the attorney for the state obtained and reviewed the audio and video recordings of the hearings in question as well as all of the other relevant documentation and ultimately came to the same conclusion in its response to my Petition for Special Action filed with the Arizona Court of Appeals. Furthermore, the matter of whether or not I paid the purge amount as previously ordered by Commissioner Morton was also "black and white" and the Arizona Court of Appeals confirmed on the record that I did in fact pay this purge in its Decision Order. Yet, Commissioner Morton did nothing to correct her obvious errors, and she placed me at risk of being unnecessarily arrested and held in custody pursuant to a child support arrest warrant that should never have been issued in the first place, and that should have been quashed for multiple reasons.

In her Minute Entry dated April 2, 2013 and in response to my request to clarify the Commissioner's prior rulings long after I had already paid the purge in full, the Commissioner wrote "LET THE RECORD REFLECT that Respondent may resolve his Child Support Arrest Warrant by either paying the purge or surrendering to the Maricopa County Sheriff's Office". In my opinion, this one sentence serves to demonstrate the Commissioner's bias, prejudice and arrogance, and her unwillingness to simply admit that her division did not issue the two minute entries in question in a timely manner, that the purge had been paid, and the child support arrest warrant should be quashed, plain and simple. Had Commissioner Morton done this, I would not have had to file the Petition for Special Action nor would I have filed my complaint with the Commission on Judicial Conduct.

Please accept this letter and enclosures as m 2nd supplement to the complaint I filed against the Honorable Commissioner Morton on April, 18, 2013. Thank you in advance for your consideration of my complaint. If you have any questions or concerns, please do not hesitate to contact me directly,

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Holmberg", with a stylized flourish at the end.

Scott Holmberg



JUL 23 2013

Honorable Wendy S. Morton
Superior Court Commissioner

JUDICIAL BRANCH OF ARIZONA

COUNTY OF MARICOPA
201 W. Jefferson St., Suite 5D
Phoenix, Arizona 85003

Phone: (602) 372-3021
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mortonw@superiorcourt.maricopa.gov

July 22, 2013

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

Dear Members of the Commission:

Thank you for the opportunity to respond to the complaint filed by Mr. Holmberg in FC2006-052712.

The litigants in the case are Scott Holmberg, (Father), Julia Mraovich (Mother) and the State of Arizona, Ex Rel. Department of Economic Security, represented by Assistant Attorney General Robert Gilliland. The one substantive hearing that was held before with all parties present was an evidentiary hearing on child support enforcement held on August 16, 2012. I also held hearings on December 20, 2012, January 3, 2013 and June 20, 2013; however, Mr. Holmberg was not present at those hearings.

History

This case results from a Petition to Enforce Support on August 19, 2011, filed by the State of Arizona on behalf of Obligee/Mother. That petition is currently pending. (See Attachment A).

On December 15, 2011, Mr. Holmberg had an enforcement hearing in which he was found in contempt and ordered to pay a purge of \$500.00. (See Attachment B). On December 16, 2011, he filed a Motion for Reconsideration, which was denied on December 20, 2011. (See Attachment C). December 20, 2011, Mr. Holmberg failed to pay the purge as ordered and a child support arrest warrant was issued for his arrest. (See Attachment D). Mr. Holmberg paid the aforementioned purge on January 6, 2012, and the warrant was quashed. When the warrant was quashed, a new hearing date of June 21, 2012, was set. (See Attachment E).

In May, 2012, I was the Judicial Officer assigned to the Enforcement Court calendar. Mr. Holmberg filed a motion to continue the June 21, 2012 hearing. I granted his motion to continue and reset the hearing to August 16, 2012 at 2:30 p.m. (See Attachment F).

On August 16, 2012, Mr. Holmberg appeared for his hearing. Following the presentation of evidence, I found Mr. Holmberg in contempt of court for failing to comply with a valid support order under the terms of the Court Order and in conformance with the statute. The court has the authority to impose sanctions for failure to properly pay child support. I ordered Mr. Holmberg to pay his child support obligations on time, in full, for a court-monitored period of 24 months. I also set a follow-up court hearing date for December 20, 2012. Mr. Holmberg was advised of the next court date on the record, and was provided the court date in writing before he departed the courtroom. A routine minute entry was issued and mailed to him. (See Attachment G). Mr. Holmberg failed to appear for hearing on December 20, 2012.

December 20, 2012 Hearing

On December 20, 2012, Mr. Holmberg failed to appear for court. I entered his default. Mr. Holmberg was determined to be in contempt of court for failure to comply with the child support order. I determined not to issue a warrant at that time. Instead, I set a purge of \$1,399.50, the amount of child support unpaid. (See Attachment H).

On December 21, 2012, Mr. Holmberg filed a motion to continue the December 20, 2012 hearing.¹ That motion was filed too late and had no legal effect.

Issuance of the Warrant

Mr. Holmberg failed to appear for the hearing on January 3, 2013. During the hearing the court was advised by the assigned Assistant Attorney General and Obligee/Mother that Mr. Holmberg had not made any child support payments and was approximately \$10,000.00 in arrears for child support. The court proceeded with the hearing, entered his default for his non-appearance, and found him in contempt.² The State requested a child support arrest warrant with a \$10,000.00 purge. I issued that warrant as authorized by A.R.S. §25-681 and Rule 94, Arizona Rules of Family Court Procedure. (See Attachment I). Mr. Holmberg asserts that he paid the purge; however, court records do not reflect a purge payment for the January 3, 2013 warrant.³

Legal Treatment of the Warrant

Procedurally, Mr. Holmberg filed an "Emergency Motion to Quash Order for Arrest Warrant/Request for Hearing" on January 4, 2013. This pleading was delayed in getting to the Enforcement Court because it was delivered to the assigned judge. After the motion was forwarded to me, I issued a Minute Entry on January 24, 2013 denying the motion. (See Attachment J). Subsequently, Mr. Holmberg filed another motion on February 8, 2013 entitled "Motion to Reduce Child Support Purge Payment/Renewed Motion to Quash Arrest Warrant." This motion was also delivered to the assigned judge, which delayed receipt of the motion to the Enforcement Court. I denied the motion in a Minute Entry dated February 27, 2013. (See Attachment K). Mr. Holmberg then filed on March 12, 2013 a "Notice of Purge Payment/Request to Quash Warrant," which from his description appeared to be child support payments and not purge payments because there was no standard purge payment receipt provided. As a result, I denied his motion. (See Attachment L). On March 19, 2013, Mr. Holmberg also filed "Motion for Reconsideration/Request for Clarification". I denied the motion in a Minute Entry dated April 2, 2013. (See Attachment M).

¹ The record of what occurred in court on December 20, 2012, was reflected in a minute entry dated December 20, 2012. The date of the electronic filing of a minute entry is not within the control of a judicial officer. Once the court approves a minute entry, it is electronically filed and docketed by the Office of the Court Clerk. Mr. Holmberg is correct that court records reflect that the minute entry was not docketed and electronically filed until January 9, 2013. When I held a subsequent hearing on January 3, 2013, I was unaware of the date that the minute entry was filed and mailed. It seems apparent from the record that Mr. Holmberg did not receive a copy of the court's minute entry prior to the January 3, 2013 hearing.

² The Court was unaware of the delay in publishing the prior minute entry and believed that Mr. Holmberg had notice of the hearing. No contrary evidence was submitted to the court.

³ On two other occasions when the purge has been paid and the court has either been handed a physical receipt showing that Mr. Holmberg paid his purge or the purge payment was verified by the State, his warrants were quashed. This is what occurred when he paid his purge on January 6, 2012 and on June 28, 2013. These payments did not address the January 3, 2013 warrant and purge.

Mr. Holmberg filed a special action appeal of the issuance of the January 3, 2013 warrant. The Court of Appeals granted jurisdiction over the matter. The Court determined that Mr. Holmberg was entitled to relief on the basis that he did not receive proper notice of the January 3, 2013 hearing. Upon receipt of the Court of Appeals decision, I issued an order quashing the warrant and set an enforcement review hearing. (See Attachment N).

Current Proceedings

An enforcement hearing was set on June 20, 2013. Mr. Holmberg was informed of the court date. He filed an untimely motion to continue, which was found to lack good cause and was denied. Mr. Holmberg did not appear at the hearing. At the hearing the State presented evidence that Mr. Holmberg had not made any voluntary support payments since 2012. A warrant was issued with a purge. (See Attachment O). On June 28, 2013, Mr. Holmberg paid his purge (and a bit more) for a total amount of \$8,079.78. I received the State's motion to quash the warrant on July 3, 2013, quashed the warrant, and set the matter for another follow-up hearing on August 29, 2013 at 1:30 p.m. (See Attachment P).

As of this writing, all or most of Mr. Holmberg's arrearages appear to have been paid. If he maintains his monthly payments there will be no need for further enforcement proceedings. Therefore, it is likely that Mr. Holmberg's matter will be resolved shortly. This court wants Mr. Holmberg, like any other obligor, to simply fulfill his child support obligations as ordered. Indeed, the central focus of enforcement court is to see that court child support orders are followed.

Motion for Change of Judge/Judicial Complaint

Mr. Holmberg filed a Motion for Change of Judge for Cause on May 29, 2013. Petitioner filed an objection on June 4, 2013. Based on Superior Court procedures, the Motion for Change of Judge was immediately forwarded for ruling to Judge Carey Snyder Hyatt, then presiding Family Court Judge. In support of his motion, and seemingly central to his claim for recusal for cause, Mr. Holmberg's asserted that the existence of a judicial complaint compelled recusal. Judge Hyatt disagreed, found that Mr. Holmberg's assertion of prejudice was unfounded, and denied the motion. (See Attachment R). Mr. Holmberg filed a Special Action to the Court of Appeals regarding the Change of Judge determination and relief was denied.

Mr. Holmberg's Allegations

Mr. Holmberg alleges that I am unprofessional, incompetent, and negligent. He also states that I did not follow "proper court procedures and the law." Mr. Holmberg also alleges that I am arrogant. To this end he cites to a Minute Entry issued on April 2, 2013 and quotes: "LET THE RECORD REFLECT that Respondent may resolve his Child Support Arrest Warrant by either paying the purge or surrendering to the Maricopa County Sheriff's Office."⁴

Purge Payments

Mr. Holmberg alleges that I failed to properly handle his payment of the purge. That is not accurate for three reasons: (1) the amount purportedly tendered does not fully discharge the purge set by the court;

⁴ The quoted passage is merely directional guidance informing the recipient of the order that there are two methodologies for resolving the outstanding obligation as a matter of law. No adverse tone is intended by this standard order language.

(2) the documents he tendered to the court are not the type of documents routinely issued by the Clearinghouse to reflect a purge payment; and, (3) disputed pay downs or requests for relief after payments are made are adjudicated after a hearing before the court with all parties present. Both the State and the Petitioner disputed Mr. Holmberg's position that he had fulfilled his support obligations and purge requirements.

Payments applied to arrearages through the Child Support Clearinghouse can be somewhat complicated as applied to the court process. All payments are tracked, but payments frequently derive from differing sources. The bulk of payments often come from direct payments from the Obligor. But intercept payments, also called involuntary payments, are also received and applied to the arrearage account. The court is not entitled to learn the source of the intercept payment, only that an intercept amount has been applied to the arrears. These may be reflected in Child Support Clearinghouse records, but because these are not voluntary payments, they are not applied to any purge payments ordered. Intercept payments may be reflected in Child Support Clearinghouse records, but may not be so designated. They are not applied to purges because they are not voluntary payments.⁵ At the hearing, the information is generally provided by the State to the Enforcement Court judicial officer to address the limited disclosure issue and, at the hearing, the State advises the Court whether payments reflected in the Clearinghouse payment history are voluntary or involuntary payments. As a practice, then, the court relies on the State to verify the payments made, voluntary and involuntary. And as noted, in this case as currently postured, the State continues to assert that Mr. Holmberg has not made any *voluntary* payments since 2012, with the exception of the purge paid on June 28, 2013. (See Attachment O).

Additionally, the paperwork that I received from Mr. Holmberg purporting to be evidence of a purge payment is not in the standard form that the court receives. The court typically receives a purge payment receipt issued by Clearinghouse specifically for the purpose of the Obligor submitting the receipt to the court. That is not what Mr. Holmberg tendered. This is not to say that Mr. Holmberg failed to make a payment; he may have. However, the documents submitted by an Obligor, unless the payment is a fully discharging purge receipt, are typically addressed at a hearing with the parties (the State and Obligee) present. As indicated, no such hearing has been held and no such hearing can be held until all of the parties appear before the court.

My Perspective

In some ways, most of Mr. Holmberg's complaints arise from the January 3, 2013 hearing. In turn, the January 3, 2013 hearing arises out of the December 20, 2012 hearing, which Mr. Holmberg chose not to attend. It is clear that if he had attended the December 20th hearing, he would have had actual notice of the January 3, 2013 hearing.

Additionally, having had the opportunity to review the record in preparation for this response, in retrospect, I may have been able to ascertain the lack of notice for the January 3rd hearing and taken action to resolve the administrative problem that led to the issuance of a warrant without appropriate notice. Because of the way Enforcement Court operates, largely driven by the State and Obligee in the first instance and payment by the Obligor in the second instance, the court is mostly reactive. If the court had been more pro-active, it is possible that I would have discovered the notice issue before the warrant was issued; however, once the warrant was issued, its undoing was problematic for reasons

⁵ Frequently a delinquent account has both a purge and arrears unless the purge payment is made quickly before another monthly obligation becomes due and owing. Therefore, it is not uncommon for an Obligor to "clear" a purge and still have an arrearage for child support.

stated below. As a result of the experience in this case, I have taken steps to modify my procedures so that I personally verify that proper notice of the hearing was achieved when a party fails to appear for a hearing before issuing any rulings.⁶

By way of further explanation and not as a means to deflect criticism of me, it occurs to me that there is some context that informs the events. Mr. Holmberg's non-appearance was not unique to the January 3rd hearing. He had failed to appear for the preceding hearing. Further, it is not uncommon for Obligors appearing before the Enforcement Court to claim that they have made undocumented payments and/or failed to receive notice. In this particular case, the State and the Obligees/Mother was advising the court that Mr. Holmberg had not made child support payments and had not discharged his purge or arrears at the critical time the January 3, 2013 warrant was in effect. His filings to the contrary merely suggested the setting of a hearing, which could not be set at that time because of his non-appearance. Even when Mr. Holmberg made a substantial payment, the payment did not fully satisfy the purge nor the accumulated past due child support. As a result, it would not have resulted in quashing the warrant without a further hearing. The further hearing could not occur because Mr. Holmberg had an outstanding warrant and, until the warrant was quashed, was not in custody. Therefore, the court would not set a hearing until either the purge amount was paid in full or Mr. Holmberg was incarcerated on the warrant. Even then, the proper procedure would have been to set and hold a hearing to determine if the partial payment of the purge was sufficient to warrant a modification of the purge amount and order Mr. Holmberg's release or the warrant quashed depending on the circumstances. The primary means for the court to correct matters such as the one that occurred here on January 3, 2013, especially given the factual dispute, would be to hold a hearing with all parties present. That did not and could not have happened with the warrant outstanding. A more thorough and closer examination of the filings would have occurred when a hearing was set, but it was not. It is unfortunate that this confluence of events resulted in a warrant being issued when Mr. Holmberg did not apparently have notice of the January 3, 2013.

Nevertheless, the process ultimately worked with the Court of Appeals reviewing a trial judicial officer's decision and setting it aside. As a result, the January 3rd warrant was quashed.

Finally, I would like to convey to the Commission that sometimes, if not often, the proceedings before the Enforcement Court can be contentious as between the parties and sometimes between the Obligor and the process. As a result of the very nature of the work done at this court parties are sometimes upset with the court and the process. Notwithstanding the parties' and Obligors' feelings, I do not take my role there as being a disciplinarian, but rather as a facilitator to achieve compliance with the trial court's support orders. This role is not just punitive, though the court does impose sanctions, but seeks to bring the Obligor into compliance sometimes providing job referral material, setting up payment plans, and accurately correcting the record so that the obligation is for what is precisely owed and not more. My goal is to have the cases move out of Enforcement Court so that the Obligor pays what is ordered and the Obligees receive what is ordered in accordance with the terms of the order.

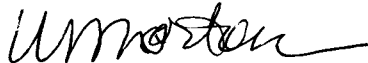
In this case, Mr. Holmberg has physically appeared only once before me. I hold no personal bias against Mr. Holmberg nor am I prejudiced against him. I am unaware of any facts or circumstances resulting

⁶ I am uncertain that I would have discerned the notice problem since my minute entries are generally reviewed and approved by me within two or three days of the hearing. It would not have occurred to me that publication of the Minute Entry would be delayed some two weeks when they are published routinely within two or three days. I suspect that this delay may have been occasioned or exacerbated by the winter holiday.

from his one appearance before me or anything contained in the court's record upon which bias or prejudice might even arise. To the contrary, I withheld imposing sanctions against him on one occasion even though he was found to be in contempt of the trial court's orders. See August 16, 2012 Minute Entry. While I join Mr. Holmberg in wishing that the January 3, 2013 warrant had not been issued without proper notice, its issuance does not result, in my opinion, from unprofessionalism, incompetence, or negligence. Nor does it result from any intent to single out Mr. Holmberg for special mistreatment by the court.

Thank you for your consideration and allowing me the opportunity to respond. If you require further information or additional commentary, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Morton", written in a cursive style.

Wendy S. Morton
Commissioner, Superior Court of Arizona
Maricopa County



JUDICIAL BRANCH OF ARIZONA

Honorable Wendy S. Morton
Superior Court Commissioner

COUNTY OF MARICOPA
201 W. Jefferson St., Suite 5D
Phoenix, Arizona 85003

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August 16, 2013

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

Clarification and Supplement to Response

Dear Members of the Commission,

Please accept this supplement as a clarification and supplement to my response filed on July 22, 2013 to Mr. Holmberg's complaint. This supplement is in reference to the hearing that took place on December 20, 2012. I appreciate the opportunity to clarify my response having now reviewed the audio record. When I held the hearing on December 20, 2012, I was given a request to continue the case that had been faxed by Mr. Holmberg.¹ Mr. Holmberg's fax was discussed at the hearing. This is reflected in the audio record, which I did not have when I filed my response.² My failure to more fully discuss it was not an attempt to mislead the tribunal; I did not recall that such a discussion took place and the minute entry did not reflect it.

Addressing Mr. Holmberg's fax is not tantamount to him properly or timely filing a motion to continue. He did not do so. My addressing it at all was a courtesy. I normally do not consider documents that are not properly filed. The record reflects, and I did not recall, that Mr. Holmberg was apparently on the phone with my judicial assistant at some point immediately prior to the hearing, although he did not appear telephonically for the hearing because he had not requested to do so.³

¹ I assume that the fax was handed to me by my judicial assistant, however, this document is not reflected anywhere on ICIS, the Court's record keeping system, nor is it reflected in the "Notes" section as having been received by the division.

² When I received Mr. Holmberg's complaint, I did a thorough review of the minute entries that I issued and the Court record that was available to me through ICIS, our court record keeping system. I could have ordered the FTR record. Upon reflection, I should have done so. Instead, I was anxious to answer Mr. Holmberg's complaint and was concerned about asking for more time. This was an error on my part. In retrospect, I simply should have requested more time to respond and ordered the record from our court. My failure to do so is not a reflection on the seriousness with which I take this matter. I take this matter very seriously and have agonized about it for weeks. I erroneously believed that I could discern the necessary information from the documentary court records.

³ The motion to continue, filed on December 21, 2012, did not contain a request to appear telephonically.

During the hearing, the parties and I discussed Mr. Holmberg's request to continue the hearing. The Petitioner objected to the court considering Mr. Holmberg's situation.⁴ She indicated that Mr. Holmberg often filed last-minute motions citing medical reasons. I asked Petitioner if she had specific information about this particular motion and she did not. Although I initially indicated that I would be continuing the matter to another date, I conducted a substantive hearing and made contempt findings due to the then shortfall in support payments.⁵

I issued a purge and set another court date rather than issuing a warrant. Logistically, I could neither grant nor deny a motion that was not properly before me. However, the end result was that I set another court date and did not issue a warrant.⁶

Since I was told that Mr. Holmberg had contacted my judicial assistant by phone, I also believed that he would be aware of what occurred at hearing provided with the next court date. There does not appear to be any record that reflects whether Mr. Holmberg did or did not become aware of the next hearing date.

In my response, I indicated that Mr. Holmberg had not timely filed a motion to continue. I indicated that his motion to continue was not filed with the Clerk of the Court until December 21, 2012 and thus had no legal effect. This statement is accurate. Mr. Holmberg's motion was stamped by the Clerk of the Court on December 21, 2012 at ___p.m. (time illegible). Under Local Rule (Maricopa County) 2.19 all motions, pleadings, and papers shall be filed with the Clerk of the Court and shall not constitute part of the records of the Court until so filed. Additionally, under Rule 3.2, at the time of filing, a copy of each motion, objection, exception and memorandum shall be presented to the judge of the division to which the case has been assigned. A document that is faxed to a particular division's fax machine does not fulfill the filing requirement. Neither did the informal discussion of the request in court. By the time I received the filed motion, as opposed to the unfiled fax, the motion was moot because the hearing had already taken place. That is what I meant when I said that the motion had no legal effect.

In my response to the complaint, I stated that Mr. Holmberg "chose" not to attend the hearing. By that, I meant that he determined to fax an unofficial motion without appearing or asking to appear telephonically or taking some other action which might have allowed him to appear. In the end, Mr.

⁴ This was not the Respondent's first motion to continue this hearing. He filed a motion to continue the hearing on November 5, 2012. The Petitioner filed an objection on November 21, 2012, and I denied the motion to continue on December 7, 2012. I did not discuss this in my earlier response because this denial was not the basis for Mr. Holmberg's complaint and notice of the December 20, 2012 hearing is not at issue.

⁵ The record might be read as indicating that I was continuing the hearing. Actually, I was thinking aloud. As a judicial officer, I had to weight the rights of the appearing parties against the unofficial request to continue. Although I did not articulate it on the record, it appears it was my thought process that the balance be struck in favor of the parties appearing when as a matter of law, no countervailing position was before the court, however, I did give some weight to the request by not issuing the warrant.

⁶ It should be noted that Enforcement Court is a unique docket. The minute entry of December 20, 2012 states "IT IS ORDERED continuing this matter for review hearing on January 3, 2013." Perhaps in another context, this may appear to be the granting of a continuance, but in the context of Enforcement Court, this is not the case. Enforcement Court is a lengthy process, sometimes months or years in duration. Settings almost always have another hearing, with each hearing being a continuation of the enforcement process. Hearings are continually set until the obligor is discharged from Enforcement Court. The language in the minute entry is not tantamount to granting a motion to continue.

Holmberg was not excused from appearing in court on December 20, 2012. I did not intend to accuse Mr. Holmberg by using the word "chose". It reflected what I understood the facts to be in that he had other options available to him to participate in the hearing.

After reviewing the record, I would also like to correct and clarify some information regarding the January 3, 2013 hearing. In my response to Mr. Holmberg, I indicated that the State requested a warrant on that date. The record reflects that the Petitioner/Mother requested the issuance of the warrant. I also stated that the State indicated that Mr. Holmberg had not made any child support payments. The more complete audio record reflects that Mr. Holmberg had not made any voluntary payments since December 14, 2012. The State reported that, as of January 3, 2013, for the time frame since the last hearing he attended (August, 2012) he had made voluntary payments totaling \$752.50; this did not meet the full obligation he owed for that time frame in the amount of \$3,000.00. The record further reflects that I considered the fact that Mr. Holmberg had spoken to my judicial assistant at the time of the last hearing and therefore that I believed he would have been aware of the January 3, 2013 hearing date.

Finally, I have reflected long and hard about Mr. Holmberg's complaint. As all judicial officers must, I made the best decisions that I could with the information available to me at the time. As I have stated in my response, my goal in Enforcement Court is to discharge obligors once they become compliant with court ordered obligation. There are three parties to this case and all of the parties have the right to be heard to determine whether Mr. Holmberg can be successfully discharged from Enforcement Court. This requires the parties to be present in court on the date of hearing. The fairness of the process and the appearance of fairness are critically important to me. Nothing in the record reflects any bias or prejudice against Mr. Holmberg or any misconduct on my part.

I hope that this addendum more thoroughly clarifies my response to Mr. Holmberg's complaint. If you have any other questions, please do not hesitate to contact me.

Sincerely,
Wendy S. Morton



Commissioner, Superior Court of Arizona in Maricopa County

JAN 13 2014

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5 Attorney for Judge Wendy Morton

6 **STATE OF ARIZONA**

7 **COMMISSION ON JUDICIAL CONDUCT**

8 Complainant: Scott Holmberg

COMPLAINT NO. 13-088

9
10 Judge: Wendy Morton

**Motion for Reconsideration;
Request to Provide Additional
Factual Information and
Evidence; and Request to Appear**

12 The Judge, Commissioner Wendy Morton (hereinafter referred to as
13 “Commissioner Morton”), through counsel, hereby submits her Motion for
14 Reconsideration pursuant to 23(b) (1), Commission on Judicial Conduct, of the Order
15 entered by the Commission on December 13, 2013 wherein Commissioner Morton
16 was publically reprimanded. Commissioner Morton further requests that she be
17 permitted to provide additional factual information and evidence including mitigating
18 evidence to the Commission in support of her Motion for Reconsideration as she now
19 has the assistance of counsel. Commissioner Morton is also requesting that she be
20 permitted to appear before the Commission.
21
22
23

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1 **FACTUAL BACKGROUND AND ARGUMENT**

2 **Enforcement Court**

3 Commissioner Morton assumed the responsibility for Enforcement Court from
4 Commissioner Justin McGuire in May, 2012. IV-D Enforcement Court is one of two
5 problem-solving courts dedicated to the payment of Child Support. The other
6 problem-solving court is Accountability Court, which is the responsibility of
7 Commissioner Otis.

8 Accountability Court also meets each week. There are two Accountability
9 Courts, IV-D and non- IV-D. The difference is that there are “staffings” in
10 Accountability Court, where the Judicial Officer is briefed by a team regarding
11 payments and a group discussion is held prior to the hearing about how the Court will
12 proceed. Commissioner Morton does not have “staffings” or these resources in her
13 court. Her calendar is significantly larger than Accountability Court.

14 Prior to the change described below, and for all of the relevant time frames of
15 this case, cases were fed into Enforcement Court in one of two ways: either by way of
16 a Petition to Enforce filed by the State or by a Petition to Enforce filed by the Obligee.
17 After the Petition is filed, the Obligor is served with an Order to Appear, which states
18 that he/she must appear in person and that a warrant may be issued for non-
19 appearance. At the first appearance, contempt findings are made where appropriate, a
20 judgment is typically entered and a payment on arrears is usually set. (As the record
21 before the Commission indicates, Commissioner Morton was not the judicial officer
22 who made the initial contempt finding in this case). After that, periodic review
23 hearings are set. Review hearings may be set, at the court's discretion at any interval

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1 that the court deems appropriate. For those people who are getting out of custody and
2 getting re-established in a job, it is not uncommon for Commissioner Morton to set
3 weekly hearings, if needed. Typically, a hearing is set out a few months (as was done
4 in this case, from August to December). The purpose of this is to monitor payments
5 and to make sure that the obligor is paying in full and on time, each month. At each
6 review hearing, the State (through the AG) provides a status update since the last
7 hearing. Commissioner Morton looks at how much is to be paid each month and how
8 much has been paid. Commissioner Morton hears from all parties who are present and
9 then makes a determination of one or more of the following:

10 a) finds the obligor in continuing contempt and remand (usually, if nothing has
11 been paid and no efforts have been made);

12 b) finds the obligor in continuing contempt and issue a purge due by the next
13 day (usually if some payments have been made, but there is a shortfall in the amount
14 due since the last hearing. The purge must be paid and a receipt provided to the court
15 by 4:30 the next day or a warrant is issued and the purge is doubled);

16 c) finds the obligor in continuing contempt but not issue a specific sanction,
17 other than to set another review hearing;

18 d) finds the obligor in compliance and set another review hearing, extending
19 the time from one hearing to the next; and

20 e) finds the obligor in compliance and find that the petition has been resolved,
21 but authorize the State or the obligee to file an affidavit of non-compliance at any time
22 in the next 12 months if payments cease again. (Even when there are no further
23 hearings, there is still a continuing obligation on the part of the obligor).

1 Commissioner Morton's philosophy is to set hearings in relatively short time
2 spans so that if there is a short fall, the obligee is not going without payment for an
3 extended time and the obligor has the ability to achieve success in smaller,
4 manageable increments and to make up the differences if they occur. (Prior to
5 Commissioner Morton taking over the court, hearings were set 4-6 months out and the
6 obligor had to come up with huge purges or sit in jail. Commissioner Morton did not
7 believe that any party was served by this process). In the Enforcement Calendar,
8 obligees do not have to appear, but can if they choose. Obligees who live out of state
9 may appear telephonically. On occasion, Commissioner Morton permits an attorney
10 to appear telephonically if that attorney has a conflict and has requested the same in
11 advance and in writing. Obligors must appear in person unless they are in custody, in
12 which case they appear telephonically from jail. Obligors are told at each hearing,
13 both in person and by minute entry, that failure to appear at each hearing may result in
14 a warrant. They are also advised that they must be in substantial compliance at each
15 hearing or other sanctions may be imposed, up to and including incarceration.

16
17 The confusion with enforcement court is that each matter is a continuation of
18 the preceding enforcement matter.

19 As of November, 2013, the court is changing the way that cases come into
20 enforcement court. Previously, Commissioner Morton was only conducting
21 Enforcement Court for the North region (other Commissioners in other regions just
22 kept their own cases on their own dockets, but did not conduct Enforcement Court).
23 She now assumes new cases only by referrals from other Commissioners. When the
State or obligee files a new case, those cases are starting in the regions for one or two

1 hearings before being referred to Enforcement Court. If there is an intractable
2 enforcement case, those cases are being sent to Commissioner Morton's Enforcement
3 Court for the purpose of continuing enforcement. So, Commissioner Morton is now
4 conducting IV-D Enforcement Court for the entire county, with the new cases coming
5 in by referrals from all of the regions. A "light" calendar is around 50 cases. Typical
6 calendars for the past 2 years have been between 70-80 cases, with 90+ cases on some
7 days. There are days that Commissioner Morton can barely get lunch. She has two
8 clerks covering each calendar day. The calendar is extremely challenging, but, for the
9 most part, gratifying.

10 There have been many obligors who have been released successfully. There
11 have been reunions of families that have occurred after enforcement proceedings.
12 There have been obligors who have asked to come back to enforcement court because
13 they believe that continuing monitoring and continuing hearings keeps them on track.
14

15
16 **December 20, 2012 Hearing**

17 The Commission's conclusions that Commissioner Morton clearly stated that
18 she "had no choice but to continue" the December 20, 2012 hearing to January 3, 2013
19 because one party had a medical emergency and could not be present is not factually
20 consistent with the record of the proceedings of December 20, 2012. Commissioner
21 Morton never stated on the record that she "had no choice" but to continue the
22 December 20, 2012 hearing.

23 On December 20, 2012, Commissioner Morton called the matter which was set
for an enforcement hearing. Commissioner Morton indicated that she had received a

1 motion from Mr. Holmberg, who was apparently on the phone, asking for a
2 continuance supported by medical documentation. Commissioner Morton asked the
3 petitioner/mother what her position was on the motion to continue. She objected to
4 the continuance indicating that she had received numerous emails from Mr. Holmberg
5 and Mr. Holmberg often tried to continue proceedings. Commissioner Morton also
6 asked the State who was represented by assistant attorney general, Steven Smith, what
7 his position was and he indicated that he had spoken with Mr. Holmberg the Monday
8 before the hearing and he believed Mr. Holmberg was trying to get around making
9 child support payments. He indicated that if there was a postponement of the hearing,
10 that the hearing should be postponed for only two weeks. The record clearly shows
11 that Commissioner Morton paused for some time before making a decision then stated
12 that she was going to continue the matter and it was going to be a brief continuance.
13 She then looked at her calendar and stated "I'm out of space" clearly referring to her
14 calendar. Commissioner Morton never indicated on the record that she was granting
15 Mr. Homlberg's Motion to Continue that he faxed to court. The matter was ultimately
16 set for January 3, 2013. See attachment A, Minute Entry, Enforcement Hearing,
17 December 20, 2012.

18
19 On Thursday, December 20, 2012, in addition to the Holmberg matter,
20 Commissioner Morton had 76 matters on her calendar. See attachment B,
21 Commissioner Morton's December 20, 2012 Final IV-D Calendar.

22 The record presented in this matter indicates that each proceeding before
23 Commissioner Morton is a continuance of the proceeding enforcement matter. On
August 16, 2012, the matter set before Commissioner Morton was a IV-D

1 enforcement hearing. See attachment C, Minute Entry, Enforcement Hearing, August
2 16, 2012. On August 16, 2012, Commissioner Morton found Mr. Holmberg for being
3 in contempt for failing to pay and issued a purge order. The matter was set for a IV-D
4 enforcement hearing on December 20, 2012,

5 On December 20, 2012, all of the findings made on the record were the same as
6 those made on the record on August 16, 2012 but for the purge order issued by
7 Commissioner Morton. On January 3, 2013, this matter was also set for an
8 enforcement hearing, the same type of hearing that had been set on the previous two
9 occasions. See attachment D, January 3, 2013 Minute Entry.

10 Child support is an ongoing obligation. A continuance, postponement or
11 resetting of a review hearing does not render a child support obligation moot.

12 **Commissioner Morton's Responses Regarding Continuance**

13 The Commission's conclusions that Commissioner Morton's responses to the
14 Commission regarding the continuance of the December 20, 2012 hearing were
15 inconsistent and demonstrated a lack of candor were premised on the factually
16 inaccurate information that was presented to the Commission which the Commission
17 relied on to Commissioner Morton's detriment in reaching its conclusions in this
18 matter.
19

20 **Commissioner Morton's Issuance of an Arrest Warrant and Failure to Quash the
Warrant**

21 On January 3, 2013, Commissioner Morton made a determination that Mr.
22 Holmberg was in contempt of court for failing to comply with a valid support order of
23 which he had knowledge and in contempt of court for failure to appear.

1 Commissioner Morton also issued a child support arrest warrant directing that Mr.
2 Holmberg appear and pay a purge release in the amount of \$10,000. (The State
3 requested the warrant and purge amount). On January 3, 2013, Commissioner Morton
4 was unaware that Mr. Holmberg did not have notice of the hearing. What is clear
5 from the proceedings is that Mr. Holmberg had frequent contact with
6 petitioner/mother prior to court proceedings as well as counsel for the State. Neither
7 petitioner/mother nor State indicated to Commissioner Morton that Mr. Holmberg did
8 not have notice of the proceedings. Further, any information regarding Mr.
9 Holmberg's failure to pay child support and the amount he would owe in arrears
10 would come from the State's attorney. In Mr. Holmberg's supplement to his complaint
11 filed before the Commission on May 9, 2013, at page 4, he indicates that on or about
12 January 4, 2013, he learned about the previous day's hearing and the issuance of a
13 child support arrest warrant during a highly contentious discussion with his ex wife.
14

15 The court record in the Holmberg matter is replete with court matters, failures
16 to appear by Mr. Holmberg as well as purge orders and contempt orders. As of
17 January 3, 2013, Mr. Holmberg still had not complied with Commissioner Morton's
18 purge and contempt orders issued by her on August 16, 2012.

19 The Commission's findings indicate that Commissioner Morton was advised on
20 at least four occasions that Mr. Holmberg had not received notice of the January 3,
21 2013 proceedings and that she had refused to quash the arrest warrant. The
22 Commission also determined that Commissioner Morton's explanation that she lacked
23 the authority to quash her own improperly issued arrest warrant is specious.

1 At the time Commissioner Morton issued the warrant of January 3rd, she had
2 not improperly issued the warrant. She was not aware that Mr. Holmberg had not
3 received notice. She was acting in good faith and any conclusion otherwise is not
4 supported by the record.

5 Subsequent to January 3rd, Mr. Holmberg did file four separate and different
6 motions seeking relief from the warrant as well as other relief. Mr. Holmberg never
7 provided Commissioner Morton with specific documentation which in her opinion
8 would permit her to either quash the warrant or enter an order that Mr. Holmberg had
9 paid the purge amount. In IV-D cases, the State submits responses to motions filed by
10 the parties in these proceedings. In this matter, the State did not, at any time, prior to
11 the filing of the petition for special action indicate to Commissioner Morton that
12 anything was improper about the warrant she issued.

13 The court record of the Holmberg matter indicates that the State of Arizona, ex
14 rel. The Department of Economic Security (State) has been a party to the Holmberg
15 matter when it intervened under A.R.S §25-509 by filing its entry of appearance for
16 the limited purpose of being heard on support/reimbursement issues. The State as a
17 real party in interest never filed a response to any of Mr. Holmberg's motions
18 asserting that Mr. Holmberg received notice of the January 3rd hearing or that he paid
19 the purge amount. Commissioner Morton submits that when the State, in response to
20 Mr. Holmberg's petition for special action, conceded that she lacked the power to
21 issue the child support arrest warrant because Mr. Holmberg was not provided with
22 adequate notice was the first time that she was affirmatively aware that the warrant
23

1 should be quashed. On May 7, 2013, when the court of appeals issued an order
2 directing that she quash the outstanding warrant, she did so.

3 **MITIGATION**

4 The Commission considered as mitigation the difficult nature of the case.
5 Commission Morton is respectfully requesting the Commission take into consideration
6 the following factors which should have been considered pursuant to Rule 19:

7 A. This is the first Complaint for which sanctions have been imposed, and
8 the allegations in this matter pertain to one case which the Commission acknowledges
9 was a difficult case.

10 B. The Commissioner's experience and commitment to the judiciary.
11 In 1997, Commissioner Morton was named the Attorney of the Year for Law
12 Related Education by the State Bar of Arizona and the Juvenile Division Attorney of
13 the Year by the Maricopa County Attorney's Office. In 2002, Commissioner Morton
14 became an Administrative Law Judge with the Arizona Office of Administrative
15 Hearings, eventually serving as an assistant presiding administrative law judge. In
16 2006, she took the bench as a Municipal Court Judge in Scottsdale. Commissioner
17 Morton received the Award for Judicial Excellence from the Public Lawyer's Section
18 of the State Bar of Arizona in 2009.

19 Commissioner Morton is a member of the Judicial College of Arizona's
20 Judicial Conference Committee and serves as chair of the Superior Court Best
21 Practices Committee for Orders of Protection and as a member of the Superior Court's
22 Judicial Education Committee, Judicial Education Day Committee and on the
23 Accountability/Enforcement Court working group.

1 For the past three years, she has served as adjunct professor at the Arizona
2 Summit School of Law (formerly Phoenix School of Law). She teaches for the State
3 Bar of Arizona's Professionalism course and speaks to many professional and civic
4 organizations. She has trained teachers, school administrators, and probation officers
5 through the Center for Civic Education Violence Prevention Demonstration Program,
6 and other Law Related Education programs, including the Bar Foundation INVEST
7 program on the Constitution and Bill of Rights, which she helped to create. She
8 serves on the faculty of the Widener University School of Law Intensive Trial
9 Advocacy Program, where she gives back to her law school alma mater by devoting
10 one week each year to train law students in trial advocacy.

11 In 2011, Commissioner Morton produced and directed a seven-part
12 documentary series for the Arizona Supreme Court entitled "*Legends of the Arizona*
13 *Judiciary*", which highlights trailblazing judges in Arizona's legal history.

14 Commissioner Morton is also the author/illustrator of "*Court Story*", a nationally
15 award-winning coloring book that teaches children about the court..

16
17 C. The Complainant suffered no real harm.

18 The Complainant was not arrested or incarcerated as a result of Commissioner
19 Morton's issuance of a warrant and subsequent alleged failure to quash the warrant.
20 The purge order issued by Commissioner Morton on December 20, 2013 did not result
21 in any harm to the Claimant as he had already been found to be in contempt in the
22 proceeding on August 16, 2012 and he had not satisfied the purge order prior to the
23 December 20th hearing. The Arizona Court of Appeals, in its stay order, referenced a
prospect for irreparable harm to Mr. Holmberg, which never occurred.

1 D. Commissioner Morton has acknowledged and recognized the wrongful
2 nature of her conduct and has taken steps to change or reform her conduct. In
3 pleadings filed with the Commission, it is clear that Commissioner Morton is
4 remorseful for the Holmberg matter.

5 E. Commissioner Morton is a hardworking and conscientious judicial
6 officer who has been a public servant for her entire career. She has taken this issue
7 very seriously and has made changes because of it.

8 As a result of the Holmberg matter, Commissioner Morton has changed the
9 way she handles matters before her. Before, it was the State's position that if someone
10 failed to appear for hearing #1, and hearing #2 was reset by minute entry, that was
11 grounds for a warrant. Commissioner Morton has become very hesitant to grant those
12 requests. Although the law allows her to issue a warrant for a properly-noticed
13 hearing, her presumption now is not issue a warrant unless she knows from the minute
14 entry that the obligor was standing in front of a judicial officer when the hearing was
15 set, or, for a new setting, if she has evidence of personal service. It is her presumption
16 not to issue a warrant for "resets". Recently, Commissioner Morton had such a
17 request and told the state that it would have to re-serve the obligor. This is not to
18 suggest that she was not careful before with warrants. Commissioner Morton takes
19 everything she does seriously and she is very careful. No judicial officer is perfect.
20 But in order to be the best judicial officer she can be, Commissioner Morton accepts
21 when she makes a mistake and learns from it.
22
23

1 F. Despite the Commission's conclusions to the contrary, Commissioner
2 Morton cooperated fully and honestly to the best of her ability at the time she was
3 requested to respond to the allegations asserted by the Claimant.

4 Commissioner Morton admits that at the time she submitted her initial response
5 to the Holmberg Complaint on July 22, 2013 and her supplemental response of August
6 16, 2013, she was not as articulate as she could have been in responding to the
7 Complaint and should have sought the assistance of an attorney before responding.

8 This is and has been Commissioner Morton's only complaint for which
9 sanctions have been imposed by the Commission against her as a judge/commissioner.
10 Quite naturally, Commissioner Morton answered the Complaint with emotion.

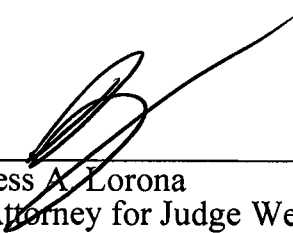
11 **CONCLUSION**

12 Commissioner Morton has requested the opportunity to informally appear
13 before the Commission. She submits that in light of all the factors in this motion for
14 reconsideration, the Commission should consider a sanction other than public
15 reprimand (Rule 17(a)), and that an informal sanction (Rule 17(b)) is a more
16 appropriate sanction in this matter.

17 **RESPECTFULLY SUBMITTED** this 13th day of January, 2014.

18 **LORONA MEAD, PLC**

19
20
21 BY: _____

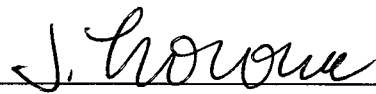

22 Jess A. Lorona
23 Attorney for Judge Wendy Morton

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ORIGINAL of the foregoing filed
this 13th day of January, 2014, with:

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



1 and evidence provided to it before the date of the disposition order.” With her
2 motion for reconsideration, Respondent submitted four exhibits and ten days later
3 (the day before the due date of this response), she submitted an additional eleven
4 “supplemental” exhibits. The exhibits related to the motion for reconsideration
5
6 comprise almost 100 extra pages.

7 Respondent’s motion for reconsideration provides no argument or explanation
8 of what “extraordinary circumstances” exist to warrant the departure from the
9 commission’s rule. The exhibits themselves include minute entries that are
10 duplicative of documents already in the record, as well as numerous documents
11 establishing what happened in the underlying case and related matters after the
12 time period at issue for this case. In other words, they are largely irrelevant to the
13 question of whether Respondent’s conduct between December 2012 and May 2013 in
14 the underlying case warrants the imposition of a reprimand.
15
16

17 Disciplinary Counsel respectfully requests that the commission deny
18 Respondent’s request to enlarge the record and thus should not consider Exhibits A
19 through O related to the reconsideration motion. Further, Disciplinary Counsel
20 requests that the commission preclude Respondent from relying on these Exhibits
21 or their contents during her appearance on January 31, 2014.
22
23

24 **II. The Commission Should Amend, But Retain the Reprimand.**

25 Disciplinary Counsel agrees that there is an error in the reprimand order,
26 and it should thus be amended as acknowledged further below. Respondent’s
27 request should otherwise be denied, and the reprimand retained.
28

1 13, 2014, Respondent submitted her written request for reconsideration.

2 **Factual History**

3 The underlying case involves an ongoing child support matter. Respondent
4 set a review hearing for December 20, 2012, and Mr. Holmberg failed to appear for
5 that hearing. He went to the emergency room that same morning where he was
6 treated (with morphine, among other medications) and released. Mr. Holmberg
7 submitted a handwritten request to continue the proceeding via facsimile, attaching
8 his emergency room documentation.
9
10

11 The recording of the hearing on December 20, 2012, is less than 10 minutes
12 long. At the beginning of the hearing, Commissioner Morton indicated that Mr.
13 Holmberg was on the phone and noted his continuance request, a copy of which was
14 in her hand. She provided a copy to Mr. Holmberg's ex-wife, Ms. Mraovich, and
15 asked for an oral response to the motion. Ms. Mraovich objected to a continuance,
16 arguing that this was simply the latest in Mr. Holmberg's history of failing to
17 appear or to meet his obligations.
18
19

20 Respondent reviewed the emergency room documentation out loud, paused,
21 and then stated, "I'm going to continue this matter, but it's going to be a brief
22 continuance. [Pause] I'm going to put it on the calendar for January 3 at 9:00."
23 Respondent did not say she "had no choice" in making this statement. Disciplinary
24 Counsel inferred that from the tone and context of her statement, and that
25 inference was improperly memorialized in the reprimand order. The order should be
26 amended to remove that incorrect reference.
27
28

1 Respondent went on to advise Mr. Holmberg that he must provide doctors'
2 note(s) regarding his condition, and that he must be current on his payments. At
3 this point, Respondent asked the attorney for the State about the current status of
4 payments. After receiving his representation of the status, Respondent ordered a
5 purge amount to be paid by the following day or an arrest warrant would issue. She
6 also explicitly stated, "We will reset this for January 3 and contempt findings are
7 made."
8

9
10 Notably, Respondent believed, according to her earlier statements on the
11 record, that Mr. Holmberg was on the telephone. Yet at no time did she offer him an
12 opportunity to speak or to answer any questions related to the facts raised or the
13 instructions given.
14

15 The minute entry based on the December 20, 2012, review hearing correctly
16 states that Mr. Holmberg was not present, but does not mention his motion to
17 continue or provide any indication that those present at the hearing discussed that
18 motion. Although the minute entry is dated December 20, 2012, the electronic file
19 stamp clearly notes that it was not filed with the clerk until January 9, 2013.
20

21 The recording for January 3 was similarly brief. At the outset, Respondent
22 has a discussion with a man that appears to be the attorney representing the State,
23 who specifically references the matter as one that was "reset from two weeks ago."
24 After some discussion, Respondent asks, "and the matter was reset for today?"
25 which the attorney confirms.
26

27 The recording reflects that there is some confusion about whether Mr.
28

1 Holmberg was on the phone at the previous hearing, but eventually the various
2 parties and Respondent agree he was not. Nonetheless, and presumably based on
3 the minute entry of the December 20, 2012, hearing, Respondent finds that Mr.
4 Holmberg had notice of the hearing, failed to appear, and is thus in contempt of
5 court. She orders an arrest warrant to issue with a purge amount of \$10,000. The
6 minute entry from the January 3, 2013, hearing is not electronically filed until
7 January 9, 2013.
8

9
10 Mr. Holmberg filed an emergency motion to quash the arrest warrant and
11 request for hearing on January 13, 2013. That motion included facts indicating that
12 Mr. Holmberg had not received notice of the January 3, 2013, hearing. On January
13 28, 2013, Respondent denied that request without explanation.
14

15 On February 8, 2013, Mr. Holmberg filed another motion requesting, among
16 other things, that the arrest warrant be quashed. In that motion he again provided
17 facts establishing that he did not have notice prior to January 3, 2013, of that
18 hearing or of the purge amount ordered at the December 20, 2012, hearing. On
19 February 27, 2013, Respondent denied the request, again without explanation.
20

21 On March 12, 2013, Mr. Holmberg filed a third pleading requesting that his
22 warrant be quashed, this time also providing notice that he had paid the purge
23 amount and attaching a copy of his recent child support payment history. On April
24 1, 2013, Respondent denied this request, again without explanation.
25

26 On March 19, 2013, Mr. Holmberg learned by calling the court that his
27 March 12, 2013, request was denied, so he filed a fourth pleading, this time a
28

1 motion to reconsider what would be the April 1, 2013, order. On April 2, 2013,
2 Respondent denied the motion to reconsider and noted that the court would not set
3 a hearing on any issues until Respondent resolved his arrest warrant by paying the
4 purge or surrendering himself into custody.

5
6 At the same time that he filed a complaint with the commission, Mr.
7 Holmberg also filed a special action with the Court of Appeals regarding his arrest
8 warrant. The Court of Appeals granted his request and ordered Respondent to
9 quash the warrant stating:
10

11 Petitioner has raised as grounds to quash the outstanding Child
12 Support Arrest Warrant (1) lack of adequate notice of the proceeding at
13 which the warrant was issued and (2) his payment of the purge
14 amount. Because Petitioner has shown a likelihood of success on the
15 merits and the prospect of irreparable harm, respondent judge shall
16 issue an order forthwith quashing the outstanding warrant.

17 On May 7, 2013, Respondent issued an order quashing the arrest warrant.

18 **Respondent's Initial Explanation to the Commission**

19 In her initial response to Mr. Holmberg's complaint, Respondent stated that
20 he filed his motion to continue on December 21, 2012, the day after the December
21 20, 2012, hearing. "That motion was filed too late and had no legal effect." As noted
22 above, while the motion may not have been stamped as filed until the 21st,
23 Respondent had a copy in her hand at the hearing and it provided the basis for
24 resetting that hearing.
25

26 With regard to the arrest warrant, Respondent provided a lengthy
27 explanation of the history of the underlying case, the way that Enforcement Court
28

1 works, and the difficulties that attended this issue. In essence, Respondent's
2 explanation for her failure to quash the warrant is thus: she would not review the
3 filings in the matter in closer detail until a hearing was set; she would not set a
4 hearing until the arrest warrant was dealt with by paying the purge or
5 surrendering into custody; Mr. Holmberg's documentation of payments totaling over
6 \$10,000 (the purge amount) insufficiently established that he had paid the purge so
7 despite his payments she could not quash the warrant.
8

9 In other words, she couldn't quash the warrant—or, apparently, even review
10 the pleadings that established a due process basis for quashing the warrant—
11 without holding a hearing, and couldn't set a hearing until the warrant was
12 satisfied or quashed.
13

14 In Respondent's supplemental response to the commission, after reviewing
15 the recording, she clarified that while she did receive the faxed motion to continue
16 in time for the December 20, 2013, hearing, it was not properly or timely filed, and
17 her "addressing it at all was a courtesy." She further acknowledges that, "Although
18 I initially indicated that I would be continuing the matter to another date, I
19 conducted a substantive hearing and made contempt findings[.]" In a footnoted
20 further explanation, Respondent states:
21
22

23 The record might be read as indicating that I was continuing the
24 hearing. Actually, I was thinking aloud. As a judicial officer, I had to
25 weight the rights of the appearing parties against the unofficial
26 request to continue. Although I did not articulate it on the record, it
27 appears it was my thought process that the balance be struck in favor
28 of the parties appearing when as a matter of law, no countervailing
position was before the court, however, I did give some weight to the
request by not issuing a warrant.

1 Respondent's position is that she ultimately determined that Mr. Holmberg
2 was not excused from the December 20, 2012, hearing and thus she proceeded
3 substantively with the hearing. She concedes this is not reflected in the record in
4 any way, but presumes that must have been her "thought process" at the time.
5

6 **B. The Basis for the Reprimand**

7 **The Continuance**

8
9 One of the central issues in this case is whether Respondent granted a
10 continuance, but then proceeded to hold a substantive hearing in spite of that
11 ruling. As described above, everything stated on the record by the Respondent
12 suggests that she intended to "continue" and to "reset" the December 20, 2012,
13 hearing. Further, it is clear that the basis for her doing so was Mr. Holmberg's
14 motion to continue, which included documentation of an emergency room visit. Even
15 the State's attorney appeared to understand that this is what happened based on
16 his later description of the hearing being "reset." Respondent's post hoc
17 rationalization of what occurred at the December 20, 2012, hearing is just that: an
18 after the fact, plausible explanation of what could have happened that finds no
19 actual support in the record.
20
21
22

23 Rule 2.16 of the Code of Judicial Conduct (Code) requires judges to "cooperate
24 and be candid and honest" with the commission. The purpose of this rule is to
25 "instill[] confidence in judges' commitment to the integrity of the judicial system
26 and the protection of the public." Rule 2.16, comment 1. Judges are, of course,
27 entitled to defend themselves against allegations of ethical misconduct and it is not
28

1 expected that they will admit or acknowledge misconduct where none occurred. Full
2 compliance with both the spirit and the letter of this rule, however, requires that
3 judges not seek to rely on semantics or inscrutable technicalities to explain away
4 conduct after the fact. Rather, a judge faced with evidence of an error should be
5 expected to acknowledge such errors and make appropriate efforts to avoid such
6 errors in the future. Indeed, that type of response is itself a basis for mitigation. See
7 Commission Rule 19(f).
8

9
10 Respondent's explanation of the continuance issue is plausible in general, but
11 is not reasonable based on the recordings of the proceedings at issue. As such, her
12 responses to the commission up to and including her motion for reconsideration
13 constitute a lack of candor to the commission in violation of Rule 2.16.
14

15 **The Arrest Warrant**

16 The child support arrest warrant issued against Mr. Holmberg was
17 ultimately quashed on two bases: (1) lack of notice, and (2) payment of his purge
18 amount. The requirement that an individual have notice and an opportunity to be
19 heard before the issuance of a warrant is the bedrock constitutional principle of due
20 process. The court's own records establish that he lacked proper notice of the
21 January 3, 2013, hearing at which his arrest warrant issued. Respondent's failure
22 to acknowledge this basis alone for quashing the warrant despite the four
23 opportunities granted her by Mr. Holmberg's pleadings is troubling.
24
25

26 More troubling was her explanation to the commission: she could not have
27 known about that basis because she would only have reviewed the pleadings in
28

1 detail if a hearing was set. This suggests that Respondent issued perfunctory
2 denials of all of Mr. Holmberg's requests to quash the warrant without
3 substantively reviewing the pleadings.

4 The secondary basis for quashing the warrant—that he had paid the purge
5 amount—is also troubling, though less so. Respondent argues that she did not
6 quash the warrant because the attorney for the State did not support the assertion
7 that Mr. Holmberg had met his purge requirement nor did the State's attorney
8 affirmatively support quashing based on the lack of notice. Respondent thus
9 appears to suggest the State's position on whether to quash the warrant was
10 decisive. While the State's position is no doubt strongly persuasive, it would be
11 improper for Respondent to cede her authority to make this decision. She set a
12 purge amount of \$10,000 and Mr. Holmberg submitted documentation of payments
13 totaling more than that amount. While there might be some question as to whether
14 he was fully caught up on his child support, it seems odd that this was insufficient
15 to quash the warrant specifically to enable the court to set a hearing to determine
16 the status of the case based on the most recent payments.

17 Instead, Respondent's failure to review the pleadings in detail and take
18 appropriate action left an active but improperly issued arrest warrant in place for
19 several months. As described in the reprimand order, Respondent's explanation of
20 why she did so is specious. Thus, her conduct violated both Rules 1.2 (requiring
21 judges to act at all times in a way that promotes confidence in the judiciary) and 2.2
22 (requiring judges to uphold and apply the law) of the Code.

1 **C. Factors Supporting a Sanction**

2 The Scope section of the Code sets forth several factors for the commission to
3 consider in determining whether a sanction is appropriate in a particular case. On
4 balance, those factors support the issuance of the reprimand in this case.
5

6 1. Seriousness of the Transgressions – The commission’s work depends
7 heavily on the candor and forthrightness of judges asked to provide information or
8 responses to complaints. Any failure to fully comply with this rule is of the utmost
9 seriousness, as the noted in the Annotated Model Code of Judicial Conduct: “the
10 need for a judge’s cooperation in the disciplinary process is paramount.” Ann. Model
11 Code of Jud. Conduct, Rule 2.16 at p. 327, Comparison to 1990 Code (noting that
12 this rule and its comments were newly added in the 2007 Code). Respondent’s
13 violation of Rule 2.16 is thus quite serious. Similarly, though, her conduct in
14 repeatedly denying properly substantiated requests to quash an arrest warrant
15 without explanation and without (apparently) sufficiently reviewing the pleadings
16 to recognize that the warrant was improperly issued is also serious. This factor thus
17 weighs in support of the reprimand.
18
19
20

21 2. Facts and Circumstances that Existed at the Time of the
22 Transgression – The underlying case is a difficult one, and Mr. Holmberg (based on
23 the limited information available to Disciplinary Counsel) appears to be a father
24 who consistently fails to appear in court and consistently fails to pay child support
25 unless an arrest warrant is issued. Respondent’s docket is also a difficult and very
26 busy one. Finally, the lack of notice that occurred in this case happened because of
27
28

1 an administrative delay in electronically docketing the minute entries. That failure
2 is not attributable to Respondent. This factor weighs against a sanction.

3 3. Extent of Any Pattern of Improper Activity or Previous Violations –

4 arguably, the continuing nature of the issues related to the arrest warrant could be
5 considered a pattern of improper activity. Nonetheless, Disciplinary Counsel
6 believes there is insufficient evidence to support finding a pattern of improper
7 activity. Respondent has no prior sanctions or violations. This factor weighs against
8 a sanction.
9
10

11 4. The Effect of the Improper Activity Upon the Judicial System or

12 Others – There is no doubt that Respondent’s conduct had a substantial impact on
13 Mr. Holmberg, and also resulted in overall delays to the case which impacted Ms.
14 Mraovich. However unsympathetic Mr. Holmberg may be as a litigant, he is entitled
15 to minimum standards of treatment. Beyond the instant case, however, this is
16 exactly the sort of factual scenario that erodes public confidence in the judiciary: a
17 man is subject to a pending arrest warrant for months that should never have been
18 issued; his numerous attempts to be heard appear to be ignored; his purge amount
19 payment of \$10,000 has no apparent effect; and he is forced to pursue appellate
20 relief. This factor weighs in favor of the reprimand.
21
22

23 While there are factors on both sides, and this is a close case, Disciplinary
24 Counsel argues that the seriousness of the transgressions and the adverse impact
25 Commissioner Morton’s conduct has had on the public’s confidence in the judiciary
26 outweigh the other factors. The commission should keep in place the reprimand,
27
28

1 amended as described above.

2 **D. The Only Available Sanction is a Reprimand.**

3 Respondent requests that the commission either dismiss her case or
4 impose a lesser sanction than an informal reprimand. There is no lesser sanction
5 available to the Commission. The only informal sanction available is a public
6 reprimand. Commission Rule 17 regarding Informal Sanctions explains the
7 reprimand. The rule, in subpart (b), also notes that the Commission “may take any
8 other informal action consistent with these rules” such as directing counseling,
9 education, or similar activities. The Commission has consistently interpreted this
10 provision to be read in conjunction with subpart (a) such that the Commission does
11 not reach these additional options without having imposed the reprimand set forth
12 in subpart (a).
13
14
15

16 Commission Rule 18, which sets forth the formal sanctions available in
17 judicial misconduct proceedings, is instructive on this issue. The Arizona
18 Constitution specifies only four specific types of formal sanctions: retirement,
19 censure, suspension, or removal. Ariz. Const. Art. 6.1, sec. 4. Subpart (e) to Rule 18,
20 however, sets forth “other formal sanctions” similar to subpart (b) in Rule 17.
21 Interpreting the Commission’s rules as consistent with the Constitution, the
22 Commission reads both Rule 17(b) and 18(e) as providing the authority to impose
23 additional conditions to the sanction imposed in either formal or informal cases. In
24 other words, these are not stand-alone sanctions, but rather provisions that may be
25 added to a sanction.
26
27
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1 In short, as noted above, there is no lesser sanction than a reprimand that
2 the Commission may impose and a dismissal is inappropriate in this case.

3 **III. Conclusion**

4 Disciplinary Counsel respectfully requests that the commission grant in part
5 and deny in part Respondent's motion. The commission should grant the motion for
6 purposes of the amendment described above, and should otherwise deny the motion,
7 including the request to expand the record,
8

9 Dated this 24th day of January, 2014.
10

11 **COMMISSION ON JUDICIAL CONDUCT**

12
13 s/ Jennifer M. Perkins

14 _____
15 Jennifer M. Perkins
16 Disciplinary Counsel

17
18 Copies of this pleading delivered
19 Via electronic mail
20 On January 24, 2014, to:

21 Jess Lorona
22 Jess@loronamead.com

23 *Counsel for Respondent*

24 By: Jennifer M. Perkins
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