

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 16-164

Judge:

Complainant:

ORDER

The complainant alleged a superior court commissioner denied her the opportunity to be heard and made improper rulings in a family law case.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the commissioner engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

The commission does not have jurisdiction to review the legal sufficiency of the commissioner's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the commissioner did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

Commission member Peter J. Eckerstrom did not participate in the consideration of this matter.

Dated: July 27, 2016

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed
to the complainant and the commissioner
on July 27, 2016.

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

I understand the commission cannot reverse court orders or assign a new judge to a case.

I declare, under penalty of perjury, that the foregoing information and the facts I have provided upon which my allegations of judicial misconduct are based are true and correct.

Signature: _____

Date: _____

INSTRUCTIONS

Use the following space or plain paper of the same size to explain your complaint. Explain why you believe what the judge did constitutes judicial misconduct. Be specific and list the names, dates, times, and places relevant to your allegations. Additional pages may be used and relevant copies of documents may be sent with your complaint (please do not send original documents). Use one side of each page only and write legibly or type your complaint. Please keep a copy of your complaint for your records.

AZ CJC COMPLAINT FORM 3

IN CHAMBERS FINDINGS AND ORDERS

IN CHAMBERS FINDINGS AND ORDERS

At the hearing held on _____ the Court suspended Petitioner's parenting time with the Minor after finding that such parenting time seriously endangered the Minor's mental and emotional health. A.R.S. § 25-411(J); see also *Hart v. Hart*, 220 Ariz. 183, 188 ¶ 16, 204 P.3d 441, 446 ¶ 16 (App. 2009) (trial court may *sua sponte* restrict a parent's parenting time rights if it finds such parenting time "would seriously endanger the child[]'s physical, mental, moral, or emotional health").

The Court, however, did not make findings on the record as required by A.R.S. § 25-403. It will do so now.

Procedurally, on _____ (filed _____), the parties participated in a Settlement Conference before Judge _____. At that Conference, the parties agreed that Respondent "would have temporary sole legal decision-making and be the primary residential parent for _____" (Order, _____) That Rule 69 agreement has never been modified.

Accordingly,

IT IS ORDERED that Respondent shall have sole legal decision-making authority and be the primary residential parent for the Minor.

Findings pursuant to A.R.S. § 25-403:

1. Since _____ on _____, the Minor has been _____
In contrast, in _____ the Minor _____

IN CHAMBERS FINDINGS AND ORDERS

Page 2

Date:

Case No.:

nothing has changed.

2. The Minor

”

3. By all indicators, the Minor is

4. The Minor is almost As referenced above,

Lastly, the

Minor's attorney made it explicit at the last hearing that the Minor

5. There is no evidence that Petitioner, Respondent, or the Minor have any mental or physical health issues relevant to the Court's consideration.
6. Neither parent is more likely to allow the other any contact with the Minor, much less contact that is frequent, meaningful and continuing. Prior to , the history of this case consisted of Petitioner making every effort to deny Respondent contact with the Minor. Since , it seems clear that the shoe is now on the other foot and Respondent, albeit less overtly, is now making every effort to deny Petitioner that contact.
7. There is nothing to indicate that either parent intentionally misled the court.
8. While the Court is alarmed by the Minor's reports about what occurred while she was in Petitioner's care , and a), such reports do not fall within the parameters of A.R.S. § 25-403.03.¹ The Minor's reports, however, particularly those pertaining

¹ While § 25-403.03(H), does make reference to § 8-201, it only permits the court to "order the services of the department of child safety." A.R.S. § 25-403.03(H). It does not, however, in contrast to the rest of the statute, create a presumption against sole or joint legal decision-making, nor does it place a limit on parenting time.

IN CHAMBERS FINDINGS AND ORDERS

Page 3

Date:

Case No.:

to Petitioner's
201(2)(a).

could arguably qualify as abuse under A.R.S. § 8-

9. There is no evidence that Respondent coerced Petitioner into the Rule 69 agreement on
; Petitioner was ably represented at the time and testified that she entered into the
agreement knowingly, intelligently, and voluntarily.

10. Both parents previously complied with the parenting education requirements.

11. Neither parent has been

12. While both parents have , there is no evidence either has

13. Neither parent is and neither has been the other
parent.

Based on the foregoing findings, as well as those made on the record on , the Court
AFFIRMS its orders of .

cc:

COUNSEL

By

Bv

Opinion of the Court

OPINION

Judge authored the opinion of the Court, in which Presiding
Judge and Chief Judge concurred.

, Judge:

¶1 appeals the family court's order suspending her parenting time with her minor child, and granting , permanent legal decision-making authority for . She argues the court abused its discretion when it made a final ruling on legal decision-making and parenting time without adequate notice and an evidentiary hearing on the issues. Because we agree was denied due process, we vacate the order and remand the case for such a hearing.

Factual and Procedural Background

¶2 was born in . The case began as a special paternity action brought by to establish child support obligations. In the judgment, legal custody was placed with under A.R.S. § 25-803 because had resided with for the greater part of the prior . In , the family court granted of parenting time and in the court increased parenting time to

¶3 In filed a petition requesting joint legal decision-making and equal parenting time. Later , the executed a search warrant on home and seized .¹ amended his petition to modify custody in , requesting sole legal decision-making authority and suspension of parenting time.

¹Although was arrested on , the charges against her were

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TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

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