

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 07-015

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Complainant: No. 1031210672A

Judge: No. 1031210672B

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**ORDER**

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: July 11, 2007.

FOR THE COMMISSION

/s/ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on July 11, 2007.

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

Complaint against [redacted]

CJC-07-015

In case [redacted] we believe that Commissioner [redacted] significantly abused his judicial authority in two specific areas.

The first abuse of authority was a blatant infringement of due process via his ex parte communication with [redacted] the guardian ad litem. The guardian ad litem was scheduled to appear at a hearing on [redacted]. For reasons never made clear, [redacted] did not appear as scheduled. Nonetheless, the hearing was initiated and completed as documented in the minute entry for the case.

Approximately one hour after all parties to the case had left the courtroom, [redacted] arrived in the courtroom and reported orally to the judge. Rather than reschedule the guardian ad litem report to a time when all parties could be present, Commissioner [redacted] received his oral report. No additional hearings were ever scheduled in the case and Commissioner [redacted] explicitly relied on this ex parte communication in his decision as documented in his ruling made on [redacted].

As we understand the rules of judicial conduct, ex parte communication with a guardian ad litem is expressly prohibited in a guardianship case. Not only did the Commissioner ignore this prohibition, he acknowledged that he relied on this prohibited communication in making his case ruling.

Beyond ignoring the prohibition on ex parte communication, the judge's conduct represented a clear abuse of due process in the following ways:

1. There is not a complete record of the guardian ad litem's oral report. After months of inquiry and follow up with the clerk of the court, we were only provided a partial audio transcript of the discussion that picks up in the middle of the communication between the Commissioner and the guardian ad litem. The oral report of the guardian ad litem was never entered into the official record of the case.
2. In the minute entry [redacted] through which Commissioner [redacted] entered his ruling, there is a reference to the position of the guardian ad litem that is not documented in any records of the court. If the position of the guardian ad litem is as is stated in the minute entry, this could only have been communicated to the judge off the record and outside the direct observation of any of the other parties to this case: "...after the Guardian Ad Litem indicated that he anticipated recommending termination of the guardianship..."
3. We were never permitted an opportunity to hear or challenge any of the findings of the guardian ad litem. No cross examination was permitted.
4. Likely because no written report had been submitted by the time of Commissioner [redacted] ruling on [redacted] the Commissioner denied the request for the court to set a date for the submission of the guardian ad litem report.

The second abuse of judicial authority was a result of apparent "forum shopping" that resulted in the inappropriate transfer of this ongoing case from Judge [redacted] courtroom to Commissioner [redacted] courtroom in [redacted]. This case was established in [redacted] when Judge [redacted] granted our petition to establish a permanent guardianship. Between [redacted] and [redacted] there were several hearings before Judge [redacted] (including a hearing on one prior motion to terminate the guardianship) and at least one annual report was filed. In [redacted] a new motion to terminate the guardianship was filed. This time, the case was re-assigned to Commissioner [redacted]. It is our believe that this was a blatant case of forum shopping by the petitioner's lawyer to find a court that would be more favorable to the petition than the (then) current case judge.

The prevailing administrative procedures of the court—Administrative Order 2005-078, In The Matter Of Adjusting Administrative Boundaries For Cases Assigned Within The Judicial Districts Of Maricopa County, dated May 20, 2005—specifically define which courts will have responsibility for which cases in Maricopa County. The administrative guidelines are unambiguous. This case could only be reassigned to Commissioner [redacted] in violation of those guidelines. This information was fully documented and presented to Commissioner [redacted] in our Motion for Reconsideration of the [redacted] ruling. According to the procedures described in this Administrative Order, the case should have remained assigned to Judge [redacted] and remained in the [redacted] district. The reassignment of this case to the [redacted] was in direct conflict with the Administrative Order and is a violation of our due process rights.

We recognize that court assignments are the responsibility of the court clerks and not a responsibility of the judges. When we inquired about the change with the clerk of the court we were instructed to discuss it directly with Commissioner [redacted]. However, through our motion to Commissioner [redacted] (filed [redacted]) we pointed out this violation had occurred and challenged the appropriateness of the judicial assignment. We believe that the Commissioner had a responsibility to investigate this charge and to hold the court clerk accountable for fair and appropriate assignment of cases based on the prevailing administrative standards. Instead, this Commissioner turned a blind eye to this clear manipulation and, in so doing, violated our due process rights.