

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-181

Complainant: No. 1445910033A

Judge: No. 1445910033B

ORDER

The complainant alleged that a superior court judge made a decision in a case in flagrant disregard of the facts and the law.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge 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.

After reviewing the information provided by the complainant, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of the judge's ruling. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: August 15, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on August 15, 2012.

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

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

FOR OFFICE USE ONLY

2012-181

COMPLAINT AGAINST A JUDGE

Your name:

Judge's name:

Date: 06-26-12

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

Judge took the Responsibility of placement of two young children - against the policy, but more importantly - against the CPS recommendations, mental health recommendations, CASA recommendations, and all members of the Children's team. He discounted the use of psychotropic drugs obtained behind the backs of CPS and Mental Health, by the foster parents with no diagnosis and covered up by the foster family. The child 3 years of age was unable to function and he did not allow CPS to remove the children for their health and safety as would have been done in any CPS investigation regarding foster children. He discounts the mission of CPS to placing children with their own families whenever safely possible. He discounts approved and licensed ICPC grandparents in favor of - giving the children to the foster family. A long drawn out trial was all one sided with all advantages being allowed the foster family. Dependency Case ID.

Asst. Atty Gen.

June 26, 2012

Marilyn J. Hernandez
2350 Adobe Rd. #116
Bullhead City, AZ 86442

To Whom it May Concern;

I am writing to call attention to a Child Protective Services, Dependency case, # JD-2010-04011 for Melissa

Rodriguez, in the Mohave County Superior Court in Kingman, AZ. Judge Richard Weiss has heard this case and it appears that an injustice is being allowed to continue.

I resigned my position of Case Manager and Adoption Specialist in the Bullhead City CPS office of the Department of Economic Security on May 11, 2012. I was the Case Manager on this case for approximately seventeen months. During the life of this case, two children age 5 mos. and not quite 2 years of age were removed from the care of their mother. The parents were not able to change their circumstances to provide for the children, so they remained in Foster Care. CPS was able to locate the paternal grandparents of little Melissa Rodriguez, the older of the two children; these grandparents live in California and had been searching for her since her mother dropped out of sight with her. They traveled to Bullhead City several times, hoping to find the mother and their granddaughter. Once they were informed that their granddaughter was in foster care, they began this process to gain custody of her. The younger child is not a blood-relative to the grandparents, Mr. and Mrs. Leo Duran.

During a court hearing on this case early on, Judge Weiss told the grandparents that if they want their granddaughter, they would need to take her sibling also. This does not seem to be an ethical or legal demand, but Caleb Chapplelear, was the case manager at that time, and heard this statement as well as all other parties in the courtroom.

The Durans continued to come to court from California, which has made it very difficult to satisfy their work schedules and to afford the long trips to Bullhead City. At another hearing, after this case manager presented a court report to Judge Weiss, he stated that in this case maybe these grandparents are "just out of luck".

The foster parents in this case; Jackie and John Manuel decided very early on that they wanted to keep these two little girls, and changed their names, enrolled them in New Day School, a local daycare under the new names. This was at the time they received the children into their home in June of 2010.

An ICPC was done for the Durans to gain custody of their Granddaughter Melissa, immediately when it was discovered that they were willing and able to take her. The ICPC was approved, and when it was returned as such, due to Judge Weiss' statement of "if they want their granddaughter, they would need to take her sibling also," another ICPC was sent for Shiva Polsinelli, the younger sibling, to CA. That also took time, but was also approved. A short time later

grandparents of Shiva requested placement of Shiva, so another ICPC was again sent to CA, but was not approved.

CPS arranged visits to begin in February 2011 for the Durans and both children. The visits went well and the children began looking forward to seeing the Durans. The Durans met Shiva and immediately fell in love with her also. They were elated to see Melissa again, as she had been missing with her mother and Durans knew the mother was using methamphetamines and not living in safe places.

The children were going to Mohave Mental Health to see a counselor, because the Manuels were making statements that there was something wrong with Melissa, then still two years old. They were giving reasons why they felt she is ADHD. During the visits to Mohave Mental Health, Brandie Martin, the Mohave Mental Health worker, did not see symptoms of ADHD. So, from there, Jackie Manuel took Melissa to Dr. Alan Barton, a local Pediatrician, and on Jackie Manuel's word alone – that Melissa is ADHD and was Substance Abused at birth, (neither of which was a fact), Dr. Barton prescribed Intuniv, a psychotropic ADHD prescription to this little child who was now barely three years old. This drug is not recommended for any child under 6 years of age. Jackie Manuel requested the dose be raised and Dr. Barton did so, two additional times, until, by observance by CPS staff, New Day School staff and Mohave Mental Health, the child was unable to function. She was tearful, clingy and too lethargic to be tested by the School District and Mohave Mental Health.

Dr. Barton also prescribed Clonidine for sleep for Melissa, on the word of Jackie Manuel.

During a Child and Family Team meeting with the Manuels, this case manager told them that transitional visits will be done to move the children to CA to the Durans home. At that time the Manuels stated that they would fight to keep the girls, again in June 2011. Very early on, they had also told Caleb Chappelle when he had the case that they wanted to adopt the children.

My supervisor suggested that there be an official Adoption Selection Staffing, which CPS holds if there is more than one family wanting to adopt a child, or if there is several families who are interested in placement of children who do not have an identified placement. There is a panel of CPS workers from two other CPS offices who are not aware of the circumstances of the case, CASA, Children's Attorney, CPS Assistant Program Manager, Case manager, previous Case Manager and CPS Unit Manager. Home studies are reviewed for all families and discussed, then a vote is done to select the most appropriate placement. The votes were unanimous for the grandparents, Mr. and Mrs. Duran for placement. It is also the mission of CPS to keep children with family if at all possible, and CPS was following policy as well as the number one priority of the safety and best interests of the children. This is when the foster family hired their attorney.

Once the medical records were obtained and it was discovered that the foster parents had gone about getting this little child medication without the knowledge of either CPS or the Mental Health Agency, it was obvious that the children were not safe in the care of the Manuels. Also their actions to sabotage reunification

for the children with family, was of concern. When the Motion for Change of Physical Custody for the children, with family, was brought to the judge, he denied it, and Ordered the children NOT be removed from the foster home. In any and all cases the removal of the children would have been done with no question, for their safety.

This case went to trial, as the foster parents hired an attorney and the judge allowed them to intervene. The trial was to begin in January 2012, and was dragged out for months, Judge Weiss scheduled other hearings on the same day as the trial, and either started it late and ended it early, cancelled the second day of trial, had to appear at another trial in Pinal County which he could not move, he finally, on May 7th, 2012, said that he would give his decision within 10 days. That did not happen until June 12th or 13th, after I had resigned. Judge Weiss decided against all of the parties concerned that the foster parents would keep the children. I was told that the only reason that he could give was that CPS did not start visits with the Durans soon enough. The Durans visited when they were allowed by the judge's order, and when CPS allowed them to take the children to their home on an extended transitional visit during a time that there was no court order, the judge ordered they bring the children back. Judge Weiss ordered every other weekend visits only for the Durans, whether they needed to be at work or not, he allowed the foster family to change the Durans visits if they had plans with the children, he completely allowed for this to go in the favor of the foster family in all respects and did not allow CPS to follow policy or keep the children safe..

This judge caused extreme stress to the Durans, who were not treated equally throughout the life of the case by him. He referred to the foster family as Jackie and John, with familiarity and the Durans as "the grandparents" most of the time.

CPS was not represented well by the Assistant Attorney General who did not come prepared to defend the position of CPS as our attorney. The supervisor for the AG in Prescott was informed by the APM for CPS, a CPS program manager, and this Case manager that his worker was not performing her job adequately.

Later, I was told by my supervisor Melinda Foy, that the AG supervisor had stated "I am not to complain about his worker any more"; "that I be prepared to lose this case"; "that Judge Weiss had his mind made up in the first 45 minutes of this trial"; and that "they would hate to see anything happen to my retirement".

As lengthy as this has become, all concerned are amazed that the judge in this case listened to all of the concerns for the safety and best interests of the children, yet on his preference alone, decided to go against all concrete proof that the foster parents lied, mis-represented themselves, and disrupted the reunification of the children with family. The judge has discounted all of the safety and risk factors which are used to keep children safe, which makes one wonder if there is a personal relationship with the foster parents, because it is unimaginable that a judge would deliberately allow two toddlers to remain in a home that is also suspect for using corporal punishment.

The foster family adopted a teen a few years back and when the subsidy payments stopped for her she was told to leave. The other teen in the home at the time, was

going to be adopted by the Manuels and she ran away before it could happen. They adopted a little boy who was observed by a CASA, being hit by Mr. Manuel in a local store. He is also on psychotropic medication.

Please, for the sake of these two little innocent girls, investigate this case and review the transcripts, speak with the parties, review the psychotropic drug dangers for two and three year olds, and please consider the type of life the children will be subjected to if they remain in this home. They will receive unconditional love and care by their large family whose members are devastated at the judge's strange behavior and decision. This decision can set a precedent for any and all foster parents who wish to keep children from ever being reunited with their families in the future, and CPS will no longer have the opportunity to protect children with biased judges discounting evidence such as in this case.

Foster care is temporary and not to be considered permanent unless there is no family willing or able to take their family member's children.

The Durans plan to appeal this case, but Judge Weiss has set the adoption date of the children to the foster parents for July 6, 2012. The Attorney General and the Office of the Governor will also be sent a copy of this letter, in the hope that someone will take a second look on how one source of power can override all practical and proven points to change lives forever.

I apologize for the length of this letter, but as a grandmother and a former CPS worker, I feel it necessary to ask for oversight in the handling of this case by those of you who have that ability.

Thank You,



Marilyn Hernandez

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