

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-331

Judge:	No. 1062914663A
Complainant:	No. 1062914663B

ORDER

The complainant alleged that a superior court commissioner exceeded his judicial authority, failed to follow the law, and was biased.

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.

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

Dated: February 26, 2014.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the commissioner on February 26, 2014.

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

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

VIA US MAIL

RE: Complaint Against A Judge

Dear Sir or Madam:

Enclosed please find a completed Complaint Form and related support documentation in connection with my complaint against the Honorable Commissioner, County Superior Court.

Important to note, is that I am not seeking the reversal of any prior decision or order of Commissioner At issue, is whether or not in the course of presiding over certain hearings, Commissioner exceeded his authority. At issue, is also whether Commissioner met his responsibility to follow the law and to observe the rules set forth in the Arizona Code of Judicial Conduct including but not limited to, his responsibility to promote confidence in the judiciary, to promote impartiality and fairness, to perform judicial and administrative duties and responsibilities competently, diligently, and promptly, and to act without bias.

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,

--

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2013 331

COMPLAINT AGAINST A JUDGE

Your name

Judge's name

Date

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

SEE ATTACHED

(Attach additional sheets as needed)

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

I. Issues Presented for Review

Commissioner _____ 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, and to act without bias. At issue is:

1. Whether Commissioner _____ acted in excess of his legal authority.
2. Whether or not Commissioner _____ acted with bias.
3. Whether Commissioner _____ (and/or his 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 _____, the Honorable Commissioner _____ conducted a Review Hearing related to the child support matters of the parties. Father did not attend this Review Hearing. Later that same day, the Court issued a Child Support Arrest Warrant against Father with a _____ purge amount. (please see Appendix A)

On or about _____ a payment in the amount of _____ was made to the Child Support Clearinghouse. This payment was applied to Father’s child support account ATLAS Case Number _____. Mother has in fact received these funds.

On or about _____ Father filed his Notice of Purge Payment with the Court

notifying the Court that the purge payment had been made. A printout from the Child Support Clearinghouse website evidencing this payment was attached to Father's Notice. Father also faxed a copy of the Notice to Commissioner [redacted] division for the Court's immediate review. (please see Appendix B)

On or about [redacted] at approximately [redacted] Father contacted the Court and spoke with [redacted] Commissioner [redacted] clerk. Father was advised that the Court had received Father's Notice and it was "on Commissioner [redacted] desk waiting for him".

On or about [redacted] at approximately [redacted] Father contacted the Court and once again spoke with [redacted] Commissioner [redacted] clerk. During this telephone call, Father was informed that a Review Hearing had been set by Commissioner [redacted] in the matter for [redacted] and that the Court would review Father's Notice, purge payment, and whether or not to quash the Child Support Arrest Warrant at that time. Father was specifically informed that the Child Support Arrest Warrant would remain in full force and effect pending the outcome of the scheduled Review Hearing.

On or about [redacted] and later that day, Commissioner [redacted] filed a Minute Entry wherein he specifically acknowledged that the Court had received a payment receipt for the purge payment in question on [redacted]. Despite this acknowledgement, Commissioner [redacted] further Ordered that that Child Support Arrest Warrant shall remain in full force and effect pending the Review Hearing which the Court had scheduled on [redacted]

(please see Appendix C)

On or about [redacted] and later that day, Father filed a Petition for Special Action with the Arizona Court of Appeals wherein Father requested that the Court quash the Child Support Arrest Warrant. Father further filed a Motion for Stay of the Child Support Arrest Warrant. (Arizona Court of Appeals, Petition for Special Action Case Number [redacted])

On or about [redacted] the Arizona Court of Appeals conducted an Emergency Hearing regarding Father's Petition for Special Action and Motion for Stay. At the conclusion of the hearing, Father's Motion for Stay was granted.

On or about _____ the Arizona Court of Appeals issued an Order directing Commissioner _____ to quash the Child Support Arrest Warrant. This Order was emailed to all of the parties in the case on that date to include Commissioner _____ Father notes that as of the date and time of the filing of this Complaint, Commissioner _____ has not taken any action to comply with the Order. Father also notes that the Arizona Court of Appeals specifically cited the “prospect of irreparable harm” to Father as a reason for granting Father’s Motion for Stay. (please see Appendix D)

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

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 this case, the Child Support Arrest Warrant issued by Commissioner _____ on or about _____ required a purge payment in the amount of _____. On or about _____, Father paid the purge amount ordered by Commissioner _____ in full. On or about _____ Father provided the Court with evidence of this purge payment having been paid by way of a printout from the Child Support Clearinghouse website which the Court can easily verify and routinely uses itself in these matters. Mother has already received the funds in question.

As a matter of routine and custom, the Court regularly issues Child Support Arrest Warrants with purge amounts only to quash same without delay when the purge payment is

made. In this case, the Court Ordered the Child Support Arrest Warrant to remain in full force and effect at least until some days after Father's purge payment was applied to his child support account by the Child Support Clearinghouse.

Father further respectfully submits that Commissioner proceeded with bias, arrogance, and in excess of his legal authority, and he failed to exercise discretion which he has a duty to exercise when he refused to take immediate steps to quash the Child Support Arrest Warrant after receiving Notice that the purge amount had been paid. To allow the Child Support Arrest Warrant to remain in full force and effect for some days after the purge payment was paid by Father and place Father at imminent risk of being arrested is heavy handed, punitive, and in direct conflict with the terms of the Child Support Arrest Warrant itself.

For these reasons, Father is respectfully requesting that the Arizona Commission on Judicial Conduct investigate this matter with a view towards sanctioning Commissioner for his misconduct.