

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-085

Judge:	No. 1046814915A
Complainant:	No. 1046814915B

ORDER

The complainant alleged a pro tem superior court judge applied the wrong legal standard to her petition for loco parentis custody and visitation and did not afford her time to respond to the adverse party's petition for attorney fees.

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 review, 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 court rulings. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: April 16, 2014.

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on April 16, 2014.

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

On _____ father of my _____ and _____ filed a Petition to Modify _____ Custody because my _____ and _____ mother, had received her _____ and was facing serious jail time and because she had abandoned her _____ to my care (a week prior to that). So, I filed a Petition for In Loco Parentis and Custody on _____ in response.

The final hearing was held on _____ In her decision on _____ stated that:

"THE COURT FURTHER FINDS that, pursuant to A.R.S. § 25-409.A, Intervenor has failed to satisfy all four of the factors required for the Court to order in loco parentis legal decision making authority."

Regarding my petition for visitation, she stated the following:

"The determination of non-parent visitation is controlled by statute. A.R.S. § 25-409. Under A.R.S. § 25-409.E, this Court may award reasonable visitation rights to Intervenor if visitation would be in the children's best interests, as long as one of the following is true:

- 1. One of the legal parents is deceased or has been missing at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency.*
- 2. The child was born out of wedlock and the child's legal parents are not married to each other at the time the petition is filed.*
- 3. For grandparent or great-grandparent visitation, the marriage of the parents of the child has been dissolved for at least three months.*
- 4. For in loco parentis visitation, a proceeding for dissolution of marriage or for legal separation of the legal parents is pending at the time the petition is filed.*

THE COURT FINDS that it does not have jurisdiction because no evidence was presented to suggest that Mother's protracted absence has been reported to a law enforcement agency. In addition, the children were born during the marriage of Mother and Father, and no petition for dissolution was pending at the time of the in loco parentis filing by Intervenor. The Court is bound by the recently enacted requirements of A.R.S. 25-409, which became effective January 1, 2013. As reflected in the findings above, the newly enacted statute severely restricts the Court's ability to require a legal parent to provide third party visitation time."

Commissioner _____ applied the NEW version of A.R.S. § 25-409.E, which went into effect January 1, 2013 regarding awarding visitation rights. Under this new statute one of the following must be true:

- 1. One of the legal parents is deceased or has been missing at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency.*

2. The child was born out of wedlock and the child's legal parents are not married to each other at the time the petition is filed.

3. For grandparent or great-grandparent visitation, the marriage of the parents of the child has been dissolved for at least three months.

4. For *in loco parentis* visitation, a proceeding for dissolution of marriage or for legal separation of the legal parents is pending at the time the petition is filed.

She said that since I did not submit evidence proving that Mother's protracted absence had been reported to a law enforcement agency, the children were not born out of wedlock, and there was no pending proceeding for dissolution of marriage at the time I filed my petition, she could not award me visitation.

When I submitted my petition on _____ A.R.S. § 25-409.E requirements for visitation were as follows (if ANY of the following are true):

1. One of the legal parents is deceased or has been missing at least three month.
2. The child's legal parents are not married to each other at the time the petition is filed
3. There is a pending proceeding for dissolution....

My petition met criteria _____ And, since my petition was filed in _____ I should've been held to the _____ version of the statute. But, _____ denied my request because she chose to hold me to the _____ criteria. In addition she acknowledged in her minute entry what an important role I have played in the _____ lives when their parents were unable to take care of them. Thus, it would have been in their "best interests" for in loco parentis visitation to be awarded.

So, because of her mistake, I was denied *enforceable* visitation rights with the _____ that I had raised and for whom I was the only stable adult in their lives when their parents both disappeared for years at a time.

In addition, after _____ rendered her decision, the father petitioned the court for me to pay his attorney fees since he claimed that I brought forth a frivolous lawsuit.

_____ was required to request a rebuttal from my attorney if she was going to seriously consider this request. However, she did not and just released a minute entry stating that I had to pay a portion of his fees without giving me the chance to argue my side of the matter.

Losing my _____ was the most devastating thing that has ever happened to me and that will likely ever happen to me, and it was all due to _____ legal mistakes and not just a subjective decision on her part.