

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 21-401

Judge:

Complainant:

ORDER

May 25, 2022

The Complainant alleged a superior court commissioner entered an ex parte order of protection in violation of the law.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission member Christopher W. Ames did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on May 25, 2022.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2021-401

COMPLAINT AGAINST A JUDGE

Name: _____ Judge's Name _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

I am _____ I am married to _____ We each have two children from prior marriages.

_____ ex-husband, the Petitioner in this protection order remarriage. Therefore, he harasses _____ constantly. _____ has a difficult time dealing with _____ is repeatedly awarded attorney' s fees in her divorce as the court finds continued harassment by her ex-husband. He has made false claims to DCS and the police trying to get me or _____ arrested. He repeatedly calls the police to do welfare checks on the children during _____ parenting time. He sent individual mail to each of the members of _____ and I' s community disparaging us and the children. and he then bragged about it to the children. The first time I met Petitioner was as a requirement c _____ divorce decree. During that meeting, he physically challenged and taunted me to a fist fight in the front vard in front of the children. Subsequently, when Petitioner saw my car parked overnight at _____ home, he was lying in wait at my car in the morning for an obvious and nefarious purpose.

Well over a year ago, before our marriage, _____ ex-husband convinced the court to award a protection order against me based on fabricated allegations. He alleged that I recklessly threw a water bottle in the direction of _____ children. Based on this, he was awarded a protection order. _____ and I put our plans for marriage and unification of our families on hold while that protection order expired. That protection order expired several months before the application of the protection order in the instant case.

In _____ and I are married and living together in a new home in _____ with our _____ children. I have been playing step-dad to her children for several months. _____ ex-husband, infuriated by our success and marriage, applied for another protection order since the first one was so easy and did so much harm. However, there were no allegations that could be made that were less than a year old. There was no event or occurrence that would lead to granting a new protection order. The only other evidence submitted was a non-dangerous criminal history from over _____ years ago. Regardless, this in no way dissuaded the court from issuing a new protection order.

At the protection order hearing, the protection order was dismissed, in summary form, because there were no allegations within a year and no extenuating circumstances to extend that time. However, and I had to spenc _____ of dollars hiring a lawyer for this very serious matter to our family. We had to take off work, get affidavits, and severely inconvenience our family to cancel plans and international travel so they could be available for the hearing. All of this could have been avoided if the judge had properly considered the protection order at the application hearing.

I feel there was judicial misconduct for granting the protection order at the application hearing.

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1. There were no allegations of domestic violence within the last year. The statute allows extending that time for certain circumstances such as incarceration, but there were no extenuating circumstances here.
2. Extending the one year consideration time requires a separate finding by the court. There was no finding made in this case. Therefore, it was procedurally improper to grant the order without a finding of time extension. Simply awarding the protection order is not synonymous with entering a finding stating the reasons for extending the time. Extending the time is an independent consideration that requires an independent finding, by statute, and that was not done here.
3. The petitioner was not properly questioned by the judge at the application hearing to see if there had been an act of domestic violence within the last year, for which there was not even an allegation. There is no acknowledgement or evidence that the judge even knew the allegations were outside the time frame of consideration.
4. The petitioner was not properly questioned by the court at the application hearing to determine if there was proper cause to extend the time. There is no acknowledgement or evidence that the judge even considered evidence to extend the time. The only allegations to extend the time were convictions from over _____ years ago that were all non-dangerous. There is no evidence that there was even consideration or examination by the court.
5. The petitioner was not properly questioned by the court at the application hearing to determine if there was an actual, legitimate threat, or if there was an ulterior motive. Petitioner knew that his ex-wife and I were married, and living together, with their children and mine, without incident, at a new home in a community in _____. There was no protection order to renew, and there was no incident that precipitated the application for a new protection order. The very fact that the petitioner showed up with no evidence and no motivating event should have led the court to consider the application more fully.
6. The order was poorly drafted to prohibit me from going to my own home, where my children live, at any time. When served with the protection order, I was ordered to leave my home by the officer because the box on the order was checked that I could not be at the address that was my home, without qualification. The judge knew, or should have known, that I was being prohibited from going to my own home because my address and the address of the children and _____ were the same. Nevertheless, the protected address was my home with _____ and I was prohibited from going there.
7. There is an active family law case between _____ and the petitioner. It is not proper to award this kind of order when it is more properly considered in the _____ court. The _____ court could have taken the appropriate action, and there was no emergency or even a motivating factor which led to this application, or which would have made an emergency ex-parte order necessary.
8. There were simply no exigent circumstances for an emergency ex-parte order. The facts are that everyone was living harmoniously until the jealousy and narcissism of the petitioner led him to manipulate the court into granting an emergency order.

This judge entered an emergency ex parte order without the proper finding, and without evidence or consideration. I have damages in the amount of a hotel stay during the _____ week I could not go to my home, attorney's fees, and costs. This is a complete civil action for violation of my Constitutional and statutory rights. However, few are versed enough to maintain such an action. Therefore, I am relegated to asking for consideration of sanctions and reprimand for this judge. Please consider my application.

Order of Protection

Amended Order

Case No.

Court ORI No.

County State **AZ**

PLAINTIFF

First Middle Last

PLAINTIFF IDENTIFIERS

Plaintiff's Date of Birth

And on behalf of any minor family member or other Protected Person listed below:

V.

DEFENDANT

First Middle Last

DEFENDANT IDENTIFIERS

SEX	RACE	DOB	HT	WT
EYES	HAIR	<i>Arizona Prohibits Release of Social Security Numbers</i>		
DRIVER'S LICENSE #		STATE	EXP DATE	
		AZ	12:00:00 AM	

Defendant/Plaintiff Relationship: The Defendant and I are living together now, or have been in the past, but not as intimate partners.

Defendant's Address:

Estimated Date of Birth

CAUTION: Weapon Alleged in Petition

WARNINGS TO DEFENDANT: This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. § 2265). Crossing state, territorial or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. § 2262). Because of this order, it may be unlawful for you to possess or purchase a firearm or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8) or state, tribal, territorial, or local law. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney. **Only the Court, in writing, can change this order. This order is effective for one year from date of service.**

THE COURT HEREBY FINDS THAT:

It has jurisdiction over the parties and subject matter.

Defendant received actual notice of this Hearing and had an opportunity to participate.

THE COURT, finding reasonable cause to believe that Defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year (or good cause exists to consider a longer period), **HEREBY ORDERS:**

NO CRIMES. Defendant shall not commit any crimes, including but not limited to harassment, stalking, or conduct involving the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury, against Plaintiff or Protected Persons.

NO CONTACT. Defendant shall have no contact with Plaintiff except through attorneys, legal process, court hearings, and as checked: Phone Email/Fax Mail Other: **PLAINTIFF IS NOT INCLUDED ON THE ORDER OF PROTECTION. THE ORDER OF PROTECTION ONLY APPLIES TO THE MINOR CHILDREN.**

NO CONTACT. Defendant shall have no contact with Protected Person, Seth Kiesel, except through attorneys, legal process, court hearings, and as checked: Phone Email/Fax Mail Other:

NO CONTACT. Defendant shall have no contact with Protected Person, Luke Kiesel, except through attorneys, legal process, court hearings, and as checked: Phone Email/Fax Mail Other:

THE COURT FURTHER ORDERS:

RESIDENCE. Plaintiff is granted exclusive use and possession of the residence currently shared with Defendant.

LAW ENFORCEMENT STANDBY. Defendant may return once with a law enforcement officer to obtain necessary personal belongings. Neither law enforcement nor this protective order can resolve conflicts over property, title, furniture, finances, real estate, or other ownership issues.

PROTECTED LOCATIONS. Defendant shall not go to or near Plaintiff's or other Protected Person's:

Residence (confidential)

Workplace:

School:

- Address Protected
- Address Protected

Other:

ARIZONA FIREARMS LAW. Under A.R.S. § 13-3602(G)(4), the court finds that Defendant poses a credible threat to the physical safety of Plaintiff or Protected Persons. Therefore, Defendant shall not possess, receive, or purchase firearms and shall surrender same within 24 hours of service to:

ANIMALS. Plaintiff is granted the exclusive care, custody, or control of any animal that is owned, possessed, leased, kept, or held by the plaintiff, the defendant, or a minor child residing in the residence or household of the plaintiff or the defendant. Defendant is ordered to stay away from the animal and shall not take, transfer, encumber, conceal, commit an act of cruelty or neglect in violation of section 13-2910, or otherwise dispose of the animal.

OTHER ORDERS:

Date

Judicial Officer

Printed Name

WARNING: This is an official court order. If you disobey this order, you will be subject to arrest and prosecution for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

NOTICE: If you disagree with this order, you have the right to request a hearing, which will be held within 5 to 10 business days after your written request has been filed in the court that issued this order. Violations of this order should be reported to a law enforcement agency, not the court. Each party must notify this court if an action for dissolution (divorce), separation, annulment or paternity/maternity is filed. This is NOT a parenting time (visitation) or custody (legal decision-making) order. You must file those requests separately in Superior Court.

ADDITIONAL WARNINGS TO DEFENDANT: Nothing the plaintiff does can stop, change, or undo this order without the court's written approval. You must appear in court to ask a judge to change (modify) or dismiss (quash) this order. **Even if the plaintiff initiates contact, you could be arrested and prosecuted for violating this order. If you do not want the plaintiff to contact you, you have the right to request a protective order against the plaintiff. But orders are not automatically granted upon request. Legal requirements must be met.**

NOTICE TO PLAINTIFF: If this order gives you exclusive use and possession of the residence and you move out while this order is in effect, you must notify the court within five days of moving out of the residence.

NCIC# COURT OF ARIZONA IN COUNTY

Plaintiff _____	Case No. _____	NOTICE OF HEARING
v.		Order of Protection
Defendant _____		Issued Date: _____

Upon request of a party or the court, this matter is set for hearing on
at _____ before _____

Location: _____

Courtroom: _____

The parties are to present testimony and evidence as to whether the court should continue, revoke, or modify the protective order listed above.

Keep in mind it's your responsibility to bring adequate copies for your reference, the Judicial Officer, and the other party. Copies will not be made by _____ Administration, the Law Library Resource Center, or the Protective Order area.

**THE COMMISSION'S POLICY IS
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.**