

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaints 22-368 and 23-147

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Judge: John F. Kelliher, Jr.

Complainants: David M. Morgan  
Lacey Dupont

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**AMENDED ORDER**

Two complainants alleged improper demeanor and bias by a superior court judge conducting a hearing in a juvenile case.

At the beginning of a hearing in a juvenile case, the attorney for the State requested that the hearing be closed to the public. The judge responded to this request by asking mother's attorney, "Is your client high?" After the attorney and her client denied any impairment, the judge continued to lecture the mother for approximately six additional minutes before addressing the request to close the hearing. During that time the judge made statements such as, "Ma'am if you're not high, then I need to find a different job. I don't think I need to find a different job." The judge continued with the statement, "ask yourself why we are here. Are we here because you've made good decisions?," and also the statement, "continue to make the same decisions and you will lose your children." The judge never stated for the record his basis for believing the mother was impaired. During the course of its investigation, the Commission contacted another individual who was present during the hearing. That individual did not recall any outward signs of possible impairment such as disheveled appearance or fidgeting. The judge's statements to mother were condescending, irrelevant to the pending request to close the hearing and served only to extend the length of the hearing and cause the mother unnecessary distress.

After the hearing was closed to the public, the judge made additional gratuitously demeaning statements to the mother. The judge stated to the mother, "We don't believe you. Your words don't matter. Trust but verify." The judge also derided the mother about being homeless and "couch surfing," despite her statements that she was renting a room in a house and working at a part-time job.

The Commission finds the judge's conduct in this matter violated the following provisions of the Code:

Rule 1.2 (Promoting Confidence in the Judiciary), which states, "A judge shall act at all times in a manner that promotes public confidence in the independence,

integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

Rule 2.2 (Impartiality and Fairness), which states: “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”

Rule 2.6(A) (Ensuring the Right to Be Heard), which requires a judge to “. . . accord to every person who has a legal interest in the proceeding, or that person’s lawyer, the right to be heard according to law.”

Rule 2.8(B) (Decorum, Demeanor, and Communication with Jurors), which requires that “[a] judge shall be patient, dignified, and courteous to litigants . . .”

Accordingly, Cochise County Superior Court Judge John F. Kelliher, Jr., is hereby publicly reprimanded for the conduct described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the Complaint, the judicial officer’s response, the reprimand Order dated August 30, 2023, and this reprimand Amended Order shall be made public as required by Commission Rule 9(a).

The complainant in Case No. 22-368 separately requested a copy of the judge’s response to the Commission’s investigation. The Commission deems this request moot due to the public disposition of these complaints.

Commission members Denise K. Aguilar and Michael J. Brown did not participate in the consideration of this matter.

Dated: December 28, 2023

FOR THE COMMISSION

/s/ Christopher P. Staring

Hon. Christopher P. Staring  
Commission Chair

Copies of this order were distributed to all appropriate persons on December 28, 2023.

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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The complainant in Case No. 22-368 separately requested a copy of the judge’s response to the Commission’s investigation. The Commission deems this request moot due to the public disposition of these complaints.

Commission members Denise K. Aguilar and Michael J. Brown did not participate in the consideration of this matter.

Dated: August 30, 2023

FOR THE COMMISSION

/s/ Christopher P. Staring

Hon. Christopher P. Staring  
Commission Chair

Copies of this order were distributed to all appropriate persons on August 30, 2023.

**COMPLAINT AGAINST A JUDGE**Name: David M MorganJudge's Name: John Kelliher

**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.

NOTE 1: I requested from local court admin a copy of the official recording up to the point that the proceedings were ordered closed. I was reminded that the Rules do not permit public access to recordings in JD cases.

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NOTE 2: Before the proceedings were closed, attorney Bill Brown said on the record something like this:

"The mother claims the DCS caseworker lied. I can understand the possible public interest in such matters. Mr Morgan is a journalist, publishes the Cochise County Record. But, as the attorney for the children, I think it's best that the information made available be limited and I support closing the proceedings.

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The 10am "Preliminary Protective Hearing Conference (Rule 331)" on Monday Oct 3, 2022 started a few minutes late as the Respondent (Mother) Lacy Dupont met and communicated with her assigned attorney, Joan Sacramento, for the first time (except for a message about the assignment and confirmation of court date/time).

With everyone in a conference room (without the judge), and introductions made, explanations were made by William Tardibuono ( "facilitator" who made notes via computer and was evidently recording the meeting).

Present at the "conference":

Rian Eckman, DCS Supervisor (caseworker Samantha Miller was not present)  
Bren Hebron-Bost (Community Partners Inc)  
Gunther and Christy Wolfram (friends? of the mother and temporary placement)  
Cheryl Brown (grandmother) by phone from Mesa, AZ  
Lacy Dupont, mother/respondent  
Joan Sacramento (assigned counsel for mother, Lacy Dupont)  
Ashley Allred (covering for father's attorney, Dawna Argenbright)  
Bill Brown, (Public Defender) children's attorney  
William Tardibueno, conference facilitator

AZ AG's attorney Benna Troup arrived a bit late and announced that she had spoken with the judge and that I was required to leave. I left. I did not challenge that statement.

CONTINUED ON PG 2

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

**FOR OFFICE USE ONLY**

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**COMPLAINT AGAINST A JUDGE****Name:** David M Morgan**Judge's Name:** John Kelliher

**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.

At the scheduled 2pm (Oct 3, 2022) initial court hearing in the case (the Preliminary Protective Hearing), in Judge Kelliher's courtroom in Sierra Vista, he announced the case and noted that the recording system was the official record. He identified everyone on the room (and grandma by phone) and noted my presence.

I was present for the first 10-12 minutes (from about 2:05 until about 2:20) before, on motion of attorney Benna Troup, Kelliher closed the hearing and waited for me to leave.

While I was present Kelliher repeatedly berated Ms Dupont. Immediately after she (via attorney Sacramento) voiced her opposition to closing the hearing, he asked "Are you high?"

The judge said he'd read the DCS reports. Then he went into a 6-8 minute rant saying that she was making bad decisions and there would be consequences and that "if you're not high . . . I need to get into another profession" . . . that he'd "seen a lot of tweakers" . . . if you continue to make bad decisions "you will lose your children".

I am told, by Ms Dupont, that after I left (while Kelliher was reading the admonition to those remaining) the rant and derogatory statements continued. Ms Dupont also says her assigned attorney never said a word to defend her nor interrupt the rant.

Ms Dupont, who refused to sign the DCS "Safety Plan", says she's not sure if her attorney made clear to the court that she wants to challenge all of the DCS allegations.



SUPERIOR COURT OF THE STATE OF ARIZONA  
COUNTY OF COCHISE

Date: October 3, 2022

2022 OCT -1 AM 9:32

CASE: IN THE MATTER OF:

E M E D

DOB:

B M D

DOB: 1

Persons Under the Age  
of Eighteen Years

MINUTE ENTRY ACTION:

PRELIMINARY PROTECTIVE HEARING

CASE NO.: JD

JUDGE: HONORABLE JOHN F. KELLIHER, JR.

AMY J. HUNLEY, Clerk

DIVISION: Two

COURT REPORTER: Liberty Digital

by: Chris Edmiston (10/03/2022), Deputy Clerk

**PRESENT:** Benna Troup, Assistant Attorney General, appearing on behalf of the Department of Child Safety  
Julio Carbajal, DCS Case Specialist  
Rian Eckman, DCS Supervisor, appearing on behalf of Samantha Miller, Investigator  
Joan Sacramento, Esq., appearing on behalf of the mother, Lacey Dupont, who is present  
Dawña Argenbright, Deputy Legal Advocate, appearing on behalf of the father, Michael Dupont, who is not present  
William Brown, Deputy Public Defender, appearing on behalf of the minor children, who are not present  
Placement for the minor child, E  
Placement for the minor child, E, appearing telephonically  
Cheryl Brown, maternal grandmother, appearing telephonically  
Hebron Bost, Community Partners  
David Morgan, reporter

Prior to the commencement of these proceedings, State's Exhibit 1 was marked for purposes of identification.

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This matter came before the Court at 2:12 p.m. for a Preliminary Protective Hearing on a Dependency Petition filed September 27, 2022.

**PROCEEDINGS:**

The Court has advised the parties that the proceeding is presumptively open to the public.

Ms. Troup made an oral motion that the proceedings in this matter be closed to the public and presented argument thereof.

Ms. Sacramento presented argument opposing Ms. Troup's oral motion.

Ms. Argenbright took no position.

Mr. Brown presented argument in support of Ms. Troup's oral motion.

**IT IS ORDERED** GRANTING Ms. Troup oral motion closing these proceedings.

**THE RECORD MAY REFLECT** at 2:24 p.m., Mr. Morgan exited the courtroom.

Pursuant to A.R.S. §8-525, the Court has determined that this proceeding is to remain **CLOSED** to the public. The Court has caused to be posted an admonition to all attendees that they may not disclose identifying information about the child(ren), siblings, parents, guardians, caregivers or other individuals identified, which includes a ban on posting on social media or the internet in this matter. The Court has explained the possible consequences of violating this Court order, the finding of contempt of Court and sanctions, which include a fine, term of imprisonment or both.

**ICWA:**

The Court **FINDS** that, based upon the assertions of the mother, the Indian Child Welfare Act **DOES NOT** apply at this time. **IT IS ORDERED** that the mother is to inform the Court, the Department and counsel if she obtains any information that these children are of Native American ancestry as defined by the Indian Child Welfare Act.

**PRE-HEARING CONFERENCE: A.R.S. §8-823(D):**

Prior to commencement of these proceedings, a Pre-Hearing Conference was held with the appropriate parties present and William Tardibuono facilitating. The Agreement reached is attached hereto, incorporated herein by reference and made an order of the Court this date.

**SERVICE:**

The Court has determined that service is complete as to the mother.

The Court has determined that service is not complete as to the father.

The Court **FINDS** that the mother had notice of the hearing and were advised of her rights and the consequences of not appearing at this hearing.

The Court directed the Department to effectuate service by publication because the father cannot be reasonably located.

**JURISDICTION/VENUE/SERVICE:**

The State of Arizona, by and through the Arizona Department of Child Safety, is authorized to initiate this dependency proceeding pursuant to Title 8 A.R.S.

The Court has exclusive original jurisdiction over the subject matter pursuant to A.R.S. §8-202 and venue is appropriate in Cochise County pursuant to A.R.S. §8-206.

The Court has jurisdiction over the mother and finds that service of process is complete as to the mother pursuant to A.R.S. §8-841 and Ariz. R. P. Juv. Ct. 329.

**ATTORNEY Meeting with the Child, Notification and Right to be Heard:**

The Court has determined that the attorney for the children met with the children prior to the Preliminary Protective Hearing.

The Court has determined that the children have been informed of and understand their right to attend their court hearings and speak to the Judge.

Mr. Brown advised pursuant to Rule 310(b) that the minor children were informed of this hearing; however, were attending school at this time.

The Court has determined that the Placements were notified of this hearing and is always welcome to attend future hearings in this matter.

The Court informed Placements, the children, and all other individuals listed in Rule 341 of the right to be heard in any proceeding to be held with respect to these children.



**COUNSEL:**

Pursuant to A.R.S. §8-843 counsel has met and conferred with the mother briefly and advised her of her rights under Arizona law pursuant to A.R.S. §§8-824 and 8-843.

The Court informed the mother of her applicable rights pursuant to A.R.S. §§8-824 and 8-843.

Appointment of counsel is made/affirmed at this time for the following:

**IT IS ORDERED** confirming the appointment of Joan Sacramento, Esq., to represent the mother in this matter.

**IT IS FURTHER ORDERED** confirming the appointment of Dawña Argenbright, Deputy Legal Advocate, to represent the father in this matter.

**IT IS FURTHER ORDERED** confirming the appointment of William Brown, Deputy Public Defender, to represent the children in this matter.

The Court advised the mother that appointment of counsel is for one year and that new financial information will be required prior to reappointment after that time.

The Court confirmed that the mother has met with counsel and been advised of her trial rights pursuant to A.R.S. §§8-843(B) and 8-824(D).

**DOCUMENTS REVIEWED A.R.S. §8-824(G):**

The Court has received and reviewed the following documents:

DCS Case Report dated September 27, 2022.

The Court has determined that DCS has not filed an initial case plan pursuant to A.R.S. §8-824.

The Court **DIRECTS** the Department to prepare a case plan consistent with the services proposed in the Report to the Court, by close of business November 15, 2022.

**PATERNITY:**

Paternity for the minor children, E and B, has been established as to father, Michael Dupont, by the father's name appearing on their respective birth certificates.

**PLACEMENT:**

The mother has waived the Review of Temporary Custody hearing.

**IT IS ORDERED** that pending adjudication the children shall remain wards of the Court in the legal care, custody and control of the Arizona Department of Child Safety, and in the placement as set forth in the Agreement presented to the Court and attached hereto.

The Court confirmed with the Department as to the minor children's placement.



Pursuant to Rule 332, the Court respectfully reminded the Department to make arrangements for assembly of the minor children's medical records, have a medical assessment performed on each of the children and implement any referrals that might be made and communicate the recommendations and results of any medical assessments.

The Court has determined that the Department is attempting to identify and assess back-up placement for the children, if necessary, with a grandparent, sibling, or another member of the children's extended family, including a person(s) who has a significant relationship with the children. **IT IS ORDERED** that the mother shall provide the names, types of relationships, and all of the available information necessary to locate persons related to the children who have a significant relationship with the children, including any absent parent(s). The mother is **FURTHER ORDERED** to inform the Department of Child Safety immediately if she becomes aware of new information relating to the existence or location of a relative or person with a significant relationship with the children.

**PARENTING TIME:**

**IT IS ORDERED** that parenting time be made as set forth in the Agreement presented to the Court and attached hereto.

**IT IS FURTHER ORDERED** that all parenting time shall be supervised and supervision by Department-approved individuals, parent aides or case aides.

The Court **FURTHER DIRECTED** the Department to facilitate visitations between the siblings unless such is contrary to the children's safety or well-being.

**SERVICES:**

Pursuant to A.R.S. §8-825(C), the Court **FINDS** that temporary custody of the children is clearly necessary to prevent abuse or neglect pending future court hearings. The Court **FURTHER FINDS** that the services proposed to be delivered by the Department of Child Safety are proper and appropriate, and that implementation of the services as outlined in the Report to the Court constitute reasonable efforts to accomplish a primary case plan of family reunification with a concurrent case plan of severance and adoption.

The Court advised the mother that a Permanency Planning Hearing will be held within one year from the children's removal from her care. If significant progress toward the case plan of reunification has not occurred by the Permanency Planning Hearing, the case plan goal will be changed.

The Court **DIRECTED** the Department to implement the services as to the mother.

The Court **FURTHER DIRECTED** the Department to implement services as to the minor children.

The Court **FINDS** the Department is relieved from placing the siblings together at this time, with the knowledge that this may change in the future.

**REASONABLE EFFORTS / ACTIVE EFFORTS:**


The Court **FINDS** that reasonable efforts were made to avoid removal of the children from the home, but that removal was clearly necessary to prevent the children from suffering abuse or neglect. The Court **FURTHER FINDS** that maintaining the children in the home under these circumstances would have been contrary to the welfare of the children. As such, the Court **CONFIRMS** that the minor child, E [REDACTED], was removed on September 27, 2022 and the minor child, B [REDACTED], was removed on September 22, 2022. The out of home placements at this time is the least restrictive, most appropriate and in the children's best interest.




**SPEEDY TRIAL DEADLINE:** December 30, 2022

**FUTURE HEARINGS:**

The Court **sets/affirms** the following hearings:

**IT IS ORDERED** SETTING an **Informal Settlement Conference** as to the mother and an **Initial Dependency Hearing** as to the father on **MONDAY, NOVEMBER 7, 2022 at 3:30 p.m.** in Division Two of the Superior Court. 

**IT IS FURTHER ORDERED** SETTING a **Publication Hearing** as to the father and a **Review Hearing** on **MONDAY, JANUARY 9, 2023 at 10:00 a.m.** in Division Two of the Superior Court. 

**IT IS FURTHER ORDERED** SETTING a **Permanency Planning Hearing** as to the minor children on **MONDAY, SEPTEMBER 11, 2023 at 2:30 p.m.** in Division Two of the Superior Court. 

**ADMONITIONS:**

The Court admonished the mother of the following:

- Rights pursuant to A.R.S. §8-824(D).
- Failure to attend future hearings without good cause shown may result in a finding that she has waived her legal rights and is deemed to have admitted the allegation(s) in the petition. Any scheduled hearing may go forward in her absence and may result in a finding of dependency, and the Court could make permanent orders by motion.
- Substantially neglecting or willfully refusing to remedy the circumstances that caused the children to be in an out-of-home placement, including a refusal to participate in reunification services, is grounds for termination of parental rights to the children.
- Failure to comply with the services offered by the Department, which the Court has found to be necessary, proper, and appropriate, could delay the return of the children to the family unit and could result in further proceedings resulting in the filing of a Motion to Terminate Parent-Child Relationship or the filing of a Petition for Appointment of a Title 8 Guardian.
- Failure to appear in court or to participate in reunification services may result in the termination of her parental rights or the establishment of a Title 8 guardianship.
- She shall stay in contact with her attorney.

The Court will provide mother with two copies each of Form 1, "NOTICE TO PARENT IN DEPENDENCY ACTION", and a Financial Affidavit. **IT IS ORDERED** that the mother sign and return completed copies of the Notice and Financial Affidavit to her attorney who shall file it with the Court.

**IT IS FURTHER ORDERED** notification to the Placements with whom the children have been placed be effectuated by the Department of Child Safety.

**OTHER:**

**THE RECORD MAY REFLECT** that State's Exhibit 1 was admitted into evidence.

**THE RECORD MAY FURTHER REFLECT** that as to Dependency Petition **filed September 27, 2022:**

MOTHER enters   X   a DENIAL        an ADMISSION        a NO CONTEST PLEA



**ORDERS:**

**IT IS ORDERED** that the appropriate Foster Care Review Board (FCRB) be notified of this action and invited to participate.

**IT IS FURTHER ORDERED** that all counsel be notified of all Child and Family Team (CFT) Meetings and Adult Recovery Team (ART) Meetings sufficiently in advance and be invited to participate on behalf of their clients.

**IT IS FURTHER ORDERED** that the Department of Child Safety shall notify all parties five (5) working days in advance of any placement changes, unless in an emergency situation.

**IT IS FURTHER ORDERED** Pursuant to Rule 104 the Department of Child Safety, Case Specialist, shall disclose Court Reports not later than fifteen (15) days in advance of any Review Hearings scheduled in this matter.

The Court addressed the conditions for return of the minor children as set forth in the Preliminary Protective Conference Agreement.

Ms. Troup encouraged the mother to present herself for hair follicle and UA testing in the immediate future. Ms. Troup informed the mother that she is not to have unsupervised contact with the minor child, B , and discussion was held thereof.

Mr. Brown encouraged the mother to engage in substance testing and the services provided by the Department.

Ms. Argenbright advised she has been unable to contact the father and presented an update thereof.

Ms. Sacramento presented the position of the mother.

The Court addressed the mother.

**FINDINGS AND ORDERS:**

**IT IS ORDERED** the minor children shall remain wards of the Court in the legal care, custody and control of the Arizona Department of Child Safety.

**IT IS FURTHER ORDERED** the physical care, custody and control of the minor children shall remain as set forth in their respective placement orders.

The Court **FINDS** the current placements for the minor children are the least restrictive, most appropriate and in the minor children's best interest.

**ADMONITIONS:**

The Court admonished the mother that:

- Failure to attend future proceedings may result in proceedings going forward in her absence.
- Failure to participate or engage in reunification services may result in the termination of the parent/child relationship, adoption, or the establishment of a Title 8 guardianship.

The Court **FINDS** that the mother was previously advised of the consequences of her failure to attend future hearings or participate in reunification services.



Proceedings concluded at 3:01 p.m.

Signed this 4<sup>th</sup> day of October, 2022

Honorable John F. Kelliher, Jr.  
Judge of the Superior Court

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Please do not visit the courthouse if you are experiencing a communicable illness. Contact your attorney or the Court to reschedule your court appearance or to request a telephonic appearance.

Mailed/distributed by: C. Edmiston on 10/5/2022

xc: Benna Troup, Assistant Attorney General (e)  
Samantha Miller, DCS (e)  
Julio Carbajal, DCS (e)  
Joan Sacramento, Esq. (e)  
Dawna Argenbright, Deputy Legal Advocate (e)  
William Brown, Deputy Public Defender (e)  
ADR Facilitator (e)  
Dependency Coordinator (e)  
IDC (e)  
FCRB (e)  
CASA (e)  
Div II JAA (e)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
COCHISE COUNTY JUVENILE COURT  
PRELIMINARY PROTECTIVE CONFERENCE AGREEMENT

Case Caption: Dupont Case Number: JD  
Hearing Date: October 3, 2022 Time: 10:00 a.m. Judge: HON. JOHN F. KELLIHER, JR.  
Start Time: 1014

**PARENT(S) PRESENT:**

X Mother: Lacey Dupont as to child(ren): B y & E  
Father #1: Michael Dupont as to child(ren): E & E  
Father #2: as to child(ren):  
Father #3: as to child(ren):  
Legal Guardian: as to child(ren):

**COUNSEL: (THE FOLLOWING ATTORNEYS WILL REPRESENT THE PARTIES THROUGH THE PRELIMINARY PROTECTIVE HEARING)**

Mother: X is is not entitled to court appointed counsel. Attorney: Joan Sacramento  
Father #1: X is is not entitled to court appointed counsel. Attorney: Dawna Argenbright  
Father #2: is is not entitled to court appointed counsel. Attorney:   
Father #3: is is not entitled to court appointed counsel. Attorney:   
Legal Guardian: is is not entitled to court appointed counsel. Attorney:   
Child(ren) is/are appointed: X Attorney GAL Name: William Brown

**OTHER PARTIES PRESENT:**

Asst. Attorney General:	<u>Benna Troup</u>	Intake Assessor:	
ADR Facilitator/ Scribe:	<u>William Tardibuono</u>	Intake Agency:	
		CASA	
DCS Investigator:	<u>Ryan Echman for Samantha Miller</u>	Coordinator:	
DCS Ongoing:	<u>Julio Carbajal</u>	CASA Volunteer:	
Placement:	<u>Placement for B in attendance</u>	Other:	
Placement:	<u>On the phone for E</u>	Other:	<u>Hebron Bost- Community Partners. For Child B</u>
Maternal Gr. Mother:	<u>Sharell Brown (T)</u>	Other:	<u>David Morgan- Observing.</u>
Maternal Gr. Father:		Other:	
Paternal Gr. Mother:		Other:	
Paternal Gr. Father:		Other:	
Parent Support (MIKID):		Other:	
Parent Support (MIKID):		Other:	

Has counsel met with their clients and advised them of their rights? M: Y F1: N F2:    F3:    LG:    LG:    C: Y

**LEGAL SERVICE:**

**PARTY REQUESTING THE HEARING BE:**

**OPEN:**

**CLOSED:**

Mother:	<u>X</u>	has	<u>  </u>	has not accepted legal service.	<u>  </u>	has not been located.	<u>X</u>	<u>  </u>
Father #1:	<u>  </u>	has	<u>  </u>	has not accepted legal service.	<u>X</u>	has not been located.	<u>  </u>	<u>  </u>
Father #2:	<u>  </u>	has	<u>  </u>	has not accepted legal service.	<u>  </u>	has not been located.	<u>  </u>	<u>  </u>
Father #3:	<u>  </u>	has	<u>  </u>	has not accepted legal service.	<u>  </u>	has not been located.	<u>  </u>	<u>  </u>
LG:	<u>  </u>	has	<u>  </u>	has not accepted legal service.	<u>  </u>	has not been located.	<u>  </u>	<u>  </u>

Has DCS informed the placement of the date and time of this conference/hearing, and their right to attend? X Yes    No

**PATERNITY/INDIAN CHILD WELFARE ACT INQUIRY (ICWA):**

Child: y

Paternity X has    has not been established as to father: Michael

by:    marriage X birth certificate    genetic testing    acknowledgement

This child    is    may be X is not subject to ICWA. Child's Tribe:   

Child 2: E

Paternity X has    has not been established as to father: Michael

by:    marriage X birth certificate    genetic testing    acknowledgement

This child    is    may be X is not subject to ICWA. Child's Tribe:   

Child 3:   

Paternity    has    has not been established as to father:   

by:    marriage    birth certificate    genetic testing    acknowledgement

This child    is    may be    is not subject to ICWA. Child's Tribe:   

Child 4:   

Paternity    has    has not been established as to father:   

by:    marriage    birth certificate    genetic testing    acknowledgement

This child    is    may be    is not subject to ICWA. Child's Tribe:   

Child 5:   

Paternity    has    has not been established as to father:   

by:    marriage    birth certificate    genetic testing    acknowledgement

This child    is    may be    is not subject to ICWA. Child's Tribe:



**PLACEMENT:**

If there is more than one minor child, are they placed together? \_\_\_\_ Yes ☒ No \_\_\_\_ Not applicable

Child: **B** \_\_\_\_ shall remain in current placement ☒ Yes \_\_\_\_ No

current placement is: **Kinship** \_\_\_\_\_

shall be returned to: \_\_\_\_\_

under the following conditions: \_\_\_\_\_

Child 2: **E** \_\_\_\_ shall remain in current placement ☒ Yes \_\_\_\_ No

current placement is: **Maternal Aunt and uncle** \_\_\_\_\_

shall be returned to: \_\_\_\_\_

under the following conditions: \_\_\_\_\_

Child 3: \_\_\_\_ shall remain in current placement \_\_\_\_ Yes \_\_\_\_ No

current placement is: \_\_\_\_\_

shall be returned to: \_\_\_\_\_

under the following conditions: \_\_\_\_\_

Child 4: \_\_\_\_ shall remain in current placement \_\_\_\_ Yes \_\_\_\_ No

current placement is: \_\_\_\_\_

shall be returned to: \_\_\_\_\_

under the following conditions: \_\_\_\_\_

Child 5: \_\_\_\_ shall remain in current placement \_\_\_\_ Yes \_\_\_\_ No

current placement is: \_\_\_\_\_

shall be returned to: \_\_\_\_\_

under the following conditions: \_\_\_\_\_

**TEMPORARY CUSTODY HEARING?**

Mother: \_\_\_\_ waives \_\_\_\_ does not waive temporary custody hearing \_\_\_\_ (other): \_\_\_\_\_

Father #1: \_\_\_\_ waives \_\_\_\_ does not waive temporary custody hearing \_\_\_\_ (other): \_\_\_\_\_

Father #2: \_\_\_\_ waives \_\_\_\_ does not waive temporary custody hearing \_\_\_\_ (other): \_\_\_\_\_

Father #3: \_\_\_\_ waives \_\_\_\_ does not waive temporary custody hearing \_\_\_\_ (other): \_\_\_\_\_



**PARENTING TIME:**

**Mother:** 2 times per week for 2 hours at: \_\_\_\_\_

       unsupervised X supervised by: Department designee

Additional conditions: With child B would be in person visits in office. Child E will have 1, 4 hr. visit as well as virtual visits.

Mother X may        may not be notified, X may        may not participate in: X medical/dental, X school appointments

**Father:** 2 times per week for 2 hours at: \_\_\_\_\_

       unsupervised X supervised by: Designee

Additional conditions: Needs to be assessed by the department prior to visits beginning.

Father        may        may not be notified,        may        may not participate in:        medical/dental,        school appointments

**Father 2:** \_\_\_\_\_ times per week for \_\_\_\_\_ hours at: \_\_\_\_\_

       unsupervised        supervised by: \_\_\_\_\_

Additional conditions: \_\_\_\_\_

Father        may        may not be notified,        may        may not participate in:        medical/dental,        school appointments

**Father 3:** \_\_\_\_\_ times per week for \_\_\_\_\_ hours at: \_\_\_\_\_

       unsupervised        supervised by: \_\_\_\_\_

Additional conditions: \_\_\_\_\_

Father        may        may not be notified,        may        may not participate in:        medical/dental,        school appointments

**Siblings/Other:** \_\_\_\_\_ times per week for \_\_\_\_\_ hours at: \_\_\_\_\_

       unsupervised        supervised by: \_\_\_\_\_

Additional conditions: Both placements will work together to have visits with siblings between and

Other        may        may not be notified,        may        may not participate in:        medical/dental,        school appointments

**INTAKE ASSESSMENT, PROPOSED CASE PLAN GOALS, CONDITIONS OF RETURN, RECOMMENDED SERVICES:**

The following remedial and rehabilitative programs and services have been identified and are offered as being reasonable and necessary to accomplish the stated goals.

Children under 3: \_\_\_\_\_ Over 3: B & E \_\_\_\_\_

Intake Assessment Summary recommendations: Completed on 9/26 for B and on 9/28 for E by CPIH \_\_\_\_\_

**Proposed** Initial Case Plan Goal: Reunification **Proposed** Backup Case Plan Goal: Severance and Adoption

**Key to notations:** M=Mother, F=Father, F2=Father #2, F3=Father #3, C=Children, O=Other

**Conditions for Return**

The department will review the conditions of return as to the parents.

**Additional Recommended Services:**

Objection by:

1.	M	C			Case Management				
2.	M	C			Coordination with other agencies				
3.	M				Drug and alcohol screening (including urinalysis/ Hair Follicle)				
4.	M				Drug and alcohol assessment or treatment				
5.					Psychological evaluations and recommendations				
6.	M				Psychiatric evaluations and recommendations				
7.	M				Parenting instruction and/or classes				
8.	M	C			Individual counseling and/or family counseling				
9.	M	C			Supervised visitation				
10.	M	C			Parent aide services				
11.	M	C			Transportation services				
12.					Other:				
13.					Other:				
14.					Other:				
15.		C			72 Hour Rapid Response (children only)				
16.		C			Mercy Care (Medical and Dental Program)				
17.					Day care services				
18.		C			Foster care and/or kinship care				
19.		C			Home studies				
20.					Paternity testing				
21.					AZEIP (Arizona Early Intervention Program) referral				
22.		C			Medical, dental and immunization records are current	Need updating:	C		
23.					Training for independent living skills (teens 16 years old or more)				
24.		C			CASA Council request				
25.					Other:				
26.					Other:				
27.					Other:				



Additional Information or Services (in addition to or modified from the prior page):

Mother: Objects to Adoption and would like Guardianship

Father #1: \_\_\_\_\_

Father #2: \_\_\_\_\_

Father #3: \_\_\_\_\_

Child(ren): \_\_\_\_\_

**PLEADINGS:**

Mother enters a/an:	_____ admission	<u>X</u> denial	_____ no contest plea to the petition.	_____ (other)
Father #1 enters a/an:	_____ admission	_____ denial	_____ no contest plea to the petition.	_____ (other)
Father #2 enters a/an:	_____ admission	_____ denial	_____ no contest plea to the petition.	_____ (other)
Father #3 enters a/an:	_____ admission	_____ denial	_____ no contest plea to the petition.	_____ (other)
Other enters a/an:	_____ admission	_____ denial	_____ no contest plea to the petition.	_____ (other)

**SCHEDULED HEARINGS AND MEETINGS:**

Speedy Trial Deadline: Friday December 30, 2022

Informal Settlement Conference: Mon 11/7 @ 3:30 as Mom Temporary Custody Hearing: \_\_\_\_\_

Initial Hearing: Mon 11/7 @ 3:30 as to Father Permanency Planning Hrg. (for child/ren < 3): \_\_\_\_\_

Review Hearing: Mon 1/9 @ 10 Permanency Planning Hrg. (for child/ren > 3): Mon 9/11/23 @ 2:30

Publication Hearing: Mon 1/9/23 @ 10 For Michael Other Hearing(s): \_\_\_\_\_

**Child and Family Team (CFT) Meeting:**

The first CFT meeting is scheduled on: Tuesday 10/4 @ \_\_\_\_\_ (date/time)  
at: \_\_\_\_\_

Virtual

**Case Plan Staffing Meeting:**

The Case Plan Staffing meeting is set on: \_\_\_\_\_ (date/time)  
at: \_\_\_\_\_

Time completed: 11:04

4/17/23

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

22-368

**COMPLAINT AGAINST A JUDGE**

Name: David M Morgan

Judge's Name: John Kelliher

**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.

Supplement to Case No. 22-368

In subsequent proceedings in a JD Parental Rights Severance case (S 0200 J Lacey DuPont), Judge Kelliher again made lengthy statements about his belief that the Respondent had been and was high during the proceedings on drugs and refused to accept a plea of No Contest.

Respondent's attorney was not present in the courtroom. The attorney appeared by telephone and told the court that she thought her client's no contest plea was going to be accepted (and so the attorney need not be present in person).

Over the Respondent's objection, trial commenced immediately.

In addition to Judge Kelliher's statements, DCS caseworker Julio Carbajal can be heard to testify (recording #2) that there was no evidence of current drug use and that the Respondent (Ms DuPont) had acknowledged mental health problems that she was willing to address with professional help.

This is at least the second time in this case that Judge Kelliher's assumptions and statements have resulted in negative consequences for the Respondent.

Recently I learned that a party in Oregon had surreptitiously recorded most of the recent proceedings and posted them online. I have listened to the first two recordings. The unauthorized recordings were the subject one week ago of a hearing regarding apparent violations of the admonition (ARS 8 525).

## Recording #1

Approx 1 hour 15 minutes, approx 9am until 10:20

<https://youtu.be/HlrORDQWjcg>

recording apparently made by Melanie xxxx? of Eugene, OR

## Recording #2

Approx 1 hour 15 minutes, approx 10:45am until Noon

<https://youtu.be/avRbzVZUZs>



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**COMPLAINT AGAINST A JUDGE**

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pg 2 of Supplement

=====

Recording #3

<https://www.youtube.com/watch?v=5rg9NKMHsl4&t=826s>

Recording #4

<https://youtu.be/HvZNg6VVNtU>

Recording #5 (edited version of #4 with less dead time)

<https://www.youtube.com/watch?v=jZrEKde8UoM>

**SUPERIOR COURT, STATE OF ARIZONA, In and for the County of Cochise**

<b>In the Matter of:</b>  E [REDACTED] D.O.B.: [REDACTED]  B [REDACTED] D.O.B.: [REDACTED]  PERSON(S) UNDER THE AGE OF EIGHTEEN	<b>March 23, 2023</b>  Case No. JD [REDACTED]  <b>ORDER SETTING/REQUESTING</b>	file stamp only  2023 MAR 23 PM 2: [REDACTED] JJA CLERK OF SUPERIOR COURT BY [REDACTED] DEPUTY
<b>HONORABLE JOHN F. KELLIHER DIVISION TWO</b>		<b>By: Clarissa Benjamin, (03/23/2023) Judicial Administrative Assistant</b>

The Court having been notified that a party/person who has appeared in the case has recorded three Dependency hearings and therefore having violated ARS8-525, and it appearing appropriate;

**IT IS THE ORDER OF THE COURT SETTING** a hearing on Violation of the Admonition (ARS8-525) for **MONDAY, APRIL 10, 2023, at 9:00 a.m.** in Division II of this Court located at 100 Colonia De Salud, Ste. 203, Sierra Vista, AZ 85635.

**THE COURT REQUESTS** that the Attorney General's Office or the DCS Case Specialist use their cell phone to call Attorney Janelle McEachern so she can appear by phone.

**mailed/distributed:**

xc: Benna Troup, AAG  
[PSSSierravista@azag.gov](mailto:PSSSierravista@azag.gov) The Attorney General's Office  
Julio Carhjal, DCS  
Dawnia Argenbright, Deputy Legal Advocate  
Janelle McEachern, Esq.  
William Brown, Deputy Public Defender  
ADR  
FCRB  
DIV II JAA

**John Kelliher**  
Judge  
Division II



**Superior Court  
Cochise County**

100 Colonia De Salud, Suite 203  
Sierra Vista, Arizona 85635  
(520) 803-3300  
Fax (520) 803-3308

**Resp (Kelliher, Jr.)  
22-368  
Apr 12 2023**

Members of the Judicial Commission  
1501 W. Washington Street, Suite 229  
Phoenix, AZ 85007

Re: Notice of Complaint and Opportunity to Respond (Case No.22-368)

Dear Commission Members:

I offer the following in response to the afore mentioned Complaint.

To give context to the Complaint and this Response, some context, I believe, will render a more complete review of my alleged derogatory and disrespectful manner during the Preliminary Protective Hearing (P.P.H.) conducted on October 3, 2022.

The P.P.H. was precipitated by the filing of a Dependency Petition by the Department of Child Safety (D.C.S.) on September 27, 2022. The substantive allegations against the mother, I Dupont, revolved around mother's long history of substance abuse and the "multiple reports of mother's drug use affecting her parenting." D.C.S. initially contacted mother on April 1, 2022, wherein mother allegedly agreed to schedule a time to meet and complete a drug screen. D.C.S. did not hear from mother again until late September 2022.

During the Team Decision Making meeting held on September 26, 2022, family members "reported that mother has been observed 'passed out' in a vehicle in front of a house." Additionally, and only recently it has come to my attention, that someone, despite the admonition stated at the



**John Kelliher**  
Judge  
Division II



**Superior Court  
Cochise County**

100 Colonia De Salud, Suite 203  
Sierra Vista, Arizona 85635  
(520) 803-3300  
Fax (520) 803-3308

beginning of every hearing, has surreptitiously recorded the audio of the three (3) hearings I have held in this matter since its inception. These audio recordings were then downloaded to the internet and provided on YouTube.

While I do not know for a fact who caused this to be, I have a strong suspicion that it was a "friend of the family" who attended the hearing by telephone from another state and without my knowledge that she was on the telephone line during at least the concluding portion of the Dependency Adjudication Trial in January 2023. I had previously "removed" this woman from the telephone because of her disruptive behavior and somehow, she returned, via telephone, when we resumed the trial after breaking for lunch. This behavior is in violation of A.R.S. § 525. All three (3) hearings were all closed upon motion of the children's attorney as well as the Assistant Attorney General, over the objection of Ms. Dupont's attorney. I have listened to the forty nine plus (49+) minute recording of the October 3, 2022, P.P.H.

I can and do readily admit that I was direct and firm with Ms. Dupont. I confronted her on whether she was high because she clearly appeared to be under the influence. I routinely inform parents, especially in P.P.H.'s that I am not there to punish them but to encourage, inspire, and motivate them to make better decisions resulting in better behaviors, increasing the likelihood of better outcomes. I stress that in order to make better decisions, they must first begin to be honest with themselves. I go on to stress that everything D.C.S. offers parents in the way of services is voluntary, that no one is required (forced) to do anything.



**John Kelliher**  
Judge  
Division II



**Superior Court  
Cochise County**

100 Colonia De Salud, Suite 203  
Sierra Vista, Arizona 85635  
(520) 803-3300  
Fax (520) 803-3308

I explain the outcomes to the various choices parents get to make in the dependency proceeding. Much like the required script in all P.P.H.'s, I repeat myself to emphasize the very important choices and outcomes. I do this more often with parents who come before me when they are suspected of or are clearly high.

Ms. Dupont was clearly under the influence on/during the October 3, 2022, P.P.H. knowing or having a strong suspicion a parent is under the influence while in Court does factor in how I address the parent and what I say to her, off script. Simply reciting the written script to parents not under the influence is confusing and less than informative; I know this to be true across the board. When a parent is suspected of being under the influence, it's incumbent to speak clearer, simpler, and more direct in order to maximize the chances of conveying the information necessary to allow the parent to understand her choices and the consequences, as the script reads, from those choices.

I did this for Ms. Dupont. I was direct, straight forward, and compassionate in addressing her. I believe this is borne out through the tone of my voice and my choice of words. I did confront Ms. Dupont about her substance use, and I confronted her about her being under the influence. I was compassionate while being direct. I do not believe I was derogatory, and I certainly do not believe I was disrespectful.

I spoke to Ms. Dupont from the heart. She expressed a desire to parent her children and I compassionately told her she needed to start the process of making better decisions resulting in better behaviors by first being honest with herself, which she was not. Everything I share with parents comes

**John Kelliher**  
Judge  
Division II



**Superior Court  
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from my training through the various programs by sponsored by the Courts. I am empathetic and I hold people accountable at the same time. That is not disrespect or derogatory.

I own my decisions. To be responsible for how my honesty is received by others should not be on me.

In closing, it is noteworthy that the actual complainant was not in the hearing and the information he puts forth in his complaint most probably came from Ms. Dupont who was not of clear mind during the P.P.H.

John F. Kelliher, Jr.

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**From:** Collins, Deidera

**Sent:** Monday, September 25, 2023 3:26 PM

**To:** Worth, Ariel

**Subject:** Motion for Reconsideration RE: Commission on Judicial Conduct Case No. 23-147 (Dupont)

Judicial Commission of Arizona  
c/o Ariel Worth, Esq.

Pursuant to Rule 23(b)(1), Commission on Judicial Conduct Rules, I respectfully Motion the Commission to reconsider its Order in Complaint 22-368 and 23-147.

The Commission, during its investigation, “contacted another individual who was present during the hearing. That individual did not recall any outward signs of possible impairment....”

I respectfully request that the Commission contact other individuals who had contact with Mrs. Dupont prior to the Preliminary Protective Hearing to ascertain whether they detected signs of impairment.

I have had sixty-six plus (66+) years of life and forty-one plus (41+) years of professional experience. I can recognize when someone I can personally see, and watch is under the influence. In addition, over the past four plus (4+) years I have been assigned to the Dependency Calendar, I can attest that it is my overwhelming experience that a significant percentage of all the dependencies that have come before me involve substance abuse and mental health issues.

Add to those facts that I read the Preliminary Protective Hearing (P.P.H.) reports as allowed by statute before every P.P.H. and they reveal the underlying reasons for the probable cause finding, I can reasonably calculate the probabilities that a parent or parents are abusing substances. This is critical to how I approach each P.P.H. because I know from training that babies cannot wait for their parents to begin making better decisions, especially to attain and sustain sobriety.

The P.P.H. is my first opportunity to impress upon parents that time is of the essence and that the first step they must absolutely embrace is being honest with themselves. From that foundation better decisions, better behaviors and better outcomes naturally follow.

My dependency training has also led me to adopt a trauma-informed court process. While expressing empathy I have been instructed time and again that holding parents accountable is an integral part of the trauma-informed process.

Confronting parents at the outset with their under-the-influence appearance is essential to successful family reunification goal. Not confronting the obvious at the earliest opportunity increases the probability that families will not reunite and is not fair to those families or consistent with my Arizona Office of the Courts training.

I want parents to parent their children.

In conclusion, I wish the Commission to reconsider its decision of a public censure and



consider re-opening its investigation to include additional fact witnesses who will support my belief that the parent was under the influence during the P.P.H., and with that factor in the above-stated reasons for my direct holding the instant parent accountable.

A public censure is not necessary.

Thank you for your consideration,

Honorable John F. Kelliher, Jr.

Deidera Collins  
Judicial Administrative Assistant  
DIV II, Judge Kelliher  
100 Colonia De Salud  
Sierra Vista, AZ 85635

520-803-3300

Arizona Commission on Judicial Conduct  
1501 West Washington Street, Suite 229  
Phoenix, Arizona 85007  
Telephone: (602) 452-3200

**STATE OF ARIZONA**  
**COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning

**Judge John F. Kelliher, Jr.**  
Cochise County Superior Court  
State of Arizona,

Respondent.

) Case Nos.: 22-368 and 23-147  
)  
)  
)  
)  
)  
)  
)

**ORDER DIRECTING THE FILING  
OF A RESPONSE**

Respondent Judge John F. Kelliher, Jr., filed a Motion for Reconsideration of the public reprimand issued on August 30, 2023.

IT IS ORDERED that Disciplinary Counsel for the Commission shall prepare and file a response to Respondent's motion by October 10, 2023. Disciplinary Counsel shall provide a copy of the Response to Respondent on or before October 10, 2023. Absent a request from the Commission, Respondent may not submit a written reply brief or any additional materials.

Dated this 26th day of September, 2023.

FOR THE COMMISSION

/s/ Christopher P. Staring  
Hon. Christopher P. Staring  
Commission Chair

A copy of this order was delivered on September 26, 2023, via electronic mail, to:

Hon. John F. Kelliher, Jr.  
Cochise County Superior Court

Respondent

Ariel I. Worth, Esq.  
Arizona Commission on Judicial Conduct

Disciplinary Counsel

By: /s/ Kim Welch  
Kim Welch, Commission Clerk



Ariel I. Worth (Bar # 018702)  
Disciplinary Counsel  
Arizona Commission on Judicial Conduct  
1501 West Washington Street, Suite 229  
Phoenix, AZ 85007  
Telephone: (602) 452-3200  
Email:

**STATE OF ARIZONA  
COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning	)	
	)	Case Nos. 22-368 & 23-147
<b>Judge John F. Kelliher, Jr.</b>	)	
	)	<b>RESPONSE TO JUDGE'S</b>
Cochise County Superior Court	)	<b>MOTION FOR</b>
State of Arizona,	)	<b>RECONSIDERATION</b>
	)	
Respondent.	)	

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On August 30, 2023, the Commission on Judicial Conduct (Commission) publicly reprimanded Judge John F. Kelliher, Jr., (Respondent) for violations of the Arizona Code of Judicial Conduct (Code). Respondent timely requested reconsideration of this order on September 25, 2023. Undersigned submits this response pursuant to Commission Rule 23(b), respectfully requesting that the Commission deny the motion.

**Factors Supporting a Sanction**

The Scope section of the Code sets forth several factors for the Commission to consider in determining whether a sanction is appropriate in a particular case. These factors are the seriousness of the transgression, the facts and circumstances existing at the time of the transgression, the extent of any pattern of improper activity or

previous violations, and the effect of the improper activity upon the judicial system or others. On balance, these factors support the issuance of the reprimand. The reprimand addresses Respondent's statements toward a litigant during a hearing conducted on October 3, 2022. The statements were demeaning and unnecessary. The public must have confidence in the independence, integrity, and impartiality of the judiciary. Respondent's interaction with the litigant lacked patience, courtesy, and dignity. Respondent's conduct impacted the litigant's right to be heard and further gave an appearance that the proceeding was not conducted fairly. Thus, the transgression is serious.

The imposition of the public reprimand comports with the principles of Commission Rule 5 (Purpose of Judicial Discipline). That rule states:

The purpose of the judicial discipline and incapacity system is to protect the public and to maintain high standards for the judiciary and the administration of justice. Any disciplinary remedy or sanction imposed shall be sufficient to restore and maintain the dignity and honor of the position and to protect the public by assuring that the judge will refrain from similar acts of misconduct in the future.

Here, the nature of the misconduct was primarily public, in the courtroom.<sup>1</sup> The harm caused, in part, was to the public's perception of the judiciary and trust in the institution. Issuing public discipline in response to underlying public misconduct helps restore dignity and honor to the judiciary. Further, the public nature of the reprimand allows other members of the judiciary to learn from the misconduct that

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<sup>1</sup> The October 3, 2022, hearing was closed after approximately eleven minutes. The dialogue between Respondent and the litigant regarding suspected drug use occurred before the hearing was closed.

warranted the reprimand. This opportunity, which helps protect the public generally, is lost if the Commission adopts a non-public resolution of this matter. The purpose of judicial discipline is to restore and maintain the dignity and honor of the position and to protect the public. The public reprimand is the best way to achieve those ends.

Respondent has additionally requested the Commission undertake additional investigation regarding the events of October 3, 2022. Respondent suggests additional witness accounts will provide important context for his conduct. Commission Rule 23(b)(1) regarding motions for reconsideration provides that “[a]bsent extraordinary circumstances, the commission will only consider factual information and evidence provided to it before the date of the disposition order.” Respondent has not stated extraordinary circumstances warranting further investigation, but rather has simply suggested that additional fact witnesses will support his belief that the litigant was “under the influence” at that time of the October 3, 2022, hearing, and that his conduct toward her was appropriate. Notably, Respondent has never offered his own observations as to the specific conduct of the litigant indicating impairment (*e.g.*, slurred speech, fidgeting, poor hygiene, etc.) despite the opportunity to do so. Respondent has only repeatedly announced his conclusion that impairment was obvious to him and therefore his comments in court were appropriate. Overall, there is no basis for additional investigation.

### **Aggravating and Mitigating Factors**

Rule 19 of the Commission Rules sets forth ten aggravating and mitigating factors for the Commission to also consider.



Nature, Extent and Frequency of the Misconduct: Respondent's conduct in this case occurred during a single hearing. However, Respondent has been repeatedly reminded of the importance of complying with Rule 2.8(B), which states, "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control."

Respondent's history with the Commission demonstrates repeated instances of similarly concerning conduct:

- 
- Public reprimand in Case No. 22-430 for violations of Rules 1.2 and 2.8(B) for disrespectful treatment of a father who was present without his attorney at a juvenile proceeding.
- Public reprimand in Case No. 22-157 for violation of Rules 12 and 2.8(B) for using a dismissive hand gesture while an attorney, who was appearing telephonically, made an argument.

This history is an aggravating factor.

Judge's Experience and Length of Service on the Bench: Respondent has served as a judicial officer for approximately thirteen years and should be reasonably well-versed regarding the Code. Undersigned deems this a slightly aggravating factor.

Whether the Conduct Occurred in the Judge's Official Capacity or Private Life: The conduct occurred in Respondent's official capacity while in the courtroom and carrying the full authority of his office. Undersigned deems this an aggravating factor.

Nature and Extent to Which the Acts of Misconduct Injured Other Persons or Respect for the Judiciary: The conduct affected the litigant's right to due process as it chilled her ability and willingness to speak up on her own behalf. The public nature of the conduct negatively impacted the public perception and respect for the judiciary. This is an aggravating factor.

Whether and to What Extent the Judge Exploited his or her Position for Improper Purposes: Undersigned finds this factor inapplicable.

Whether the Judge has Recognized and Acknowledged the Wrongful Nature of the Conduct and Manifested an Effort to Change or Reform the Conduct: Respondent does not appear to appreciate the wrongful nature of his conduct. When responding to the Commission, Respondent has stated he was "direct, straightforward, and compassionate in addressing" the litigant. Respondent further stated that he was "empathetic" and addressed the litigant "from the heart." These responses indicate

that Respondent is unaware of how his statements are perceived by others, and that he is unwilling or unable to make an accurate self-assessment of his conduct even when it is brought into question. On the balance, undersigned finds this to be an aggravating factor.

Whether There has Been Prior Disciplinary Action Concerning the Judge, and if so, its Remoteness and Relevance to the Present Proceeding: As discussed previously, Respondent has two prior public reprimands in Case Nos. 22-157 and 22-430. These cases also involved a lack of courtesy and dignity while conducting court business.

Undersigned notes that the reprimands in Case Nos. 22-157 and 22 430 were issued on March 17, 2023, for misconduct committed during 2022. Although the August 30, 2023, reprimand order was issued subsequently to those earlier orders, Respondent did not engage in new or additional misconduct. Thus, Case Nos. 22-157 and 22-430 are not prior discipline in terms of the timing of the misconduct sanctioned. The prior reprimands, however, demonstrate a pattern or practice of violations of Rule 2.8(B).

Overall, undersigned finds Respondent's prior discipline to be a neutral factor.

Whether the Judge Complied with Prior Discipline or Requested and Complied with a Formal Ethics Advisory Opinion: Undersigned does not deem this factor as applicable as Respondent did not have prior discipline at the time of the misconduct and has not acted in reliance upon a formal ethics advisory opinion.



Whether the Judge Cooperated Fully and Honestly with the Commission in the Proceeding: Undersigned believes Respondent has cooperated fully and honestly. This is a mitigating factor.

Whether the Judge was Suffering from Personal or Emotional Problems, or from Physical or Mental Disability or Impairment at the Time of the Misconduct: This was not raised as a defense by Respondent, and undersigned does not deem this factor applicable to this case.

While the aggravating factors outweigh the mitigating factors numerically, the Commission is free to assign whatever weight it chooses to the factors. Given the nature of the conduct, Respondent's experience, and the injury to the public perception of the judiciary, undersigned argues that the overall balance is in favor of upholding the sanction.

### CONCLUSION

Based on the foregoing, undersigned recommends that the Commission deny Respondent's Motion for Reconsideration and affirm the imposition of the public reprimand issued on August 30, 2023. Undersigned further requests a protective order regarding the discussion of confidential matters regarding Respondent's prior history (non-public discipline) with the Commission as set forth on page four of this pleading.

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COMMISSION ON JUDICIAL CONDUCT

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Ariel I. Worth  
Disciplinary Counsel

A copy of this document was electronically served this 4th day of October, 2023 to:

Hon. John F. Kelliher, Jr.  
Cochise County Superior Court

Respondent

Ariel I. Worth, Esq.  
Arizona Commission on Judicial Conduct

Disciplinary Counsel

By: /s/ Dora Ruelas Rivera  
Dora Ruelas Rivera, Administrative Assistant II

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaints 22-368 and 23-147

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Judge: John F. Kelliher, Jr.

Complainants: David M. Morgan  
Lacey Dupont

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**ORDER DENYING RESPONDENT JUDGE'S  
MOTION FOR RECONSIDERATION AND ORDER ISSUING AMENDED  
REPRIMAND ORDER**

The respondent judicial officer filed a Motion for Reconsideration of the Commission's reprimand decision as set forth in its previous order. Pursuant to Commission Policy 23, disciplinary counsel was requested to file a response to the motion, and did so.

On December 8, 2023, the Commission denied the Motion for Reconsideration. The Commission amended its previously issued reprimand Order to correct a non-substantive drafting error. As provided in Commission Policy 23, the respondent judicial officer's Motion for Reconsideration, disciplinary counsel's response, and this Order denying the Motion for Reconsideration shall be made a part of the record that is posted to the Commission's website with the other public documents (the Complaint, the judicial officer's response, the reprimand Order dated August 30, 2023, and the reprimand Amended Order dated December 28, 2023).

Commission members Denise K. Aguilar, Roger D. Barton, Louis Frank Dominguez, and Regina L. Nassen did not participate in the consideration of this matter.

Dated: December 28, 2023

FOR THE COMMISSION

/s/ Christopher P. Staring  
Hon. Christopher P. Staring  
Commission Chair

Copies of this order were distributed to all appropriate persons on December 28, 2023.