

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-392

Judge:

Complainant:

ORDER

November 21, 2022

A superior court commissioner self-reported a failure to recuse in a family case.

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 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 Barbara Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on November 21, 2022.

From:
Sent:
To:
Subject: Self-Reported Violation of the Rule Against Ex Parte Contacts

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I'm sorry to say that I have another incident to report, which happened today.

I currently serve as a commissioner judge pro tem on the _____ County _____ Court, and have served in that capacity since _____. I am currently assigned to a _____.

My duties include some very different types of cases, two of which are implicated here:

This past summer I administered a child support enforcement petition filed by Mother against Father. After a hearing, I found Father to be in violation of court orders and held him in contempt. I also ordered a review hearing. The first (and most recent) review hearing was on _____. At that time I found Father in contempt again for failing to produce documents showing his income information as previously ordered, but took no further action other than to set another review hearing on _____.

With that background, today I received a petition for an order of protection filed by Mother against Father. My staff flagged the child support case as a related case and that a child support enforcement review hearing is set in that case in _____.

Notwithstanding the continued proceedings in the enforcement case, I did not recuse off of the new case. I did think about it, but in my haste I decided that these are two different cases. So I plowed ahead on the order of protection. I read the petition, and thought about the allegations, then I took the bench and asked Mother whether she was OK with me hearing her petition. She said yes. I then took testimony and, after considering the petition and her testimony, I decided to deny her petition for an order of protection.

The doubts set in after I finished the hearing. I feel that I should have recused myself on the OOP. In an effort to ameliorate any harm, I subsequently recused myself from the child support enforcement matter. That case has now been assigned to another commissioner.

In mitigation, I have never had a case with this particular posture, and have had plenty with a slightly different posture, e.g., where I have a pending _____ but was assigned a hearing on an order of protection (a "HOP") where both sides are present and where I can ask them if they both are OK with me hearing the HOP. As noted above, I initially thought that it was OK to proceed since these were two different cases. I also felt the need to hear the OOP petition fairly quickly, as

required by the rules governing those petitions. I also sought to ameliorate any harm by recusing myself off of the enforcement matter. To my knowledge and belief, I haven't had any problems of this nature until the recent Rule 60 cases, and now this.

To be sure, these may be mitigators, but they're not excuses. I take full responsibility for my acts and omissions. In hindsight I feel that I did the wrong thing by not immediately recusing off of the order of protection petition.

I stand ready to accept the Commission's discipline and to cooperate with you in every way.