

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-430

Judge: John F. Kelliher, Jr.

Complainant: Rebecca Prudhomme

ORDER

Complainant alleged improper demeanor by a superior court judge hearing a juvenile case.

The Commission found that during a settlement conference in a juvenile matter, the judge engaged in insulting, demeaning, and unnecessary dialogue with the father. The father's attorney was not able to attend the settlement conference, and the father remained silent until addressed by the judge. The mother's attorney requested a trial date at the start of the settlement conference and no settlement discussions were conducted. After setting a trial date, the judge spoke to the parties for approximately fifteen additional minutes. During this time, the judge addressed the father and told him his body language was disrespectful, including the statement "Sit up straight. You're not at home watching TV on the couch." When the father replied, "I meant no disrespect, sir," the judge said "Yeah, well, you've communicated it pretty clearly." The father eventually asked permission to leave the courtroom and stated he felt "incredibly disrespected."

The Commission found there was no discernable reason for the judge to address the father, without his attorney present, after setting a trial date in the case. The judge engaged in unnecessary and demeaning commentary about non-verbal communication, brain development, and the attachment process for infants stating, for example, "who do you think your baby is going to attach to, given that babies can't wait? Not either of you." The Commission found the judge's commentary and treatment of the parties, particularly the father, to be disrespectful in violation of Rule 2.8(B) and also violated Rule 1.2 by eroding "public confidence in the independence, integrity, and impartiality of the judiciary."

Accordingly, Cochise County Superior 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, and this order shall be made public as required by Commission Rule 9(a).

Commission members Roger D. Barton and Joseph C. Kreamer did not participate in the consideration of this matter.

Dated: March 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 March 30, 2023.

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

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2022 - 430

COMPLAINT AGAINST A JUDGE

Name: Rebecca Prudhomme

Judge's Name: John F. Kelliher, Jr.

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 the placement for _____ a child currently in the custody of DCS. An Informal Settlement Conference was conducted in front of Judge Kelliher at 9:00 a.m. on _____. J _____ Hi _____ is the father and C: _____ K _____ is the mother of J _____ 's attorney did not appear for the hearing and Judge Kelliher advised J _____ of the emergency that kept her from attending. There were a number of concerning statements and conversations that took place during the hearing and the Commission is asked and encouraged to listen to the entirety of the recording to gather the full scope of the concerns. However, the following specific statements caused me great concern and appear to violate several judicial canons:

Rule 1.3 appeared to be violated when the Judge made comments to the effect of him being more important than Ms. C _____ with regard to vacation time and scheduling an Adjudication. There were verbal comments made as well as the Judge holding up two hands with one hand as the Judge and the other as the AAG and showing that he, as the Judge, was more important and had priority with regard to scheduled vacation and time off interfering with speedy trial deadlines. They ultimately settled on a date past the speedy trial deadline for "good cause." However, Judge Kelliher made it abundantly clear that his position as a judge would allow him greater deferential treatment than that of the AAG.

Rule 2.3 was violated when Judge Kelliher made several comments regarding the age of C: _____ K _____ that intimated she was incapable of making good decisions due to her age. He stated that good decisions are expected of her; however, she wouldn't be able to make good decisions for seven more years due to her age. There were some comments regarding J _____ 's age as well that can also be heard on the recording. Judge Kelliher violated this rule by appearing to show bias and prejudice towards the parents due to their young ages. He asked C: _____ if she knew what the word "admonition" meant and when she said "no", Judge Kelliher stated, "I didn't think you did." This unnecessary comment appears to be harassment based upon her age or education.

Rule 2.2 was violated on a couple of different occasions with the most prominent being that after the Judge advised J _____ H _____ to remain silent as his attorney wasn't present, J _____ did remain silent and sat quietly in his chair while Judge Kelliher directed the majority of his comments towards C _____. About 20 minutes into self-agrandizing speeches, Judge Kelliher asked J _____ if he knew that 93% of communication is non-verbal. J _____ responded that he did and then Judge Kelliher began to comment on how J _____ was sitting in his chair. J _____ then sat up ram-rod straight and politely apologized to Judge Kelliher stating he meant no disrespect. (When that was stated, I immediately looked over to see how J _____ was sitting and while he was not sitting ram-rod straight, he was not sitting half-way down in the chair or in any way that should have been singled out in that manner.) Upon hearing J _____ 's apology, Judge Kelliher stated, "Well I've already made up my mind" referencing J _____ 's attitude along with a few other unnecessary comments that appeared to be intended to provoke J _____ into responding. J _____ did not respond and continued to remain quiet. Judge Kelliher then continued to speak to C _____ about childhood brain development and eventually made a comment regarding bonding and asked who _____ was bonding to now that he was out of her care. C: _____ was crying during the entirety of Judge Kelliher's continued dialogue and J _____ finally asked if he could say something.

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COMPLAINT AGAINST A JUDGE

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Judge's Name: John F. Kelliher, Jr.

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Jr questioned what Judge Kelliher's intention was in continuing to say these things when the purpose of the hearing was to set future hearings and "reunite." Judge Kelliher began mocking Jr's incorrect use of the word and at that point, Jr asked to be allowed to leave the courtroom. He was understandably agitated as Judge Kelliher's demeanor and behavior throughout the entirety of the hearing was unnecessary and continually demeaning to them as parents. Judge Kelliher's conduct, both verbal and non-verbal, did not promote the image of impartiality and fairness in the parties or observers.

Rule 1.2 was violated for all of the same above reasons and additionally violated public confidence in the independence, integrity, and impartiality of the judiciary and certainly did not avoid impropriety or the appearance of impropriety. His verbal and non-verbal conduct reflected adversely on his impartiality and temperament and did not create an environment where the parties felt justice and fairness could be had. Upon Jr exiting the courtroom, Judge Kelliher made comments to the effect that if Jr did not change his attitude that he would not be getting his son back. Again, this does not reflect impartiality and the seeming way Judge Kelliher appeared to goad Jr into speaking, despite his attorney not being present, was improper. A review of the entirety of the hearing would be beneficial for the committee to hear the full scope of the improper comments and statements being made. If a video recording of the courtroom is available, that would also be beneficial to review so the Committee can see what was actually taking place. Judge Kelliher's behaviors were irrelevant and both his verbal and non-verbal actions conveyed to the parties, observers, DCS workers, and attorneys an appearance of bias or prejudice.

Rule 1.1 was violated when he did not uphold the Judicial Canons.

Rule 2.8 requires a judge to be patient, dignified, and courteous to litigants, etc... Judge Kelliher behaviors were not patient or dignified and left all in the courtroom shaking their heads at the seemingly blatant hostility.

The totality of this hearing was very much in keeping with how Judge Kelliher manages his courtroom and it is high time the Committee puts a stop to it. I have been an employee of good standing within the judicial system in Cochise County for many years and it is widely known that parties in Judge Kelliher's courtroom are not given consistent and proper respect. I have never had any bad interactions with Judge Kelliher but today's hearing crossed the line of judicial integrity that I personally observed and I felt that it was necessary to ask the Judicial Committee to once again review his conduct. Jr and C. K are both now afraid to be present in an honest and meaningful manner in Judge Kelliher's courtroom for fear of being bullied or provoked. I too, am fearful that he will take punitive actions against myself as the placement for due to my reporting his behaviors today. To the extent that it is possible out of fear of retaliation, I would ask the Committee to redact my name and information. Thank you for taking the time to read this and I hope that this time, something will finally be done about the wanton and unprofessional manner in which Judge Kelliher runs his courtroom. I did leave the courtroom shortly after Jr H did and there may have been more unprofessional comments made following our departure.

John Kelliher
Judge
Division II



**Superior Court
Cochise County**

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

JAN 20 2023

2022-430

Members of the Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007

Re: Notice of Complaint and Opportunity to Respond (Case No. 22-430)

Dear Members,

I very much appreciate the opportunity to respond to the complaint made by Ms.

Prudhomme concerning my conduct in case _____, a Dependency matter.

I have listened to the thirty-six plus minute audio recording of the Informal Settlement Conference held on _____. I have not been able to review the paper file because the case is no longer assigned to me, and the file is in Bisbee where the newly assigned Judge is located. I recused myself when I received _____ Motion for Change of Judge for Cause.

This Dependency case did not start in my Court as I was on vacation when it was first heard. Thus, I did not have the opportunity to give my usual explanation of the process in laymen's terms or to explain the number of legal terms and phrases in the mandated script for all Preliminary Protective Hearings in Arizona. I offer this information as-background to help explain why I said some of the things I said in the Informal Settlement conference. I will address the Complaints in the order made.

Rule 1.3

John Kelliher
Judge
Division II



**Superior Court
Cochise County**

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I was engaging in verbal banter with the Assistant Attorney General when scheduling the Dependency Adjudication hearing requested by mother's attorney. All counsel present were finding it difficult to agree on a date and time within the Speedy Trial deadline, and we spent some time before finally agreeing on a date. I have a very good working relationship with all the attorneys in the Cochise County Dependency Court. We are a small, tight-knit group.

The real issue was/is not who is superior, the real issue is scheduling the matter for a timely adjudication so that the case proceeds in a timely manner; so that this family can have a timely opportunity to reunify. "Babies can't wait." Perhaps Ms. Prudhomme's seemingly blind hatred of me and her search to find fault with everything I do prevents her from seeing this?

Rule 103, (b) ARJCP, provides:

"Juvenile court proceedings **must** be conducted as informally as the requirements of due process and fairness allow."

You will note from listening to the recording that the Assistant Attorney General was neither offended nor defensive in her response. In fact, I could hear her laughing in the recording. I did not state I was more important than anyone nor did I make clear that my position as a judge allows me greater differential treatment than anyone. In fact, my court schedule (and thus me) deferred to respective counsel's schedules in ultimately setting the Adjudication Trial.

Rule 2.3



**Superior Court
Cochise County**

I spoke to the mother about the fact that babies cannot wait for their parents to make better decisions, resulting in better behaviors, which increases the likelihood of better outcomes, resulting in a better life and thus a better world. I delved into the brain development of children aged 0-3 years and explained the importance of being in the child's life at this most critical time.

I did ask mother her age and pointed out that her brain would still continue to grow and connect until about age twenty-five (25) or twenty-six (26). I did make a comment to her that she is not supposed to make good decisions because the decision-making portion of her brain is the last to connect and form. I offered this to her to lessen any distress she might feel about her ability to make decisions. The audio recording sets forth these comments clearly.

I recited the Admonition as required by state law and rule and asked mother if she knew what "Admonition" meant, as I do in every case in the early stages. It has been my experience almost without exception that most "laymen" do not know the word nor its meaning. In order for the Admonition to be effective, people need to know its meaning. Ms. Prudhomme's assertion that I harassed mother, "based upon her age or education," is wholly unfounded.

Rule 2.2

I asked father to sit up straight in his chair because for the majority of the time in Court he was slouching and sitting sideways. His general attitude was indifferent and petulant, which I did not comment on. I asked him if he knew that ninety-three percent (93%) of all



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Cochise County**

communication is non-verbal. He said he did, and I then asked him what he thought his non-verbal communication was communicating to the courtroom attendants. I had already drawn my own inference. I cautioned us all to be cognizant of our non-verbal communications, especially when with children. I was respectful, polite, and firm. The recording I listened to does not support the contention I was trying to provoke father or anyone else.

I did speak to mother about "attachment" (not "bonding," a different psychological term) in the context of trying to support my statement that "babies can't wait." This was intended to motivate and inspire mother to engage in services quickly and completely. Babies begin the attachment process between the ages of four (4) months and six (6) months. Positive attachments are critical to children's growth and development. We want children to attach to at least one (1) parent and that can only happen if there is substantial and significant time spent together.

Father did state something about "reunite," and I thought I did not hear him correctly, so I repeated the word with a question in my voice, meaning "is that what you said?" not mocking anything or anyone. I do not mock. Father's being "understandably agitated" was not understood by me. It was not reasonable. He came to Court with an attitude and he maintained that attitude until he left.

Rule 1.2

I did comment that if father did not change his attitude, he would not get his child back. The attitude he displayed is not one that demonstrates a desire to make better decisions. As Ms.

John Kelliher
Judge
Division II



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As Ms. Prudhomme suggests, a review of the entirety of the hearing would be beneficial for the committee to hear the full scope of the hearing.

I do not have biases or prejudices in the courtroom. When I do have a bias I recuse myself. I actively fight against having or displaying prejudices, and I have never had to recuse myself because of prejudices because I have not encountered any, to date. Ms. Prudhomme takes a broad paint brush, if you will, and smears my good name and solid reputation.

Rule 2.8

I believe the audio recording supports my contention that I was patient, kind, understanding and attempting to motivate both parents to make better decisions. I can with confidence state I have experienced Ms. Prudhomme in my courtroom on two (2) occasions in my twelve (12) years on the bench. She cannot credibly maintain the assertion of her last paragraph of the complaint.

I respectfully suggest the complainant's perception of what transpired at mother's Informal Settlement Conference is not the reality of everyone else's experience or reflected, as she asserts, by the audio recording. Ms. Prudhomme was the Judicial Administrative Assistant to Judge Donna Beumler when she was our previous Pro Tem and filed my second Judicial Complaint ever against me. That, too, was a vile and nasty attack

Respectfully and sincerely, /

John-F. Kelliher Jr

A handwritten signature in blue ink, appearing to be "John-F. Kelliher Jr", is written over the typed name.