

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-251

Judge:

Complainant:

ORDER

October 13, 2023

The Complainant alleged improper delay by a superior court judge hearing 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 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 members Barbara Brown and Colleen E. Concannon did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on October 13, 2023.

Office of

CONFIDENTIAL

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

Dear Members of the Commission:

I am submitting this complaint as the appointed parenting coordinator (PC), *see Exhibit A*. I made the decision to submit this complaint as a result of Judge _____ apparent repeated refusal to follow the clear and express requirements of Rule 74, Arizona Rules of Family Law Procedure (*ARFLP*).

BACKGROUND

This case, the second case in which I've submitted a PC Report to Judge _____ (reference and discussion of the first case is set out below to illustrate her knowledge of Rule 74, *ARFLP*), involves a _____-year-old who had _____ () hospital commitments within a _____ period of time in _____ as result of attacking his mother with a knife on one occasion and suicidal ideation in the second; his first admission was to _____ ; the second admission was to _____ (). When he was released, he was released to the care of his Father and was to be involved in intensive intervention therapy with _____ .

In early _____ , as a result of interaction with the parents, I became very concerned about the child's welfare based on the information being communicated to me by the parents. I then contacted and conferred with the Director of _____ in my capacity as the PC to obtain additional information. Based on my investigation and the information I gathered, I prepared a PC Report expressing my concerns, with recommendations I considered to be in the child's best interest and submitted it to Judge _____ on _____ . *See Exhibit B*.

I followed up with an email to the Judge's division on _____ asking what action the Court had taken on my Report. *Exhibit C*. The division replied, " _____ ." *Exhibit D*. I responded that I wanted to give a copy of my Report to the mental health professional treating the child and told the mental health professional that " _____ I assumed that adding that information might persuade the Court to take some action. *See Exhibit E*. When still no action had been taken on my Report by _____ , I followed up with another email on _____ , asking:

Exhibit F.

No response has ever been received to that email at the time I sent this complaint.

What has additionally prompted me to take the serious step of filing a complaint in this case, in addition to the child's well-being, is the fact I previously filed a PC Report with Judge division quite some time ago and experienced the same lack of responsiveness and inaction with respect to the Report that was filed in that case.

In that matter, I sent an email to the Judge's division (the same JA) to inquire about the Report I filed. My email stated:

See Exhibit G.

The JA then advised me:

See Exhibit H

I then asked if all Reports are filed "Confidential" and advised her that I did not receive a minute entry regarding what action was taken and also inquired as to whether the parties were notified?

See Exhibit I.

The JA then advised me:

See Exhibit J.

I then almost immediately sent the following email to the JA:

See Exhibit K.

The JA responded, in part, “

See Exhibit L.

In this case, I believe I took reasonable steps to advise the Court of the submission of my Report. In addition, the Report itself together with my subsequent emails underscored the urgency of having Court action taken with respect to the recommendations in the Report.

I also believe that at the very least an inference can be drawn from the Judge’s , minute entry, *see Exhibit M*, that the Judge, as of the date of the hearing, still had not reviewed or taken action on my PC Report (see discussion on page 2 of the minute entry addressing the “Therapeutic Interventionist” whom I had recommended not be re-appointed in my report – a recommendation within the “scope” of my authority as a PC made almost months prior).

CANONS OF JUDICIAL ETHICS AND RULE 91(E)

The Judicial Ethics Advisory Committee has provided guidance pertinent to addressing issues of judicial responsibility when examining questions of compliance with the Canons of Judicial Ethics:

. . . [I]t is helpful at the outset to identify the various laws, rules and canons that relate to the responsibilities of a judge to conduct the business of a court in a prompt and timely manner. The state constitution states, “Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period.” Article VI § 21 Ariz. Const. This provision is reinforced by A.R.S. §§ 11-424.02(A) and 12-128.01 (“the related statutes”) and Rule 91(e). Although we will not interpret what constitutes a “submitted matter” under Rule 91(e), we note that the rule has its origins in the 1912 constitution and that as late as 1995, the Arizona legislature had qualified the term “submission” as “[w]here briefs are filed, the action shall not be deemed

submitted until the time for filing the briefs has expired.” Ariz. R. Civ. Proc. 39(1) (abrogated Oct. 10, 2000). Lastly, Canon 3B(8) of the Code of Judicial Conduct (“the Code”), requires that “A judge shall dispose of all judicial matters promptly, efficiently and fairly.”

Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 06-02, p.2.

The *Opinion* went on to state, at page 4:

Conversely, compliance with Rule 91(e) does not serve as a safe harbor by precluding a finding of an ethical violation. Rather, in order to determine whether a judge has violated Canon 3B(8), the chief inquiry is whether the delay was reasonable under the particular circumstances, which requires a case-by-case review of the facts and circumstances involved in each alleged violation.

In contrast to the Canon, Rule 91(e) and the related statutes are founded upon administrative concerns, and there is no necessary connection between the ethical duties of judges and the administrative regulations that apply to them. This is not to say that a violation of Rule 91(e) or the related statutes may not also constitute ethical misconduct, because the code generally requires a judge to apply the law.

Emphasis added.

I am presenting to the Committee conduct engaged in by the trial judge in this case which in my opinion calls into questions compliance with both administrative requirements, Rule 91(e), and compliance with the Canons of Ethics, Canon 3B.

Rule 74, Rules of Family Court Procedure, j.(1) states:

(1) Binding Nature of the Decision. The parenting coordinator's decision is binding if the parenting coordinator acted within the coordinator's authority under this rule and the appointment order.

As noted above in my email to Judge _____ division in _____, Rule 74 requires very specific action by a trial judge to whom a PC Report has been submitted. Based on the appearance of non-compliance which, in fact, has adversely impacted the PC’s ability to fully communicate with the mental health professionals involved in this case, the PC has taken the very serious step of lodging a complaint for inaction and non-compliance with the express rules of procedure governing the Judge’s actions in this case as well as the ethical obligations imposed on a trial judge.

The PC previously noted the pertinent requirements of Rule 74 to the Judge’s division noting that Rule 74, *RFLP*, sets forth the procedure to follow when a PC Report is filed with the Court. In pertinent part, it states:

(i) Court Action.

(1) Receipt and Filing. The court, upon receipt of the parenting coordi-

nator's report, must file the report. If the report contains confidential or private information, it must be filed in a manner that prevents the public from accessing the report consistent with Rule 13(e).

(2) Action. Once the report has been filed, the court may:

(A) adopt the decision as an order of the court.

(B) reject the decision and the report entirely or partially as outside the scope of the parenting coordinator's authority, and affirm all or part of the current court order; or

(C) set a hearing regarding the decision.

The Rule further states, at (j)(3):

(3) Court Action on an Objection. If either parent files an objection, any court action will remain in effect pending resolution of the objection.

The PC also raised in his emails subsequent to the filing of his Report in this case to Judge _____ division the factors underscoring the need for Court intervention.

I am reluctantly filing this Complaint against the Judge. The imagined ramifications of speaking up can deter the decision to complain about Judicial action or non-action.

I leave to the Commission the action, if any, to be taken. I am concerned for the emotional well-being of the child who needs the Court's active assistance and intervention in a case that is characterized by conflict between the parents. I sat as a Judge on the _____ Court in _____ County for _____ years. I know what it takes to manage a calendar and the obligation to families the assignment demands, including timely, conscientious and, sometimes, hands-on involvement in cases. It appears to me that further inquiry into whether that obligation was met in this case is warranted.

Respectfully,

Parenting Coordinator

Office:

The following information is also being provided in accordance with the information requested on the Arizona Supreme Court website: <https://www.azcourts.gov/azcjc/How-to-File-a-Complaint>

Case name: _____ (still pending)

**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.**