

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-300

Judge:

Complainant:

ORDER

November 17, 2023

The Complainant alleged a superior court judge made incorrect legal rulings in his family law 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).

Copies of this order were distributed to all appropriate persons on November 17, 2023.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2023-300

COMPLAINT AGAINST A JUDGE

Name: Judge's Name:

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

On _____ the judge ruled that a Rule 69 agreement had been entered into without father signing any documents. The judge cited a case from _____
Effective as of _____ :

(a) Validity. An agreement between the parties is valid and binding on the parties if:
(1) the agreement is in writing and signed by the parties personally or by counsel on a party's behalf;
(2) the agreement's terms are stated on the record before a judge, commissioner, judge pro tempore, or certified reporter; or
(3) the agreement's terms are stated in an audio recording made before a mediator or a settlement conference officer appointed by the court.

Ariz. R. Fam. Law. proc. 69

None of these requirements were met by the plaintiff.

Rule 69(a)(1) of the Rules of Family Law Procedure states that an agreement is not valid and binding until "the parties" sign the agreement; also, Rule 69(b) states that "[a]n agreement under this rule is not binding on the court until it is submitted to and approved by the court as provided by law" (emphasis added). You should consider undertaking additional research to determine whether agreements subject to Rule 69 become valid and binding on a party immediately upon signing, even when the other party to the agreement has not yet signed it.

25-403. Legal decision-making; best interests of child

A. The court shall determine legal decision-making and parenting time, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all factors that are relevant to the child's physical and emotional well-being, including:

1. The past, present and potential future relationship between the parent and the child.
2. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
3. The child's adjustment to home, school and community.
4. If the child is of suitable age and maturity, the wishes of the child as to legal decision-making and parenting time.
5. The mental and physical health of all individuals involved.
violence or child abuse.

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- 6. Which parent is more likely to allow the child frequent, meaningful and continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.
- 7. Whether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation or to persuade the court to give a legal decision-making or a parenting time preference to that parent.
- 8. Whether there has been domestic violence or child abuse pursuant to section 25-403.03.
- 9. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding legal decision-making or parenting time.

With these points above, there was no evidence or arguments provided at trial to cause Father to not have been given 50% custody of the children. As an example in #6 above, the judge before trial that Mother had on several occasions denied Father requests to see the children. Father showed that he is the only parent in this requirement that would allow the children continuing contact with the other parent. In #7, the opposing council misled the court to cause an unnecessary delay etc as they refused to work with Father to come to an agreement before trial. They told the court that they were trying to work and cooperate with Father when that was not the case. They refused to move forward in discussions and signing any documents unless Father signed the exact documents which they provided and refused to accept any of Father's or Father's council (at the time) suggestions, changes, etc. The judge then ruled that Father was the one who caused a delay and forced the case to trial when it was actually Mother.

In a letter from the _____ dated _____ to the opposing council, "

"

Quoting from In re the Marriage of Flower, 223 Ariz. 531 (2010), the court wrote:

"As recognized by our supreme court, the general principle is that "all marital joint property should be divided substantially equally unless sound reason exists to divide the property otherwise."

Assests and parenting time were not divided in a "fair or equitable" manner.

(c) Testimony of a Party or Witness at an Evidentiary Proceeding. On request of a party or a witness or on its own, and subject to A.R.S. § 25-1256(F), the court may allow a party or witness to testify telephonically if the court finds it would not substantially prejudice any party and the testifying party or witness:

- (1) is not reasonably able to attend the hearing or trial;
- (2) would be unduly inconvenienced by attending the hearing or trial in-person; or
- (3) would incur a burdensome expense to attend the hearing or trial in-person.

The judge denied Father's motion to Appear Telephonically for the 8-1-23 trial where all 3 of these fit Father's situation and why he made the request.