

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-110

Judge: David Thorn

Complainant: Commission on Judicial Conduct

ORDER

The Commission initiated an investigation into a delayed ruling by a superior court judge hearing a family case.

Cochise County Superior Court Judge David Thorn presided over a family law matter, *Christopher Antone and Maelia Kroll*, DO202000593, Cochise County Superior Court. On February 27, 2023, the father filed a petition to modify parenting time, legal decision-making, and child support. Judge Thorn took no action on the petition. Father's counsel engaged in a series of acts to attempt to have a hearing date set for the petition, including phone calls and emails with Judge Thorn's judicial assistant, and later with the judicial assistant for the presiding judge. After several months with no action taken, Father's counsel filed a notice of change of judge as of right on August 12, 2023. Judge Thorn took no action on this pleading either. Ultimately, Father's counsel filed a petition for special action with the Arizona Court of Appeals on February 27, 2024, seeking an order directing Judge Thorn to address the outstanding matters in the family law case. The Court of Appeals, Division Two, issued an order on March 5, 2024, directing Judge Thorn to file a response. Prior to the response deadline, Father's counsel withdrew his petition for special action, stating the matter had been addressed.

In his response, Judge Thorn indicated that the parties were contacted, and a hearing was scheduled "immediately" after he learned of the petition for special action. He indicated that he had issues with his former judicial assistant, and after this individual left, he had discovered over 1000 unopened emails and several unanswered phone messages. Judge Thorn stated that his assigned matters had been reviewed for any similar issues and addressed any outstanding matters needing hearing dates. He also stated there was a larger review that is ongoing to address communications between the Clerk's office and the judges. Further, Judge Thorn noted that during the summer of 2023, he first became aware of some issues with his docket, when local attorneys would advise him on the weekends of communication issues with his judicial assistant, however, his judicial assistant always assured him matters had been handled. Judge Thorn admitted that during the time that the petition was outstanding, he signed multiple salary certifications stating he had no matters pending for more than sixty days.

The Commission found that Judge Thorn's conduct violated the following provisions of the Code of Judicial Conduct and Arizona law:

- Rule 1.1 which states, "A judge shall comply with the law, including the Code of Judicial Conduct."
- Rule 2.5(A) which states, "A judge shall perform judicial and administrative duties competently, diligently, and promptly."
- Article 2, Section 11 of the Arizona Constitution which states, "Justice in all cases shall be administered openly, and without unnecessary delay."
- Article 6, Section 21 of the Arizona Constitution which 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."
- Rule 91(e), Arizona Rules of Supreme Court which states, "Every matter submitted for determination to a judge of the superior court for decision shall be determined and a ruling made not later than sixty days from submission thereof, in accordance with Section 21. Article VI of the Arizona Constitution. Each superior court clerk shall report to the Administrative Director of the Courts, in writing, on the last day of March, June, September and December, in each year, all matters in that court submitted for decision sixty days or more prior to the date of such report and remaining undecided on the date of the report. The report shall contain the title of each action or proceeding, the matter submitted, the judge to whom submitted, and the date of submission."
- A.R.S. §12-128.01 which states:

Receipt of salary by judges and commissioners; affidavit; pending and undetermined causes; violation; classification

A. A superior court judge or commissioner shall not receive his salary unless such judge or commissioner either certifies that no cause before such judge or commissioner remains pending and undetermined for sixty days after it has been submitted for decision or there is submitted by the chief justice of the Arizona supreme court a certification that such superior court judge or commissioner has had a physical disability during the preceding sixty days or that

good and sufficient cause exists to excuse the application of this section to particularly identified litigation then pending.

- B. Any certification submitted by the chief justice pursuant to subsection A shall set forth in detail the nature and duration of the physical disability involved or the reason why subsection A should not apply to the specified pending litigation.
- C. Any person who issues or causes to be issued any check, warrant or payment to a judge or commissioner knowing that, pursuant to this section, such judge or commissioner should not receive his salary is guilty of a class 3 misdemeanor.

Accordingly, Cochise County Superior Court Judge David Thorn 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 Louis Frank Dominguez and Delia R. Neal did not participate in the consideration of this matter.

Dated: September 20, 2024

FOR THE COMMISSION

/s/ Christopher P. Staring

Hon. Christopher P. Staring
Commission Chair

Copies of this order were distributed to all appropriate persons on September 20, 2024.

ARIZONA COURT OF APPEALS

DIVISION TWO

CHRISTOPHER ANTONE,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE
OF ARIZONA, in and for the County of
Cochise, the Honorable David Thorn, a
Judge thereof,

Respondents,

MAELIA KROLL,

Real Party In Interest.

Court of Appeals Division Two
Case No. 2 CA-SA2024-0013

Cochise County Superior Court
Case No. DO202000593

PETITION FOR SPECIAL ACTION

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Telephone: (602) 385-6817
Attorneys for Petitioner

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INTRODUCTION

The issues raised in this Special Action pertain to a family court, post-decree Petition to Modify Parenting Time, Legal Decision-Making, and Child Support filed on February 27, 2023, that the Superior Court has failed to take any action in response to. Notwithstanding multiple written and telephonic communications to the assigned Judge's Judicial Assistant and to the Judicial Assistant to the Presiding Judge of the Cochise County Superior Court, the Superior Court has failed to issue an Order to Appear or failed to act in any way. This includes failing to rule on a subsequent Notice of Change of Judge as a Matter of Right after months and months of inactivity and undersigned counsel's communications being ignored/not responded to substantively.

Under Arizona law, Petitioner is entitled to a timely resolution of his Petition to Modify filed in the Superior Court. Unfortunately, this Special Action was necessary because the Superior Court has failed to act for an extended period of time.

JURISDICTIONAL STATEMENT

This Court has discretion to accept special action jurisdiction where there is a need to expedite resolution of an issue. *City of Phoenix v. Superior Court*, 158 Ariz. 214, 216, 762 P.2d 128, 130 (App. 1988). The questions that may be raised in a special action include, "(a) [w]hether the defendant has failed to .

. . . perform a duty required by law as to which it has no discretion”

Ariz.RP.Spec.Actions 3(a), 17b A.R.S. Special Actions, Rules of Procedure.

Special action jurisdiction is appropriate where there is no equally plain, speedy and adequate remedy by appeal. Ariz.RP.Spec.Actions 1(a), 17B A.R.S. 17B A.R.S. Special Actions, Rules of Procedure. It is also appropriate to accept jurisdiction when “under no rule of law can a trial court's actions be justified.” *Volk v. Brame*, 235 Ariz. 462, 464, 333 P.3d 789, 791 (App. 2014).

In this case, unless special action jurisdiction is accepted, Petitioner will continue to be unfairly and prejudicially denied timely resolution of his post-decree Petition to Modify Parenting Time, Legal Decision-Making, and Child Support within the time frame mandated by the Arizona Rules of Family Law Procedure. This Court has previously stated in *Volk* that,

Failures of due process are inherently of statewide importance. When due process succumbs to the demands of expedience created in high-volume settings such as family court, the risk that the error will recur is real and special action jurisdiction is appropriately exercised.

The issues raised in this Petition are purely questions of law and procedure, and the acceptance of special action jurisdiction is appropriate.

Matter of Guardianship/Conservatorship of Denton, 190 Ariz. 152, 154, 945 P.2d 1283, 1285 (1997).

Petitioner contends that the Superior Court violated and continues to

violate Rule 30 of the Arizona Rules of Family Law Procedure and A.R.S. section 25-407 by failing to timely issue an Order to Appear in Response to Petitioner’s post-decree Petition to Modify and by failing to rule on Petitioner’s Notice of Change of Judge. To that end, the Superior Court has failed to take any action in response to any filing made by Petitioner since the post-decree Petition to Modify was filed one year ago on February 27, 2023.

Petitioner has no equally plain speedy and adequate tool for review of the Superior Court’s actions because the Superior Court will not act. Petitioner’s claim in this Special Action involves purely a question of law and procedure: Whether the Superior Court failed to issue an Order to Appear and rule on Petitioner’s Notice of Change of Judge in violation of Rule 30 of the Arizona Rules of Family Law Procedure and A.R.S. section 25-407.

STATEMENT OF ISSUES

A. Did the Superior Court violate Rule 30 of the Arizona Rules of Family Law Procedure and A.R.S. section 25-407(A) by Failing Timely to Issue and Order to Appear in response to Petitioner’s post-decree Petition to Modify filed on February 27, 2023?

B. Did the Superior Court violate Rule 30 of the Arizona Rules of Family Law Procedure by Failing to rule on Petitioner’s Notice of Change of Judge filed on August 12, 2023?

/ / /

/ / /

STATEMENT OF FACTS

The Petitioner and the Real Party In Interest in this case were formally husband and wife. The marriage between Petitioner and Real Party In Interest was dissolved in Cochise County Superior Court on April 6, 2021. The parties have three minor children in common.

On February 27, 2023, Petitioner filed a Petition to Modify Parenting Time, Legal Decision-Making, and Child Support in the Cochise County Superior Court. As Petitioner understood it from a review of the docket and undersigned counsel's communications with a representative from the Clerk of the Superior Court, the assigned Superior Court Judge was the Honorable David Thorn.

Undersigned counsel has had other family court matters before Judge Thorn. In fact, undersigned counsel has participated in evidentiary and other hearings before Judge Thorn in those other matters shortly before the filing of the Petition to Modify at issue in this case and had communicated with his Judicial Assistant and received timely rulings in those earlier cases.

As of March 28, 2023, undersigned counsel had not received an Order to Appear, which is the next step in the family court after the filing of a post-decree Petition to Modify. Undersigned counsel called Judge Thorn's Chambers and left a voice message requesting the status on the issuance of the Order to Appear. As of the filing of this Special Action, no one from Judge Thorn's Chambers or the

Superior Court returned this voice message.

On April 21, 2023, undesignated counsel called Judge Thorn's Chambers and left a second voice message requesting the status on the issuance of an Order to Appear. As of the filing of this Special Action, no one from Judge Thorn's Chambers or the Superior Court returned this voice message.

On May 3, 2023, undersigned counsel called, undesignated counsel called Judge Thorn's Chambers and left a third voice message requesting the status on the issuance of an Order to Appear. As of the filing of this Special Action, no one from Judge Thorn's Chambers or the Superior Court returned this voice message.

Also on May 3, 2023, and after leaving the voice message for Judge Thorn's Chambers above, undersigned counsel the Clerk of the Cochise County Superior Court and spoke with a representative of the Clerk's Office named Randall. Randall confirmed that Judge Thorn was the assigned Judge and the Petition to Modify filed on February 27, 2023, appeared on the docket. Randall also placed undersigned counsel on hold and attempted to call Judge Thorn's Judicial Assistant, but Randall reported that his call to Chambers went to voicemail.

Also on May 3, 2023, after these two attempts, undersigned counsel sent two emails to Judge Thorn's Judicial Assistant transmitting a proposed Order to Appear in an effort to expedite the issuance. This email is at [Exhibit 1](#).

On June 6, 2023, undesignated counsel called Judge Thorn's Chambers and

left a fourth voice message explaining the past communication attempts and requesting the status on the issuance of an Order to Appear. As of the filing of this Special Action, no one from Judge Thorn's Chambers or the Superior Court returned this voice message. Also on June 6, 2023, undersigned counsel sent the follow up email at [Exhibit 2](#) to Judge Thorn's Judicial Assistant. Undersigned counsel has not received a response to this email.

On July 25, 2023, undersigned counsel called Judge Thorn's Division explaining the past communication attempts and requested the status on the issuance of an Order to Appear. No one from Judge Thorn's Chambers or the Court returned this voice message. As of the filing of this Special Action, no one from Judge Thorn's Chambers or the Superior Court returned this voice message.

Also on July 25, 2023, after leaving the voice message above, undersigned counsel called the Chambers of the then Presiding Judge of the Cochise County Superior Court, the Honorable Timothy Dickerson and left a voice message with Judge Dickerson's Judicial Assistant explaining the issue.

On July 28, 2023, Judge Dickerson's Judicial Assistant returned undersigned counsel's phone call and left a voice message and explained that undersigned counsel's voice message to Judge Dickerson's Chambers was forwarded to Judge Thorn's Judicial Assistant. Judge Dickerson's Judicial Assistant also explained that she sent an email to Judge Thorn's Judicial Assistant and provided Judge

Thorn's Judicial Assistant with undersigned counsel's phone number and that Judge Thorn's Judicial Assistant could return undersigned counsel's call that day or the following business day. Judge Dickerson's Judicial Assistant further explained that undersigned counsel could contact her again with any questions. Judge Thorn's Judicial Assistant did not call on that day or the next business day.

On August 5, 2023, undersigned counsel sent a follow up email to Judge Dickerson's Judicial Assistant as a result of having not heard from Judge Thorn's Judicial Assistant. This email is at [Exhibit 3](#).

On August 8, 2023, undersigned counsel received an email from Judge Dickerson's Judicial Assistant (at [Exhibit 4](#)) who Cced Judge Thorn's Judicial Assistant on undersigned counsel's August 5, 2023, email. As of the filing of this Special Action, Judge Thorn's Judicial Assistant has yet to call or email undersigned counsel in response to this communication.

On August 12, 2023, having received no communication from Judge Thorn's Chambers or the issuance of an Order to Appear, undersigned counsel filed a Notice of Change of Judge as a Matter of Right. On the same date, undersigned counsel emailed a copy of the filing and the Clerk of the Superior Court's email efilng confirmation to the Judicial Assistants for Judge Thorn and Judge Dickerson. This email is at [Exhibit 5](#).

On August 14, 2023, the Judicial Assistant for Judge Dickerson sent an

email at [Exhibit 6](#) confirming receipt of the courtesy copy of the Notice of Change of Judge. As of the date of this Special Action, no action has been taken in response to the filing of the Notice of Change of Judge.

On September 17, 2023, undersigned counsel sent the follow up email at [Exhibit 7](#) to Judge Dickerson's Judicial Assistant requesting status on Change of Judge filing.

On September 18, 2023, Judge Dickerson's Judicial Assistant responded by email at [Exhibit 8](#) and explained that she'd forwarded undersigned counsel's September 17, 2023, email to Judge Thorn's Judicial Assistant.

As of the filing of this Special Action, the Superior Court has not issued an Order to Appear or ruled on or taken any action in response to the Notice of Change of Judge. As of February 27, 2023, no one from Judge Thorn's Chambers has communicated with undersigned counsel in response to undersigned counsel's voice messages, emails, and the emails of Judge Dickerson's Judicial Assistant.

ARGUMENT

1. Standard of Review.

In this case, Respondents violated Rule 30 of the Arizona Rules of Family Law Procedure and A.R.S. section 25-407(A) by failing to issue timely an Order to Appear in response to Petitioner's post-decree Petition to Modify and by failing to rule or take any action in response to Petitioner's Notice of Change of Judge as a

Matter of Right under Rule 6 of the Arizona Rules of Family Law Procedure. By failing to take any action in response to these filings, Respondents have failed “to perform a duty required by law as to which he has no discretion.”

Ariz.RP.Spec.Actions 3(a), 17b A.R.S. Special Actions, Rules of Procedure.

2. Applicable Rules and Law.

Rule 30 of the Arizona Rules of Family Procedure is titled “Right to Timely Review,” and states in full:

In every domestic relations action, **the parties are entitled to the timely resolution of their disputes.** To ensure the matters do not linger unnecessarily, the courts of this state must abide by time requirements imposed by an applicable statute or these rules.

Petitioner filed a Petition to Modify Parenting Time, Legal Decision-Making, and Child Support under the applicable family court rules and A.R.S. section 25-411. Under A.R.S. section 25-407(A), “[l]egal decision-making and parenting time proceedings shall receive priority in being set for hearing.”

3. The Superior Court Has Failed to Act in Violation of Rule 30, Arizona Rules of Family Law Procedure, and A.R.S. Section 25-407(A).

Exactly one year after the filing of the Petition to Modify, the Superior Court has failed to take any action in response to the Petition in violation of Rule 30’s requirement of timely review and the priority in being set for hearing as required by A.R.S. section 25-407(A). What’s particularly

disappointing in this case though is the unwillingness or inability by Judge Thorn's Chambers to return an email, telephone call, or send an email in response to another Judicial Assistant's email. It seems inexplicable.

The Superior Court has also failed to rule or take any action in response to Petitioner's Notice of Change of Judge as a Matter of Right filed under Rule 6 of the Arizona Rules of Family Law Procedure. That filing was made in an effort to move the case forward. As of the filing of this Special Action, no action has been taken in response to the request for change of judge.

4. Request for Special Action Relief.

Based on the above, Petitioner asks this Court to exercise its discretion, accept review of this matter, and grant the following relief:

- A. Issue an order directing the Superior Court to Issue an Order to Appear in response to the February 27, 2023, Petition to Modify.
- B. Issue and order directing the Superior Court to rule on the pending Notice of Change of Judge filed on August 12, 2023.
- C. Petitioner's reasonable costs and attorney fees as authorized by Ariz.RP.Spec.Actions 4(g), 17b A.R.S. Special Actions, Rules of Procedure.
- D. Such other and further relief this Court deems just and proper under

the circumstances.

RESPECTFULLY SUBMITTED this 27th day of February, 2024

By /s/ Frank R. Mead
Frank R. Mead, Esq. 020577
LORONA | MEAD, PLC
3838 N. Central Avenue, Suite 100
Phoenix, Arizona 85012
Telephone: (602) 385-6817
Attorneys for Petitioner/Appellant

Resp (Thorn)
4/30/24
24-110

From: Thorn, David
Sent: Tuesday, April 30, 2024 11:29 AM
To: Commission on Judicial Conduct <CommissionJudicialCo@courts.az.gov>
Subject: Case No. 24-110

Dear Commission Members,

The facts of this case are identical to those in the _____ matter; _____. In sum, my judicial assistant was apparently suffering from emotional or mental problems and failed to respond to many requests for hearings, telephone messages, and emails. We discovered approximately 1000 emails which were unopened after his separation from our organization. Since his departure, we have combed through the cases assigned to this Division and rectified the matters which required hearings. There were many such matters and it has been an extraordinarily busy time for us these past several months.

The parties in this case were contacted immediately after we received notice of the Special Action and the matter has been set for a hearing. The Special Action was dismissed and the Notice of Change of Judge was withdrawn. The circumstances of this matter, and all of the other matters which were unduly delayed, is unfortunate but it has brought our attention to weaknesses in communication between the Clerk's Office and the Court. In the past, a local rule required litigants to provide a physical copy of any pleading and order to the judge assigned to the case. That rule is inapplicable to pleadings which are filed electronically such as this case. We are currently working on solutions to the problem of the judicial assistant being a "choke point" in the information stream between the Clerk's Office and the judge.

Please do not hesitate to contact me if I can provide any other information to help you in determining the proper outcome of this matter.

Sincerely,

David Thorn
Cochise County Superior Court
Division III
Bisbee, AZ

From: Thorn, David
Sent: Thursday, July 11, 2024 5:12 PM
To: Worth, Ariel
Subject: RE: CJC Case No. 24-110

Hi Ms. Worth. I just left you voicemail but my calendar is jammed for the next several days so I will provide you with more information in the event we are unable to speak with each other.

I did complete the 60 day certifications during the time period when the petition was pending. I had no idea that a hearing had been requested or that the matter was not addressed. This is one of the issues we have been working to resolve.

In retrospect, I guess started having problems last spring. A family member died, his dad became ill with Covid, and he seemed to be struggling. I encouraged him to seek counseling- which he did- but he masked the severity of his personal life with an overt cheeriness and appeared to be very competent. The tasks I gave him to do were done quickly but they often contained small errors and I had to emphasize that quality was more important than speed.

After he left, we discovered that there were many cases which had been unduly delayed or mis-calendared. We have spent the last 6 months combing through our open cases and conducting hearings and issuing orders. It has been challenging but it made us aware of a weakness in our system and we have taken measures to strengthen the communication between the divisions, specifically the judges, and the clerk's office.

Again, if I can provide you and the Commission with any further information please do not hesitate to ask.

Best Regards,

David Thorn

From: Worth, Ariel
Sent: Monday, July 08, 2024 10:54 AM
To: Thorn, David
Subject: CJC Case No. 24-110

Good morning,

I am concluding my review of the above-referenced complaint. Thank you for your prior response to our office. I have some additional questions based on the information you provided.

Did you complete 60-day salary certifications during the time period when the underlying petition to modify was outstanding?

Your response mentions “mental and emotional problems” afflicting your judicial assistant. Please provide your best understanding of the time period during which your judicial assistant was suffering from these issues, and the date of the employee’s separation from employment with you division.

If you have any questions about this email, please feel free to contact me directly at

Regards,

Ariel I. Worth
Disciplinary Counsel
Arizona Commission on Judicial Conduct
1501 W. Washington St., Ste. 229
Phoenix, AZ 85007

Phone: (602) 452-3200

David Thorn
Presiding Judge
Division III



P.O. Drawer CJ
Bisbee Arizona 85603

**Superior Court
Cochise County**

Judge MR
2024-110

September 25th, 2024

SEP 27 2024

Commission on Judicial Conduct
1501 W. Washington St.
Suite 229
Phoenix, AZ 85007

RE: Case No. 24-110
Superior Court of Arizona In and For Cochise County
Maelia Kroll v. Christopher Antone DO202000593

MOTION FOR RECONSIDERATION

Dear Commission Members,

I recently received notification that I was reprimanded for failing to timely make a ruling in the above case. After I received the notification I went back to review the file again. It appears that the Respondent, through counsel, filed a Petition to Modify Parenting Time, Legal Decision Making, and Child Support on February 27th, 2023 but he failed to file an Order to Appear in accordance with Arizona Rule of Family Law Procedure 23(b)(2) and 91(h). Counsel apparently filed the Petition and then called and emailed the Court to get a hearing date. No one responded to his telephone calls or emails. In sum, there was no Order for me to sign.

I am asking the Commission to reconsider the reprimand. I rely on the Clerk's Office to notify my judicial assistant when a hearing is requested and I rely on my judicial assistant to timely process the Orders and put them into ebench for me to sign or to present a paper copy for a wet signature. I promptly act on matters presented to me and do not make a habit of procrastination.

Sincerely,

David Thorn

A copy of this document was delivered via email on October 3, 2024, to:

Respondent, Hon. David Thorn
Cochise County Superior Court, Div. III

Disciplinary Counsel, Brian A. Bohan
Arizona Commission on Judicial Conduct

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

Brian A. Bohan (Bar # 014342)
Disciplinary Counsel
Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200
Email:

**STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning)	
)	Case No. 24-110
Judge David Thorn)	
)	RESPONSE TO JUDGE'S
Cochise County Superior Court)	MOTION FOR
State of Arizona,)	RECONSIDERATION
)	
Respondent.)	

On September 20, 2024, the Commission on Judicial Conduct (Commission) publicly reprimanded Judge David Thorn, (Respondent) for violations of the Arizona Code of Judicial Conduct (Code). Respondent timely requested reconsideration of this order on September 27, 2024. 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 failure to rule on a motion filed February 27, 2023, failure to respond to numerous communications to the court, failure to respond to the motion for change of judge, and only resolving the matter when the Court of Appeals became involved when the party filed a petition for special action on February 27, 2024, exactly one year later. Respondent's delay was not in compliance with the law. Respondent did not perform judicial and administrative duties competently, diligently, and promptly as required by Rule 2.5(A). Justice was not administered openly, and without unnecessary delay, as the matter submitted to Respondent, a judge of the superior court, was not decided within sixty days from the date of submission as required by the Arizona Constitution. Finally, Respondent did not comply with A.R.S. §12-128.01 when he falsely certified that no cause before him remains pending and undetermined for sixty days after it has been submitted for decision. 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, while the nature of the misconduct was not primarily public or done in a court hearing, 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 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 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 consider supplemental evidence, that the party failed to file an order to appear under 23(b)(2) of the Family Law Rules of Procedure, and Rule 91(h). Respondent asserts that because the motion was filed electronically, he did not receive any notification that the matter was pending, and that he relies upon the clerks and his judicial assistant to notify him of pending matters.

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.” This

information was not part of Respondent's original response to the Commission. Respondent has not stated extraordinary circumstances warranting further investigation, but rather has simply suggested that the failure of the party to file an order to appear would negate Respondent's responsibility to attend to the matter. This additional information suggests that Respondent would have no reason to know there is a case pending because of a procedural error by the party. However, this assertion ignores the multiple attempts by the party to contact Respondent's division, both by phone and email, and to the division and through the presiding judge's judicial assistant. The party filed a change of judge, to get some traction to the case, and when that failed to cause any movement, sought relief through the Court of Appeals. There were multiple methods of communication, including a different type of pleading, which were attempted to bring attention to the pending matter. The failure of the party to file an order to appear, even if true, would only account for one of the many attempted communications. Overall, there is no basis for considering any additional information or conducting any 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 failure to rule on the Petition to Modify, the Notice of Change of Judge, and the multiple communication attempts both through email and telephone calls, both to the judicial assistant and through the presiding judge's judicial assistant, demonstrate a pattern

of misconduct by the judicial assistant that lasted over a year in length. Respondent not only has a duty to rule on matters in his court but an administrative duty to supervise his staff. Here, multiple motions were filed and never addressed, and communications were ignored. This extraordinary length of time between the filing and a resolution is an aggravating factor.

Judge's Experience and Length of Service on the Bench: Respondent has served as a judicial officer for approximately five years and should be aware of the action or inaction, of his judicial assistant. 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 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 parenting time, as any additional parenting time was effectively denied during the year long period that the Petition to Modify was not heard. This potential parenting time lost can never be recovered. While this inaction was not necessarily public, the inability to receive any action from the judiciary when requested hampers respect for the judiciary. Such inaction could have caused a party to take matters into their own hands, rather than continue to wait for a response from the court. 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 states he did not know of the inaction of his judicial assistant. His Motion for Reconsideration also asserts without a written motion for him to sign, he would not be aware a motion was outstanding. While Respondent claimed he was unaware of the full extent of the issues involved with his judicial assistant, he did acknowledge in his response that lawyers in the community had brought it to his attention that they were encountering difficulty in communications with the assistant. The judicial assistant reportedly would assure Respondent the issues had been taken care of, and Respondent relied on those assertions to his detriment. At the same time, it is concerning that Respondent could be oblivious to inaction on a case for a year, and not address it until the matter was before the Court of Appeals. To his credit, Respondent did address the issue once it was “discovered”. Respondent’s responses argue a lack of knowledge defense and provide some remedies to avoid the situation again in the future. So, while reform of conduct appears to be manifested, it is unclear if Respondent has acknowledged the issues with his conduct, at least at the supervisory level. On the balance, undersigned finds this to be a mitigating factor.

Whether There has Been Prior Disciplinary Action Concerning the Judge, and if so, its Remoteness and Relevance to the Present Proceeding: Respondent has an escalating history. He received:

- Advisory letter in Case No. [REDACTED], regarding appearance of impropriety after commenting on when it would be appropriate to request a welfare check for a minor.
- Warning letter in Case No. [REDACTED], regarding demeanor after making disparaging comments about a witness's credibility and skill level.
- Public Reprimand in Case No. 23-508, for improperly issuing a civil arrest warrant against a non-party who had not been served with notice of a court date in a probate matter.

These cases each involve different issues, but also suggest an escalating pattern.

Overall, undersigned finds Respondent's prior discipline to be an aggravating factor.

Whether the Judge Complied with Prior Discipline or Requested and Complied with a Formal Ethics Advisory Opinion: There is no evidence that Respondent failed to comply with prior discipline. Also, there is no evidence that Respondent sought or relied upon a formal ethics opinion. This appears to be a slightly mitigating factor.

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, the injury to the party, and the potential 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 September 20, 2024.

COMMISSION ON JUDICIAL CONDUCT

Brian A. Bohan
Disciplinary Counsel

A copy of this document was delivered via email on October 18, 2024, to:

Respondent, Hon. David Thorn
Cochise County Superior Court, Div. III

Disciplinary Counsel, Brian A. Bohan
Arizona Commission on Judicial Conduct

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

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-110

Judge: David Thorn

Complainant: Commission on Judicial Conduct

**ORDER DENYING RESPONDENT JUDGE'S
MOTION FOR RECONSIDERATION**

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 November 8, 2024, the Commission denied the Motion for Reconsideration. 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, and the Reprimand Order).

Commission members Roger D. Barton and Louis Frank Dominguez did not participate in the consideration of this matter.

Dated: November 22, 2024

FOR THE COMMISSION

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

Copies of this order were distributed to all appropriate persons on November 22, 2024.