

Public Admonition of Referee Barbara Johnston St. Joseph Probate Court

July 1, 2022

The Commission on Judicial Qualifications has determined that formal disciplinary charges are warranted against former Referee Barbara Johnston.¹ However, in lieu of filing formal disciplinary proceedings, the Commission issues this Admonition pursuant to Supreme Court Admission and Discipline Rule 25 VIII E(7) and with the consent of Referee Johnston. Referee Johnston cooperated with the Commission in this matter and acknowledges she violated the Code of Judicial Conduct.

The Commission admonishes Referee Johnston for temporarily suspending a father's parenting time with his minor daughter based, in part, on notes received from a Guardian Ad Litem (GAL) that Referee Johnston did not circulate to the father and his counsel or allow either to review when they requested to do so. Referee Johnston violated Rules 1.1, 1.2, 2.2, 2.5(A), and 2.9(A) of the Code of Judicial Conduct when she engaged in this conduct.

Father and Mother had been in an ongoing custody dispute regarding their minor daughter since 2012. In April of 2021, the GAL assigned to the case submitted a report to the probate court, expressing some concerns about the child returning to live with Father. The report was based partially on an interview the GAL had conducted with the child in November 2020. Father and his counsel received a copy of the GAL's report in late April 2021.

Simultaneous with the filing of her report, the GAL also filed motions requesting that portions of her report remain confidential from the other parties (at the child's request) and that the Referee conduct an *in camera* interview of the child or alternatively review the GAL's notes of her earlier interview with the child. On April 29, 2021, Referee Johnston issued an order directing the GAL to tender her notes to the court. Although neither Father nor his counsel had been given a copy of the GAL's notes, Referee Johnston elected to review the GAL's notes *in camera* in lieu of conducting her own *in camera* interview of the child in order to avoid requiring the child to submit a second interview in which the child might feel frustrated and emotionally traumatized by having to give another statement against her parent.²

On May 4, 2021, when the parties appeared for a hearing on Father's petition to modify custody, Referee Johnston temporarily suspended Father's visitation rights with his daughter based on the GAL's interview notes and set the matter for an evidentiary hearing a month later.

¹ Referee Johnston voluntarily retired from the bench on May 31, 2022.

² Pursuant to I.C. § 31-17-2-9(a)(b), Referee Johnston was permitted to interview the minor child outside the presence of the parties (*in camera*) had she elected to do so. This statute, however, did not authorize Johnston to receive and review written documents without providing copies to all parties. Further, no other legal authority allowed her to take the actions she took in this matter.

At the hearing, Father’s counsel requested a copy of the GAL’s interview notes, which Referee Johnston denied because she felt “the matters raised in the notes³ were enough to justify termination of visitation rights.”

By temporarily suspending Father’s visitation rights with his daughter based on ex parte information that was not otherwise authorized by law, Referee Johnston violated Rules 1.1, 1.2, 2.2, and 2.5(A) of the Code of Judicial conduct, which require judges to ensure the fairness, impartiality, diligence, and integrity of the judiciary. She also violated Rule 2.9(A) of the Code of Judicial Conduct, which forbids judges from initiating, permitting, or considering ex parte communications concerning a pending proceeding. Referee Johnston acknowledges that the best practice would have been for her to circulate the GAL’s interview notes to all parties and to give the parties an opportunity to present counter evidence instead of considering the notes *in camera* and temporarily suspending Father’s visitation rights without an opportunity to be heard.

The Commission recognizes that judicial officers may be confronted with difficult situations in child custody matters regarding child welfare and may wish to modify certain court procedures to alleviate stress on the child. The law certainly provides some flexibility, such as allowing judges to conduct an *in camera* interview of a child who is the subject of custody proceedings. Nonetheless, to ensure that litigants are afforded the right to fair and impartial proceedings, judges still must conduct proceedings in a manner that complies with the Code of Judicial Conduct and refrain from engaging in or considering ex parte communications unless authorized by law.

The Commission further would note that its decision to issue this Public Admonition in lieu of filing formal charges was influenced, in part, by Referee Johnston’s proactive corrective actions to remedy her mistake. Such actions included immediately granting Father’s request for change of judge, participating in additional ethics learning opportunities, and cooperating fully with the Commission. Had Referee Johnston not taken these actions, the Commission would have been inclined to pursue a stronger course of action.

The Commission now admonishes Referee Johnston for violating the Code of Judicial Conduct. This Admonition concludes the Commission’s investigation, and Referee Johnston will not be formally charged with ethical misconduct.

Questions about this Admonition may be directed to Adrienne L. Meiring, Counsel for the Commission, at (317) 234-1872.

³ The notes raised questions about the safety of the child.