

**In the
Supreme Court of Indiana**

IN THE MATTER OF)	
)	
THE HONORABLE)	
)	
TIMOTHY B. DAY)	Case No: 22S-JD-412
)	
JUDGE OF)	
)	
DECATUR CIRCUIT COURT)	

NOTICE OF THE INSTITUTION OF FORMAL PROCEEDINGS

AND

STATEMENT OF CHARGES

The Indiana Commission on Judicial Qualifications (“Commission”), having found probable cause to warrant formal charges of judicial misconduct, now notifies Respondent, the Honorable Timothy B. Day (“Respondent”) of the filing of these Charges. These Charges are brought under Admission and Discipline Rule 25 and before the Indiana Supreme Court, which, pursuant to Article 7, § 4 of the Constitution of Indiana, has original jurisdiction over the discipline, suspension, and removal of all judges and judicial officers of this State. The Commission charges that Respondent, while Judge of Decatur Circuit Court, engaged in judicial misconduct as specifically charged below. Pursuant to Admission and Discipline Rule 25VIII (F), Respondent may file a written Answer to these Charges within twenty (20) days of service.

BACKGROUND

1. Respondent was admitted to the Indiana Bar in 1989.
2. Since January 1, 2013, Respondent has served as the Judge of Decatur Circuit Court.
3. At all times pertinent to these Charges, Respondent presided over a general jurisdiction docket that included criminal and civil cases. Respondent's docket includes Children In Need of Services ("CHINS") cases along with terminations of parental rights, guardianship, and adoption cases.

FACTS GIVING RISE TO MISCONDUCT CHARGES

Pattern of Excluding GALs/CASAs from Proceedings in Cases Involving Minor R.P.¹

4. R.P. was born on August 22, 2015. After her birth, R.P. tested positive for methamphetamines, amphetamines, marijuana, and opiates due to her mother's drug use.
5. On August 28, 2015, the Indiana Department of Child Services ("DCS") filed a CHINS petition, *Matter of R.P.*, under cause number 16C01-1508-JC-000265 in Decatur Circuit Court, alleging that R.P. was a child in need of services. Respondent presided over R.P.'s CHINS case and over six (6) related proceedings involving R.P.
6. On September 4, 2015, DCS placed thirteen-day-old (13) R.P. in the home of A.W. and M.W. ("foster parents"), who were non-relative foster parents. Thereafter, in December of 2015, Respondent found R.P. to be a child in need of services and granted R.P.'s wardship to DCS.
7. Respondent did not appoint a guardian ad litem ("GAL") to represent R.P.'s interests in R.P.'s CHINS case until January 17, 2017, leaving R.P. without representation for

¹ Due to the confidential nature of CHINS proceedings, the Commission is not identifying the name of the child or the names of the parties involved in R.P.'s various court proceedings.

approximately seventeen (17) months.²

8. During the pendency of R.P.'s numerous proceedings, Respondent engaged in a pattern or practice of not including the GALs/Court Appointed Special Advocates (CASA) at hearings and in-chambers meetings with Respondent and other parties.³
 - a. Respondent's Order from the April 4, 2019 Periodic Case Review in R.P.'s CHINS case does not reflect that a GAL/CASA was present for the hearing, and the chronological case summary reflects that no GAL/CASA filed a report prior to the hearing.
 - b. During the April 4, 2019 hearing, Respondent declined to follow DCS's recommendation regarding a proposed visitation plan for R.P. and threatened that if R.P. continued to refuse to go on visits with her Father, Respondent would change her placement from her current foster home.
 - c. On December 26, 2019, R.P.'s paternal grandparents filed a Petition for Appointment of Permanent Guardianship of R.P. in cause no. 16C01-1912-GU-000060. R.P.'s foster parents also filed a Petition for Appointment of Guardianship of R.P. in cause no. 16C01-2001-GU-000002 on January 10, 2020. Respondent set hearings on both guardianship petitions, and in the interim, changed the permanency plan in R.P.'s CHINS case to reunification

² Respondent's January 17, 2017 Order Appointing a GAL for R.P. specifically stated that the GAL "shall appear at all hearings or proceedings scheduled in this Cause and assure proper representation of the child(ren) at said hearing." Additionally, the GAL "shall be notified of any hearings, staffings, investigations, depositions or other proceedings concerning the child(ren) and shall be notified prior to any action taken on behalf of the child(ren) by any party."

³ At all times relevant to the Charges, I.C. § 31-32-3-6 provided that a guardian ad litem or court appointed special advocate shall represent and protect the best interests of the child. I.C. § 31-32-3-7 provided that the guardian ad litem or the court appointed special advocate, or both, shall be considered officers for the purpose of representing the child's interests.

with a concurrent plan of guardianship.

- d. Respondent did not appoint a GAL for R.P. in either of the two guardianship cases.
- e. Respondent excluded R.P.'s GAL in the CHINS matter from participation in all of the guardianship hearings, leaving R.P. without representation in the proceedings. In his April 20, 2022 deposition, Respondent offered that his reason for not appointing a GAL for R.P. in the guardianship proceedings was that: "I'm representing the best interests of that child, that is the overarching issue in guardianships, what is in the child's best interests, and it was very squarely presented to me by all sides."
- f. Prior to a scheduled guardianship hearing on January 23, 2020, parties met in Respondent's chambers to discuss the case. No GAL nor other individual representing R.P.'s separate interests was invited or present for the January 23, 2020 in-chambers meeting with Respondent, even though the parties discussed the entry of an agreed order regarding placement and visitation with R.P. between the paternal grandparents and the foster parents. This included a transition in placement from R.P. from the foster parents to the paternal grandparents.
- g. On August 20, 2020, Respondent commenced a hearing on the guardianship petitions and the CHINS case but continued the hearing to October 29, 2020 for completion.
- h. Prior to the start of the August 20, 2020 hearing, and final October 29, 2020 hearing in R.P.'s cases, Respondent called the attorneys into chambers to

discuss the case. Although the GAL was present on October 29, 2020, and R.P.'s CHINS case was also scheduled for that day, the GAL was not included in the in-chambers meeting with Respondent.

Pattern of Ex Parte Communication Within the Circuit Court

9. From 2017 to 2020, Respondent fostered a culture of ex parte communication within Decatur Circuit Court and failed to take appropriate remedial measures when unauthorized ex parte communications were presented to the court.
10. From 2017 to 2020, Respondent routinely did not include GALs/CASAs at hearings and in-chambers conferences/meetings with Respondent and other parties when discussing CHINS matters.⁴
11. In his deposition on April 20, 2022, Respondent testified that when parents would send ex parte correspondence directly to the court, he would just “shred” the ex parte communications without properly notifying the other parties of the substance of the communications.⁵
12. Some examples of the improper ex parte environment Respondent cultivated include:
 - a. On May 7, 2020, Respondent conducted approximately twenty (20) hearings at which he made records of agreements and continuances in CHINS cases. Respondent only accommodated DCS attorneys to be present at these hearings, and no other parties, including GAL/CASA, were present for these hearings.
 - b. On March 24, 2020, a DCS attorney emailed Respondent regarding a modification request in a CHINS matter and asked Respondent whether he

⁴ GALs/CASAs are considered parties to the proceedings. *See* I.C. § 31-34-9-7.

⁵ Rule 2.9(B) of the Indiana Code of Judicial Conduct requires a judge who receives unauthorized ex parte communication bearing upon the substance of a matter to make prompt provisions to notify all parties of the substance of the communication and to provide the parties with an opportunity to respond.

approved of DCS moving forward on the modification; Respondent responded via email: "That sounds fine. Go ahead and submit the paperwork." The email exchange did not include the other parties in the case, including the GAL/CASA.

- c. On November 22, 2019, a DCS attorney documented in an email that he had spoken with Respondent that day regarding how to address a custody change in a particular CHINS matter. The email references the parties having counsel but gives no indication that the parties were present for the conversation with Respondent.

CHARGES

The Commission incorporates the facts set out in ¶¶ 1-12 into the Charges below.

Count 1

The Commission charges that, during the pendency of R.P.'s cases, Respondent engaged in a pattern or practice of not including GALs/CASAs at hearings and in-chambers meetings with Respondent and other parties when discussing CHINS matters. By engaging in this conduct, Respondent violated Rule 1.1 of the Code of Judicial Conduct, which requires judges to comply with the law; Rule 1.2 of the Code of Judicial Conduct, which requires judges to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary; Rule 2.2 of the Code of Judicial Conduct, which requires judges to uphold the law and to perform all duties of judicial office fairly and impartially; and Rule 2.9(A) of the Code of Judicial Conduct, which requires judges to not initiate, permit, or consider ex parte communications; and committed conduct prejudicial to the administration of justice.

Count 2

The Commission charges that, from 2017 to 2020, Respondent allowed ex parte communications in Decatur Circuit Court in CHINS matters, which included engaging and permitting communication without the presence or participation of all parties and not taking appropriate remedial measures when such communications were received by the court. By engaging in this pattern of conduct, Respondent violated Rules 1.1, 1.2, 2.2, 2.9(A), and 2.9(B) of the Code of Judicial Conduct, which requires judges to make prompt provisions to notify the parties of the substance of any unauthorized ex parte communications bearing upon the substance of the matter and to provide the parties with an opportunity to respond; and committed conduct prejudicial to the administration of justice.

WHEREFORE, the Commission respectfully requests that, upon the filing of Respondent's Answer, the Indiana Supreme Court appoint three Masters to conduct a public hearing on the charges that Respondent committed judicial misconduct as alleged, and further prays that the Supreme Court find that Respondent committed misconduct and that it impose upon him the appropriate sanction.

12/14/22
DATE

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this "Notice of the Institution of Formal Proceedings and Statement of Charges" was sent by certified mail, postage pre-paid, to Respondent, PO Box 336, Greensburg, IN 47240 and via electronic mail.

12/16/22
DATE

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