

**December 28, 1999**

**PUBLIC ADMONITION**

**OF**

**THE HONORABLE FREDRICK R. SPENCER  
MADISON CIRCUIT COURT**

The Indiana Commission on Judicial Qualifications issues this Public Admonition of the Honorable Fredrick R. Spencer, Judge of the Madison Circuit Court. This Admonition is issued pursuant to Supreme Court Admission and Discipline Rule 25 VIII E(7), and is issued with the consent of Judge Spencer, who has cooperated fully with the Commission in this matter.

The Commission admonishes Judge Spencer for entertaining and granting an *ex parte* petition for change of custody, without notice to the custodial father. Although the petition purported to present an emergency not requiring notice and hearing, in the Commission's view the petition merely reflected a standard dispute between divorced parents, one desirous of obtaining a change in the custodial relationship. Therefore, it should have been treated as any civil pleading, where the filing would be noticed and the parties would be given an opportunity to be heard. Judge Spencer is admonished further for failing to communicate with the Florida judge who had assumed jurisdiction and had issued an order granting custody to the father, and whose office attempted to contact Judge Spencer. This communication is required under the Uniform Child Custody Jurisdiction Act, and is a requirement designed to help prevent the very circumstances which occurred here, where a request was made to an Indiana court to grant relief when another state was exercising jurisdiction. Judge Spencer's failure to acknowledge Florida's claim of jurisdiction is exacerbated by his knowledge that, a year earlier, the mother had filed a similar "emergency" petition in another Madison County Court, with Judge Brinkman presiding, and that Judge Brinkman ultimately had deferred jurisdiction to Florida.

The circumstances which led to this Admonition are as follows. Daniel and Irene Rios were divorced in Texas; the decree awarded custody of the Rios' two children to Daniel. Irene moved to Indiana and Daniel moved to Florida. In 1995, he allowed the children to join Irene in Indiana, although he retained legal custody. In June, 1996, Irene filed an emergency

petition for custody in Judge Brinkman's court. He initially granted the petition and set the matter for hearing. In March, 1997, Irene permitted the children to return to Daniel's custody. In July, 1997, Daniel petitioned a Florida court to enforce the Texas decree and to set aside Judge Brinkman's order granting temporary custody to Irene. The Florida court granted his request. In September, 1997, Irene filed a motion to dismiss the action in the Florida court. A hearing on Irene's motion to dismiss was set in Florida for October 28, 1997. By then, Judge Brinkman had deferred jurisdiction to Florida under the UCCJA.

In July, 1998, while Irene was in Florida, she and Daniel executed a joint stipulation of permanent custody and visitation. Pursuant to that stipulation, Irene was to have summer visitation with the children. She took them to Indiana, then enrolled them in school without Daniel's permission. On August 6, 1998, the Florida judge signed an order awarding Daniel permanent custody and giving Irene summer visitation. On August 28, 1998, Irene filed her emergency petition for change of custody in Judge Spencer's court. Irene's so-called Emergency Petition for Change of Custody and Petition for Modification of Custody, which was filed by her attorney, Robert Cowles, outlined Irene's claim that the stipulation she had signed in Florida was signed under duress. It set out fully the steps by which Florida had taken jurisdiction, and also stated that Judge Brinkman previously had deferred jurisdiction to Florida. Irene stated in her petition that the children wanted to live with her and that they were enrolled in school in Madison County. No real emergency was alleged, and Judge Spencer should not have granted the extraordinary relief without notice to Daniel and an opportunity to be heard, and he should have recognized, by her very pleading, that another state was exercising jurisdiction. Indeed, after Judge Spencer granted the emergency request, the Florida judge attempted to telephone Judge Spencer on more than one occasion, and Judge Spencer ignored his own duty under the UCCJA to make contact with the judge.

On the day Irene's petition was granted by Judge Spencer, Daniel traveled to Indiana and, with the help of local law enforcement, and on the strength of the Florida order, retrieved the children from school and returned to Florida. Daniel filed an affidavit of the children's residency and a motion to dismiss in Judge Spencer's court. Next, apparently in reliance on Judge Spencer's order, Irene went to Florida and surreptitiously took the children from Daniel's residence and brought them back to Indiana.

In December of 1998, Judge Spencer held a hearing on Daniel's Motion to Dismiss, and determined he had jurisdiction. Four months had elapsed since Judge Spencer first assumed jurisdiction in the case, despite all the indications of Florida's interest and jurisdiction. During this time, the Rios children were the subject of two parental "grabs." It was not until September 24, 1999, when the Indiana Court of Appeals ruled that Judge Spencer erred in not granting Daniel's motion to dismiss on jurisdictional grounds, that this unnecessary ordeal was resolved. See, Rios v. Rios 1999 WL 767800 (Ind.App. 1999).

The Commission concludes that when Judge Spencer entertained and granted Irene's

“emergency” petition, he violated Canon 3B(8) of the Code of Judicial Conduct, which prohibits a judge from considering *ex parte* communications and which requires the judge to accord every person with a legal interest in a proceeding the right to be heard. Judge Spencer’s failure to communicate with the Florida judge and his persistence in retaining the case in his court despite the significant indicia of Florida’s interest in the case constituted a violation Canon 3B(2), which requires judges to be faithful to the law. Finally, these acts constituted violations of Canons 1 and 2 of the Code of Judicial Conduct which require judges to uphold the integrity of the judiciary and to respect and comply with the law.

For this conduct, the Commission determined that formal charges were warranted. By agreement with Judge Spencer, the Commission issues this Public Admonition in lieu of filing formal charges. The issuance of this Admonition concludes this matter.

---

Questions about this Admonition may be directed to Chief Justice Randall T. Shepard, Chairman of the Commission, at (317) 232-2550, or to Meg Babcock, Counsel for the Commission, at (317) 232-4706, or to Jon Krahulik, Counsel for Judge Spencer, at (317) 334-9200.