



**Indiana Judicial Nominating Commission
Indiana Commission on Judicial Qualifications**

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**PUBLIC ADMONITION OF
THE HONORABLE DANIEL C. BANINA
MIAMI SUPERIOR COURT**

The Indiana Commission on Judicial Qualifications has determined that formal disciplinary charges are warranted against the Honorable Daniel Banina. 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 Judge Banina. Judge Banina cooperated fully with the Commission in this matter and acknowledges he violated the Code of Judicial Conduct.

The Commission admonishes Judge Banina for entertaining and granting an *ex parte* petition for temporary custody without prior notice to the custodial parent or an opportunity for her to be heard. Judge Banina violated the Code of Judicial Conduct and basic due process requirements for emergency orders as outlined in Indiana Trial Rule 65(B). (See also, *In Re Anonymous*, 729 N.E.2d 566 (Ind. 2000); Commission Advisory Opinion #1-01; Public Admonition of the Honorable J. Steven Cox, Franklin Circuit Court, March 21, 2003; Public Admonition of the Honorable Christopher B. Haile, Marion Superior Court, Civil Division 11, October 17, 2005.)

K.K. (Mother) and A.K. (Father) had divorced, but later lived together, during which time A.W.K. was born. Although A.K. is named on A.W.K.'s birth certificate as the father, there existed no adjudication that A.K. was A.W.K.'s father and K.K. had legal and sole custody of A.W.K. In January 2007, K.K. decided to move from the residence and to take two-year-old A.W.K. with her. However, A.K. and Miami County Deputy Sheriffs intervened, demanding she leave A.W.K. with A.K. On February 1, 2007, A.K., by counsel, Jeffry Price, filed a "Verified Petition to Establish Paternity" in which A.K. also asked for an emergency order granting him temporary custody of A.W.K. The only purported basis for A.K.'s request was that he "currently has possession of [A.W.K.] and requests an emergency order." The petitioner and his attorney indicated they had served K.K. with the Petition by turning it over to the Sheriff for delivery; they made no allegation of an emergency, a prerequisite for granting custody without a hearing, assuming A.K. had any existing parental rights to custody of A.W.K., which he did not.

Instead of ensuring that K.K. had notice of the petition, and instead of proceeding first to a hearing on the paternity request, then to any disputes about custody, Judge Banina issued an Order on February 2, 2007 granting temporary custody to A.K. pending “further order of the Court.” He set a hearing for March 27, 2007. His Order violated K.K.’s due process rights as well as Canons 1, 2, 3B(2), and 3B(9) of the Code of Judicial Conduct, which require judges to ensure the fairness, impartiality, and integrity of the judiciary. He also violated Canon 3B(8), which forbids *ex parte* contacts absent a true emergency in which irreparable danger would result if the court does not act without the benefit of notice to the other party and a hearing; even then, the affected party is entitled to a hearing within 10 days of the *ex parte* Order. In the Commission’s view, there is perhaps no greater injustice than to strip a parent of custodial rights without an opportunity to be heard and in the absence of an emergency. The Commission calls upon all judges and lawyers in Indiana to respect this fundamental notion, one the Commission and its counter-part, the Supreme Court Disciplinary Commission, attempted to convey now for several years, only to repeatedly address the same violation.

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

Questions about this Admonition may be directed to Adrienne L. Meiring, Staff Attorney for the Commission, at (317) 232-4706, or to Judge Banina.