

PUBLIC ADMONISHMENT OF COMMISSIONER WENDY M. HARRIS

The Commission on Judicial Performance ordered Commissioner Wendy M. Harris publicly admonished, pursuant to article VI, section 18(d) of the California Constitution and commission rule 113, as set forth in the following statement of facts and reasons found by the commission:

STATEMENT OF FACTS AND REASONS

Commissioner Wendy M. Harris has been a commissioner of the Riverside County Superior Court since 2019.

In *H. v. B.* (FLRI2105670), in January 2022, Commissioner Harris ordered that the father, Mr. B, and mother, Ms. H, share joint physical custody of their daughter, with Mr. B having custody during the week, and Ms. H having visitation on weekends. In February, Ms. H sought orders to change the custody and also sought a domestic violence restraining order.

A. Day 1 – March 16 – AM

According to Ms. H's petition for a domestic violence restraining order (DVRO) and request for orders to change custody, filed on February 7 and 8, 2022, Mr. B was responsible for the daughter's living in unsafe and inappropriate conditions in a motel in Los Angeles, the daughter had not been enrolled in the school district "for months," and Mr. B sent the girl to the Midwest to live with "unknown persons" (while he stayed behind in California) on January 12, 2022. Ms. H alleged that she "recovered" the child on February 6, 2022.

Reportedly, as of March 16, the day of the hearing, the child was in Ms. H's physical custody. The hearing transcript reflects that the proceedings began in the morning with Mr. B personally present in court; Ms. H was not present. Both parties proceeded in pro per. On the record, Mr. B explained that, sometime after the last court hearing, he sent his daughter to be with "family" (on Day 2, Mr. B described the person as "a close friend," whom he considers to be family) in the Midwest, and the child had been in Ms. H's physical custody since February 6. Commissioner Harris did not ask why the child was sent out of state without permission and instead asked Mr. B, "Sir, do you want me to try to recover the child and return the child to you?" He responded, "Yes, ma'am." (R.T. 4:28-5:2.) Thereafter, Commissioner Harris allegedly directed the courtroom clerk to reach Ms. H by phone, stating: "I need [Ms. H] in here. These are her motions. *But I'm more concerned about her picking up the child and keeping the child, violating my order.*" (R.T. 6:26-28; emphasis added.) Back on the record after a break in the proceedings, Ms. H explained by phone that she was waiting for the bus to take her to the courthouse. The following exchange occurred:

THE COURT: All right. Why are we not in court today, ma'am?

MS. H: Okay. Actually, I was working hard to get there this morning. I just had my baby girl. She is six days old. I took [my daughter] to school, and so me and baby were getting our way over there. And you guys called me right as I'm standing here at the bus stop. . . . I was working hard to get there. [¶] The earliest I can drop [my daughter] off at school is 8:20. The gates open for breakfast, so I always take her there for breakfast. And then immediately me and baby made our way to the bus stop --

THE COURT: No. [¶] Hold on. Hold on. Hold on. [¶] No. Why do you have this child? You're only supposed to have the child on the weekends.

MS. H: Okay. So --

THE COURT: Hold on. [¶] I need you to bring the child to the school -- to my courthouse, and I'll see you when you get here.

MS. H: Oh, well, that -- I don't know how that's going to work. She actually --

THE COURT: Well, hold on. Hold on. Hold on. [¶] How that's going to work is you're going to bring the child to this courthouse, because you're in violation of my court order. If you do not, I can tell you that I have measures to retrieve that child.

MS. H: Hello?

THE COURT: Hold on.

MS. H: Well, maybe we can go through that, because she --

THE COURT: Ma'am, please -- ma'am, please stop talk -- ma'am, please stop talking and listen to what I have to tell you.

MS. H: (Unintelligible.)

THE COURT: Ma'am --

MS. H: You are exposing my child to a lot, allowing that man to see my child.

THE COURT: Ma'am -- ma'am --

MS. H: I'm not going to do that --

THE COURT: All right. I find the Court -- I find that the petitioner is --

MS. H: You're not --

THE COURT: -- is not present -- [¶] Please mute her.

THE CLERK: She's muted.

THE COURT: I find the petitioner is in violation of my court's order. She has said she is not going to return the child. I am appointing the Child Abduction Unit to retrieve this minor child.

MS. H: You can't -- I just had --

THE COURT: The father -- the father will have sole legal, sole physical custody of the minor child. [¶] Mother will have no visitation since she is refusing to comply with my court's order.

THE CLERK: She hung up.

THE COURT: I know. [¶] Sir, have a seat. We'll get you some paperwork. You'll need to fill it out. Take it out over [sic] to the district attorney's office, and they will retrieve the child for you. All right?

MR. B: Thank you, Judge.

THE COURT: Have a seat.

MR. B: Thank you.

(Other matters were heard.)

(R.T. 7:22-9:28.)

B. Day 1 – March 16 – PM

On the afternoon of March 16, Ms. H appeared in person before Commissioner Harris, while Mr. B appeared by telephone for a proceeding described in the minutes as “Hearing re: Return minor child to father set for 03/17/22 at 8:30 a.m.” Also present in the courtroom was a deputy district attorney (DDA) and an investigator, both from the Child Abduction Unit (CAU). Commissioner Harris did not give the DDA or the investigator an opportunity to speak. Instead, Commissioner Harris engaged in an argument with Ms. H, with Commissioner Harris addressing Ms. H’s poor conduct in court (both on this and prior occasions) and her purported violation of court orders, and with Ms. H repeatedly asserting that Commissioner Harris’s ordering the daughter back to the custody of Mr. B was not in the child’s best interest. (See R.T. pp. 10 to 21.) Ms. H attempted to discuss, as her papers alleged, Mr. B’s inappropriate activity in front of their daughter, at one point adding: “[Mr. B] sent her out of state, and the people out of state returned her to me. I was trying to let you know that.” (R.T. 14:20-22.) Commissioner Harris did not respond in any way to this information and instead repeatedly asked Ms. H to answer the question: “Will you be here tomorrow with the child, yes or no?” Ms. H attempted to explain why that would not be in the best interest of her daughter, but Commissioner Harris did not permit her to speak further as to why. Commissioner Harris stated to Ms. H, “[Y]ou’re digging a ditch,” and “You’re digging a grave.” (R.T. 18:14-24.) Commissioner Harris did not ask any questions or otherwise address, with Ms. H or anyone else, the allegations that formed the basis of her request for a DVRO and request for orders.

Because Mr. B, who was on the phone, could not physically arrive at the courthouse before the close of business that afternoon, Commissioner Harris ordered Ms. H to bring the child to court at 8:30 a.m. the next day, so she could be handed over. Commissioner Harris informed Ms. H that if she did not appear at 8:30 a.m. with the child, Commissioner Harris would issue a bench warrant for Ms. H’s arrest.

Later that day, Commissioner Harris “self-reported” her handling of that day’s proceedings to her supervising judge, Judge Jennifer R. Gerard, and asked Judge Gerard to observe the next day’s proceedings via livestream.

C. Day 2 – March 17

On March 17, Ms. H, Mr. B, and their daughter appeared before Commissioner Harris at 8:30 a.m., as ordered. (The daughter was taken to the child interview room at the beginning of the hearing.) Also present were the same members of the DA's CAU who attended the March 16 hearing, plus two additional DDAs with supervisory roles in the CAU, all of whom made appearances for the record. Judge Gerard observed via livestream.

Once on the record, Commissioner Harris immediately relieved the members of the CAU. Commissioner Harris questioned Mr. B regarding whether the child was attending school and whether he sent the child out of state. During this exchange, Commissioner Harris interrupted Mr. B several times and did not allow him a full opportunity to speak.

Ultimately, based on Commissioner Harris's finding that Mr. B failed to enroll the child in school and sent the child out of state without notice or permission, Commissioner Harris ordered the following: awarded sole legal and physical custody of the daughter to Ms. H; that the daughter "not be removed" from the school she was attending or from the State of California; and for Mr. B to have supervised visitation until the next court date in May. As Mr. B was in the process of explaining why he sent the child to the Midwest, he became argumentative when Commissioner Harris criticized him for sending the child out of state, because, according to him, Ms. H spent three years in prison.

With respect to their past histories, Commissioner Harris told both Ms. H and Mr. B that they:

THE COURT: -- can stop bringing up all the past -- because, quite frankly, the two of you have horrible pasts, both of you. You're both convicted felons, and you both are on parole currently. So you both have issues.

MR. B: Yeah, but --

THE COURT: All right?

MR. B: My thing, Your Honor, is this --

THE COURT: Sir, I've made an order. You're either going to follow it -- and so are you -- because you see what happens when you don't follow the court order.

MR. B: How did we get from this order --

THE COURT: Sir --

MR. B: -- to what it was yesterday?

THE COURT: Sir --

MR. B: You called me yesterday and said to come get my child. Now you're telling me not to.

THE COURT: Correct.

MR. B: Help me out here to understand.

THE COURT: Sir, I just made a record of why I believe, pursuant to Family Code Section 3011, that at this time the child is better suited to be in mom's custody --

(R.T. 17:5-25.)

D. Reprimand By Presiding Judge

Presiding Judge John M. Monterosso issued a written reprimand to the commissioner, effective June 20, 2022. The written reprimand also found that “[t]he serious nature of [the commissioner’s] conduct [was] compounded by the fact that prior oral counseling [in October 2021] concerning similar conduct ha[d] been unsuccessful.”

The commission determined that on March 16, Commissioner Harris made no reference to having reviewed the request for a DVRO and request for orders; did not ask any questions regarding the substantive issues raised therein; did not ask any questions regarding the child being sent out of state (even though the issue was raised in the moving papers; and Ms. H alleged, and Mr. B admitted on the record, that he sent the child to the Midwest); did not ask the CAU to address the court, even though Commissioner Harris summoned them to appear, and it was possible they had relevant information; and denied Ms. H a meaningful opportunity to explain the reasons why she had custody of her daughter, thereby giving the appearance of prejudgment and bias. Commissioner Harris failed to adequately review the moving papers before the hearing and did not inquire into the issues raised therein or by the parties’ statements in court. Despite these omissions, Commissioner Harris ended the court day by stating that she intended to remove the child from Ms. H’s custody and return her to the custody of Mr. B.

On March 17, without the submission of any additional evidence or any change in the evidence available to Commissioner Harris the day before, and again dismissing the DDAs present in court, Commissioner Harris changed her order and awarded sole legal and physical custody of the daughter to Ms. H.

The commission determined that, during both hearings, Commissioner Harris was discourteous, argumentative, impatient, and demeaning to the litigants, and appeared to be embroiled in the proceedings and that Commissioner Harris twice dismissed the DDAs present in court without any inquiry as to whether the CAU had any information relevant to the issues before her.

The commission determined, as did Presiding Judge Monterosso, that on March 16 and 17, 2022, Commissioner Harris's conduct constituted a violation of canon 3B(4), requiring judges to be patient, dignified, and courteous to litigants, witnesses, lawyers, and others with whom judges deal in an official capacity; canon 3B(5), requiring judges to refrain from speech or conduct that could reasonably be perceived as bias or prejudice; canon 3B(7), requiring judges to accord every person who has a legal interest in a proceeding the full right to be heard according to law; canon 1, requiring judges to uphold the integrity and independence of the judiciary; canon 2, requiring judges to avoid impropriety and the appearance of impropriety; canon 2A requiring judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; canon 3, requiring judges to perform duties impartially, competently, and diligently; canon 3B(2), requiring judges to be faithful to the law and maintain professional competence in the law; and canon 3B(8), requiring judges to manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.

In determining to issue this notice of tentative public admonishment, the commission considered as an aggravating factor Commissioner Harris's prior discipline by the presiding judge, in October 2021, regarding her poor temperament in the handling of another family law matter. In mitigation, as noted by Judge Monterosso, the commissioner sought guidance from her supervising judge, "took full responsibility" for her conduct, and attended classes.

Commissioner Harris's conduct, described above, in the handling of *H. v. B.* (FLRI2105670) constitutes, at minimum, improper action within the meaning of article VI, section 18, subdivision (d)(3) of the California Constitution.

Commission members Dr. Michael A. Moodian; Hon. Lisa B. Lench; Hon. William S. Dato; Hon. Michael B. Harper; Rickey Ivie, Esq.; Ms. Sarah Kruer Jager; Mani Sheik, Esq.; Mr. Richard Simpson; and Ms. Beatriz E. Tapia voted for the Notice of Tentative Public Admonishment. Mr. Eduardo De La Riva and Ms. Kay Cooperman Jue did not participate.

Date: August 29, 2023