

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 07-103

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Complainant: No. 1308200163A

Judge: No. 1308200163B

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**ORDER**

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The issue raised is legal or appellate in nature, and the more appropriate remedy would have been to appeal the judge's decision to a court with proper jurisdiction.

The commission is not an appellate court and cannot change a judge's decisions; therefore, the complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: June 27, 2007.

FOR THE COMMISSION

/s/ Keith Stott  
Executive Director

Copies of this order were mailed  
to the complainant and the judge  
on June 27, 2007.

*This order may not be used as a basis for disqualification of a judge.*

COMPLAINT AGAINST A JUDGE

CJC-07-103

Regarding Case No. [redacted]

Estate of [redacted]

Date of Death - [redacted]

Date Personal Representative submitted first Final Accounting - [redacted]

Date Court had hearing on the Beneficiaries request for a detailed Final Accounting - [redacted]  
[redacted]

Date Personal Representative submitted his last Final Accounting - [redacted]

BACKGROUND INFORMATION

In the middle of [redacted] the deceased [redacted] informed his family that he had [redacted] and that the prognosis was not good. He was given up to six (6) months to live and that he needed to get his affairs in order. The deceased stated that he had a will where his estate was to be split 3 ways, a third to each surviving siblings. The deceased stated that his estate exceeded [redacted]. After his death, [redacted] the personal representative stated that the estate was in excess of [redacted]. So the beneficiaries had expected a 3 way split of around [redacted] each.

This case was first submitted to the State of [redacted]. When the personal representative found out that [redacted] Estate taxes exceeded Arizona, he had the deceased domicile changed to Arizona. The family, at the time of death, had the death certificate state the deceased official address as Arizona. This delayed any action on an estate settlement by fourteen (14) months. Throughout the process and proceedings the personal representative continued delaying the settlement process. The personal representative was not in any hurry to settle the estate, since he used this time to spend excessive amounts of the estate for personal reasons.

When the personal representative finally submitted the final accounting, [redacted] over two (2) years after death, the beneficiaries were surprised that the estate was only [redacted]. The final accounting was submitted without a detailed accounting. A preliminary accounting was given to the beneficiaries in [redacted] at which time the beneficiaries asked the Personal Representative's attorney about detailed information. He advised the beneficiaries that they should receive better details of the accounting. The personal representative refused to provide details. So the beneficiaries filed a lawsuit for explanation and details of the estate's final accounting.

INTRODUCTION

On [redacted] the Commissioner [redacted] found the personal representative did breach his fiduciary duties and had a legal duty to provide undivided loyalty to the beneficiaries. It was clear from the time of appointment of [redacted] in Arizona on [redacted] that he

failed to responsibly administer the estate and to communicate fully with the beneficiaries, which is one of his fiduciary duties. [ ] failed to perform the duties of the Personal Representative from the beginning and throughout the hearings. In addition the Personal Representative failed to follow the Court's Judgments from the beginning to the final distribution.

At that time the Court found, based upon testimony given today [ ] that the personal representative needs to be sanctioned for monies provided to his daughter, his wife, and himself, for services not justified or documented. For administration, maintenance, and repair, the Court does not find sufficient documentation exists to substantiate [ ]

As to medical care, the Court will provide for any medical providers that [ ] received care from during the last days of his life, but not allow the estate to constitute a boon for his family.

The Court is unable to determine what the surcharges judgment would be because failure to comply with discovery as ordered in [ ] has prevented the Court from reviewing everything prior to today's date. The Court can assure the parties that part of the surcharge will involve any and all attorney fees for the beneficiaries to seek the relief they sought.

The Court does not find attorney fees and costs utilized to defend this action constitute valid expenses of the estate as these proceedings could have been avoided entirely if there was compliance with the responsibility of being as Personal Representative. Counsel shall review all new documentation just in and to justify proper deductions.

The Court stated that it would not authorize any Final Accounting Figures that are not set forth as previously ordered.

Parties shall set forth their respective proposals in a judgment form within fourteen (14) days from today's date.

#### **A TIMELINE**

Date of Death - [ ]  
 First Appointment of Personal Representative - [ ]  
 Second appointment of Personal Representative - [ ]  
 Official change of venue - [ ]  
 Submission of estate draft accounting - [ ]  
 Submission of Estate Final Accounting - [ ]  
 Submission of revised estate accounting - [ ]  
 Completion of Court's Accountant Report - [ ]  
 Submission of second revised estate accounting - [ ]  
 Submission of Final Estate Distribution - [ ]  
 Court approval of Final Estate Distribution - [ ]

#### **COMPLAINT SUMMARY**

This is a case where the justice system went awry. The judge ignored the judicial system of the State of Arizona and [ ] County. Based upon the Laws of Arizona, the Commissioner [ ] failed to comply with those Laws. This Commissioner did not review, remember, or enforce judgments she had made. Because of ineptness on the part of the Commissioner verbal judgments issued in the hearings were not always included in the written Minute Entries. This lack

of communication caused problems in the hearings and in the Final Distribution. The Commissioner failed to review the Personal Representative's Final Accounting. This left the door open for the Personal Representative and his attorney to submit a Final Accounting, which failed to comply with the Court's Judgments. The Commissioner failed to review the Final Distribution for compliance with Court Ordered Judgments. If this had been a criminal case the Personal Representative and his attorney would have both been charged with fraud and perjury.

The commissioner cited the Personal representative, then failed to see that the Personal Representative and his attorney complied with the Court Judgments. At no time throughout the Court proceedings did the Commissioner enforce a complete accounting. In fact the Commissioner admitted that she had not looked at the accounting submitted by the Personal Representative on [redacted]. This accounting failed to comply with the Court Judgments. Had the Commissioner taken the time to review the accounting, she would have found it was riddled with errors. Assets were incomplete, and the Personal representative and his attorney had added thousands of dollars in unallowable expenses. Thus allowing the Personal Representative and his attorney to submit a Final Distribution, which was not compliant.

If the Commissioner had reviewed her judgments and made sure the Court's rulings were enforced the Final Distribution would have been in line with the Beneficiaries accounting. Following the Court's judgments the distribution to the beneficiaries would have increased by about [redacted]. This includes the [redacted] the deceased made as gifts to the beneficiaries prior to his death, that the Commissioner allowed in the Final Distribution, even though, the Commissioner had twice issued a Minute Entry stating that any distributions made prior to death of the deceased was specifically excluded from the estate.

#### CITATIONS

The personal representative [redacted] was cited by the Court for a breach of fiduciary duties on the part of the Personal Representative. The Personal Representative contrary to his fiduciary duties had a legal duty to provide undivided loyalty to the beneficiaries. The Personal Representative had to be prudent and cautious in dealing with the assets.

It is clear from the time of the appointment of [redacted] as Personal Representative in Arizona on [redacted] that he failed to responsibly administer the estate and to communicate fully with the beneficiaries.

The Personal Representative was cited with:

- ☐ Sanctioning for monies provided to his family;
- ☐ The Court will allow medical care for the deceased, but not let it be a boon for his family members;
- ☐ The Court stated that surcharges would be made against the Personal Representative;
- ☐ Surcharges will include any and all beneficiaries attorney fees and expenses incurred, to be paid by the Personal Representative from his own accounts;
- ☐ That the Court does not find attorney fees and costs of the Personal Representative utilized to defend this action constitute valid expenses of the estate;
- ☐ And, the Parties (Personal Representative) shall submit their respective proposals in a judgment form within 14 days from today's date. It was impossible for the Beneficiaries to submit any proposal until the Personal Representative had complied.

Motion for Order Setting Aside the Proposed Accounting - [ ]

A time was set for [ ] The Personal representative requested a delay due to health reasons.

Second time for hearing - [ ]

Personal Representative once again failed to appear.

- ☐ Court ordered the requirements as related to directing further accounting and further directing the Personal representative not to diminish, dissipate or transfer, encumber, or distribute assets until the accounting is approved;
- ☐ No expenses will be allowed that is not supported by documentation;
- ☐ It was further ordered that the Personal Representative appear in a hearing on [ ]

Beneficiaries request Personal representative to submit final accounting according to the pleading - [ ]

The Personal Representative stated he did not know what was required for a final accounting. A detailed list of data needed was sent on this date, with a request that the Personal Representative provide such information by [ ] Personal Representative failed to comply.

Court hearing on [ ]

- ☐ Personal representative presents at the hearing a bunch of invoices and receipts, which did not comply with the State of Arizona requirements. Personal Representative did not give the beneficiaries any time to review the records prior to the meeting. Therefore, all of the surcharges were entered by the Commissioner, who had apparently been given the records in time to review prior to the meeting.
- ☐ Parties did start to discuss some of the proposed surcharges against the Personal Representative, but could not complete because the accounting was incomplete.
- ☐ The Court stated that all attorney fees and expenses of the beneficiaries were to be paid by the Personal Representative and that they were not to be included as estate expenses.
- ☐ The Court stated that the beneficiaries would have an opportunity to review all of the assets and liabilities of the estate, after an approved accounting was provided by the Personal Representative. The beneficiaries were denied this opportunity. The Court never reviewed or accepted the accounting from the Personal Representative.

First Judgment against the Personal Representative - [ ]



As stated in the pleading submitted by beneficiaries attorney [redacted] the first surcharge against the Personal Representative was [redacted] was to be paid by [redacted] or a penalty of 10% per annum would apply [redacted] until payment was made. Payment to the Estate for the first judgment was never made by the Personal Representative to date.

**Court hearing on [redacted]**

- ☐ Court orders Personal Representative to submit a detailed accounting that is supported by all necessary documentation.
- ☐ Commissioner vacates charges against [redacted] (beneficiary) for costs incurred in carrying for the deceased, which negates the [redacted] paid by [redacted] to the estate;
- ☐ Personal Representative files a pleading, wherein he confirms that he was to use the [redacted] Account for the payment of the estate bills. [redacted] was withdrawn prior to his appointment as Personal Representative in Arizona. This is in agreement with written documents from [redacted] to [redacted].
- ☐ The beneficiaries submitted a pleading that the [redacted] Account was an estate account and not a joint account as so stated by the Personal Representative.
- ☐ Personal Representative and his attorney stated that all checks issued by the estate were included in the accounting. This was not true. About [redacted] of expenses did not have a form of payment included in the accounting.

**Personal Representative submits accounting in compliance with Court Order - [redacted]**

The Court had ordered that this accounting be submitted to the Court fourteen (14) days after the hearing on [redacted] This is fourteen (14) months late. Court requests that its Court appointed accountant review the accounting for compliance.

**Court Accountant Report and Recommendation, Second Response Review - [redacted]**

- ☐ There isn't any written record allowing the Petitioner to not submit supply checks and register.
- ☐ Petitioner was asked to explain why the lists of expenditures itemized by the Court Accountant were not valid charges? The Court on [redacted] re-iterated its accountant's findings that these expenditures were to be excluded from the estate. Personal Representative failed to comply in the Final Distribution.

**Court hearing on [redacted]**

- ☐ Minute Entry issued [redacted]
- ☐ Court reiterates previous judgments against the Personal Representative;
- ☐ Court orders Personal representative's attorney to submit a proposed distribution within thirty (30) days.

Personal Representative submits Final Estate Distribution on [ ]

Court hearing on [ ]

- ☐ Court states that costs specified in the List D - Money spent be charged against the Personal Representative. The Personal Representative failed to deduct this amount in his Final Distribution.
- ☐ The Final Accounting was discussed. The Personal Representative's Final Accounting still was not complete. It was short several thousands of Assets and included more unallowable expenses, approximately [ ] Expenses that the Court had ordered in previous hearings as not allowable were included in the final accounting.

**These charges are:**

1. Attorney Fees [ ] in the first judgment the Commissioner stated that the Personal Representative's attorney fees were not to be included as a estate expense, about [ ] was a part of the first judgment [ ]
2. Charges without invoices or receipts [ ]
3. Additional charges for the Car, which was a part of the first surcharge. These are additional charges added by the Personal Representative later. [ ]
4. Use of deceased pickup from [ ] [ ]
5. [ ] Computer [ ]
6. [ ] packing in [ ] [ ]
7. Additional Charges made by [ ] for maintenance after 1<sup>st</sup> surcharge [ ]
8. Court's Accountant, recommendation of deductions [ ]
9. Interest on above items, per Court Order dated, [ ]  
[ ] 28 months @ 10% [ ]

Total Amount of Court Ordered Surcharges not included in Final Distribution

10. Surcharges to be paid by Personal Representative from his own accounts for attorney fees and for beneficiaries expenses.
  - ☐ Personal Representative did not pay beneficiaries attorney fees. In the final distribution the estate paid [ ] of [ ] invoiced. Personal representative should pay to estate the [ ] and then pay the beneficiaries the balance due of [ ]
  - ☐ Interest on Attorney Fees [ ]  $10\% \times 19 \text{ months} =$  [ ]
  - ☐ Beneficiary expenses - (Actual - [ ] + Interest [ ] [ ]

Total Amount Personal Representative was to have paid beneficiaries from his personal accounts. Actual amount paid - \$0.00

**Assets not declared by Personal Representative in Final Accounting or Distribution**

1. Capital Gains on IRA Account
2.  Account, including interest -
3. The estate had several interest bearing accounts. The Personal representative refused to submit in his final accounting information on the estate assets, as required by law. There are additional monies that the Personal representative failed to identify.

**Final Distribution Submitted by the Personal Representative on**

- ☐ The Court accepted the Personal Representative's Final Distribution that was not in compliance with its rulings, thus causing great damage to the Beneficiaries.
- ☐ Personal Representative did not return one (1) penny to the estate as required by the judgments issued by the Court;
- ☐ Personal Representative did not pay one (1) penny from his personal accounts for judgments to re-imburse the beneficiaries for their expenses.
- ☐ Personal Representative included  for gifts from the deceased prior to his death, even though the Court issued a judgment in favor of the beneficiaries.
- ☐ Personal Representative included  for repayment of services performed by  for care of the deceased, even though Court Records states that these charges were vacated.

**CONCLUSION**

The questions you have to answer are;

1. Should a Commissioner who has failed to administer and/or uphold the laws be allowed to continue to sit on the bench?
2. Should the beneficiaries be punished because a Commissioner failed to do the job?
3. Or, Should the attorney, who failed to file an appeal on time, be required to pay the beneficiaries for errors committed by the Court?