

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

---

Disposition of Complaint 12-007

---

Complainant: No. 1409510330A

Judge: No. 1409510330B

---

**ORDER**

The complainant alleged that a superior court judge disrespected and threatened him, and made numerous erroneous rulings.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainant, along with the electronic record, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to investigate the legal sufficiency of the judge's rulings. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: February 3, 2012.

FOR THE COMMISSION

/s/ George Riemer

\_\_\_\_\_  
George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on February 3, 2012.

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

I feel that Judge \_\_\_\_\_ has shown open bias against me and is clearly favoring the opposing party. Judge \_\_\_\_\_ has openly disregarded the facts of the case, the law, has made threats to me and has shown a complete lack of disrespect for myself and my health.

These claims are based on the following facts:

1. The judge has failed to deal with the deceased burials plots despite numerous requests by me. It has now been more than 2 years and I have yet to be able to inter my father's ashes in the burial plots that were given to my father by HIS parents. The burial plots DO NOT even appear in the assets of the Estate despite NUMEROUS requests and Motions that I have brought forth.
2. That several hearings have been held without my notification due to the Courts mail room error. The judge ignored anything that I brought forth to prove my allegations and has refused to give me a hearing on these items. That despite at least five different requests and continuously informing the Court of the errors, communications that were supposed to have been directed at me where sent to my DECEASED father at his mailing address which I did NOT reside at and there was no mail forward on since he was deceased. Further, a hearing was held on August 6<sup>th</sup>, 2010 without my knowledge, notification or presence even though at the time I was the personal representative. My "failure to appear" was used as the basis for my removal as the Personal Representative. My alleged "failure to appear" is the Courts fault and I am enclosing an email sent to Linda Foss, Judge \_\_\_\_\_ judicial assistant which VALIDATES what I have brought forth all along that notifications from the court were being sent to my deceased father and not to me. I have MANY other supporting documents showing where I have brought this very issue up to the court but it always fell on deaf ears. Ms. Foss has provided me with a statement in which she acknowledges the Court error and the fact that up until November 14, 2011 all of the mail that was meant for me was in fact, being sent to my deceased father at his old address.
3. That on January 25, 2011 a trial was scheduled to challenge the validity of the Claim against the Estate filed by Beverly in the amount of \$10,000. The hearing was scheduled to be an all day hearing. I had several witnesses who were expected to give testimony via a telephonic appearance. After less than ten minutes of testimony, Judge \_\_\_\_\_ informed that participants that he was ill and was going to go home. The hearing was rescheduled for February 17<sup>th</sup>, 2011. At the February hearing, Ms Smith was fully allowed to question her client to get her testimony in. I was less than 10 minutes into cross examining Beverly to prove that in fact her claim was false, when Judge \_\_\_\_\_ interrupted me, stopped my cross examination and said that Ms. Smith had met her burden of proof even before I had finished my cross examination. I was not allowed to have my witnesses appear or give any testimony and to date no hearing has ever been held. The alleged basis for

Beverly's claim was that Beverly and my father had several loans together and he had not paid on any of them. The loans were based out of the State of Michigan and according to Michigan statute, each party is responsible for an equal 1/2 of the loan. Upon challenging the claims, Beverly thru her attorney NEVER submitted ANY documentation showing where she had paid more than her obligated 50%. In fact, the documents she provided the court showed that in fact she paid considerably less than her 50%.

The first instance is a Bank One Disclosure statement that was used as evidence of a joint loan but the document did not have my deceased's father signature on it. The total of the payments on this loan according the Bank One document is \$14,412.48. Beverly only submitted proof of payment in the amount of \$5403.90 which is far below her statutory requirement of \$7206.24. This was pointed out to the Judge who simply ignored it. The Bank One documents also show where the deceased and Beverly had a joint bank account, number 653725812 which was NEVER listed under the assets of the Estate.

The next loan in question is a loan to Citi Financial. According to the loan document, the total of the payments was \$7874.06. Again, Beverly's half of this loan, according to Michigan law would have been \$3937.03. Again, only payments totaling \$3707.71 were submitted to the Court again falling short of the 50% Michigan Statutory requirement.

There was also a loan to Members Credit Union in the amount of \$6000 for a 1984 Coachmen motor home. Again, the records submitted to the Court only indicate payments in the amount of \$2840, which is less than the 50% requirement. Again this was brought to the Judge's attention.

There is also an issue as it relates to property taxes paid on an alleged joint piece of property in Traverse City, Michigan. Again, each party would be liable for half. The total taxes are \$15,688.05 and according to the Grand Traverse County Treasurer documents which have been submitted to the Court, the totals are as follows: \$3957.37 where the person who made the payment is not identified which leaves a balance of \$11,730.68 which would be equally divided. The Treasurer's records indicate that joint payments in the amount of \$1632.82, taking this amount from the joint liability of \$11,730.68 leaves a total of \$10,097.86 jointly owed. The documents submitted by Ms. Smith only show Beverly individually paying \$2225 while my deceased father is showing to have paid \$7872.86

The above addressed items are what Judge \_\_\_\_\_ allowed Beverly thru her attorney to use as having met their prima facia claim against the Estate. Clearly, the evidence just simply does not support the claim. This is simple mathematics and clearly the judge has not taken the time to read and understand the most basic foundations of this case. Had the denial of the

claim been upheld, as it should have been due to evidence provided to the Court by the Claimant, Beverly, then Beverly would have had NO STANDING to apply to be the Personal Representative, thus leading to this multiple year battle.

It should also be noted that the documents which were submitted were nothing more than carbon check copies with NO verification showing that the checks had ever cleared the bank.

4. Judge \_\_\_\_\_ has allowed the systematic gutting of the assets of the estate by attorney Elizabeth Smith. Ms. Smith billed in excess of \$2200 BEFORE becoming the Successor Personal Representative INCLUDING a charge for her RETAINER AGREEMENT with her client! Not only that, but Ms. Smith billed to the Estate, after appointment as Personal Representative, \$1062.50 to pick up her client AT HOME and take her to two court hearings each of which lasted a combined total of less than an hour! Ms. Smith has billed MORE THAN \$8000 against the estate to try and collect an alleged claim of \$10,000 which had been previously denied by the Estate as frivolous.
5. That on May 17, 2011 Judge \_\_\_\_\_ at a court hearing ordered a period of 90 days for the parties to try and negotiate. I tried to contact Ms. Smith and never received any response from Ms. Smith who was the attorney for the personal representative. At a court hearing on July 29, 2011 I brought to this to the attention of the Judge that Ms Smith and her client had made NO attempts to contact me despite my attempts to contact her. The Judge found me in contempt for failing to abide by his orders but gave Ms. Smith a pass. The attached billing records of Elizabeth Smith against the Estate CLEARLY show that she IN NO WAY did Ms. Smith make any attempt to contact me during the court ordered period of negotiation.
6. Judge \_\_\_\_\_ failed to honor and enforce a Court Order from the Michigan Circuit Court. Judge Power of the 13<sup>th</sup> Circuit Court of the State of Michigan found the need to appoint a Guardian Ad Litem for Ms. Smith's client, Beverly, based on her threats to the deceased and the letters that Beverly wrote to the Circuit Court, which Judge \_\_\_\_\_ has overlooked with obvious disregard to the safety and needs of the Estate or myself. Beverly, Ms. Smith's client, did in fact make death threats, which are documented in the divorce file, to the deceased and the Michigan Court found the threats to be credible since Beverly's first ex husband murdered his wife and a family friend, two people before turning the gun on himself in Michigan. The Michigan Judge found Ms Smith's clients threat to do the same to be a threat to the decedent and Ms Smith's client has made overt threats to me and my family which Judge \_\_\_\_\_ has conveniently overlooked despite my Motion requesting to evaluate her mental condition.

7. That at a hearing on July 29, 2011 Judge \_\_\_\_\_ found me to be in contempt of Court for failing to turn in an accounting of the Estate, however, at the previous hearing, a status conference had been set for July 29, 2011 and it was my understanding that as long as I had turned in the accounting prior to that date I would have fulfilled my obligation. Despite my objections and my explanation that I was extremely underemployed barely making ends meet, the Judge fined me \$20. The Judge also ordered me to turn over boxes of my dad's personal items to Ms. Smith by Monday, August 1, 2011. While I was traveling on Monday, August 1, 2011 my vehicle broke down. I sent Ms. Smith an email right away to let her know that I was stranded and could I set a new day to deliver the items in question. I did not receive a response from Ms. Smith until October 4<sup>th</sup>, 2011 with a statement how I did not appear at a hearing on that same day. I was never notified of the hearing, again due to the mail issues outlined above. I only came to know of a Show Cause hearing scheduled for November 2<sup>nd</sup>, 2011 thru the email of Ms. Smith. I made a telephonic appearance on November 2<sup>nd</sup>, again only to be found in contempt for failing to pay the fine from the July 29, 2011 hearing. I explained to the Judge that I simply had not previously had the money that I had moved back to Illinois so that I could go back to work after having been unemployed in the Tucson area for more than two years. Again, my pleas fell on a deaf ear of the Court and the Judge assessed another fine for failing to pay the original fine and advised me that if I failed to pay both immediately that he would issue a warrant for my arrest! I believe this to be unconstitutional as this would fall under the debtor's prison provision. Judge \_\_\_\_\_ then proceeded to berate me for failing to turn over the boxes of personal items. I tried to interject my issue of my vehicle having failed and the fact that I had reached out to Ms. Smith but never heard back from her until October.

Judge \_\_\_\_\_ suggested that I should have abandoned my vehicle, walked to my storage unit and personally carried the boxes to Ms. Smith's office. I am enclosing the map route from Google Maps which clearly indicate that Judge \_\_\_\_\_ wanted me to walk a distance of 26.2 miles during a HOT SUMMER day of August 1<sup>st</sup>, 2011. The absurdity of this is obviously clear when Google suggest that this trek would have taken **EIGHT HOURS and TWENTY NINE** minutes AND this does not take into account the necessity of carrying boxes on this suggested journey! I am a 43 year old male who smokes and suffered a heart attack in 2009 and the ridiculous assertion by this Probate Judge that I undertake this journey is outrageous!

I feel that it is clear and obvious, that had the Court not made the mistakes it made and actually taken the time to review the facts in the case rather than simply believing the opposing party because they were represented by counsel and I was not, that I would not have suffered the additional emotional distress that I have had to undertake.

Never in my wildest dreams when I filed this probate case did I expect that the Probate Judge would find me in contempt of court not once, but twice, that I would be threatened with jail and then expected to take an almost 30 mile trek thru the Tucson Desert on a hot summer day, only to have my dad's estate fleeced by his ex wife due to my fathers SUDDEN and unexpected death at the age of 65. A probate judge should be empathetic and caring due to the raw emotional nature of a case such as this. To have to be forced to endure of all these travesties only to at the end learn that the court has made incredible egregious mistakes, while yet endearing the loss of a loved one makes this judges actions need to be called into question and serious review undertaken.