

Administrative Office of the Courts



INVESTIGATION SUMMARY, DETERMINATION, PROBABLE CAUSE REVIEW, AND RECOMMENDATION REPORT

Complaint No. 23-0035

License No. [REDACTED]

August 20, 2024

Certification and Licensing Division

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
INVESTIGATION SUMMARY, DETERMINATION, PROBABLE
CAUSE REVIEW, AND RECOMMENDATION REPORT**

LICENSEE INFORMATION	License Holder: Patricia Flores License Number: [REDACTED] Type of License: Individual Fiduciary
COMPLAINANT	Name: Debhora Childress
INVESTIGATION INFORMATION	Complaint Number: 23-0035 Investigator: Janelle Bauserman

Complaint Received:	September 2, 2023
Complaint Forwarded to the Licensee:	October 30, 2023
Licensee Received Complaint:	November 9, 2023
Response From Licensee:	January 4, 2024
Period of Active Licensure:	August 22, 2006 – Present
Status of License:	Active
Availability of Licensee:	Available
Availability of Complainant:	Available
Report Date:	August 20, 2024

ALLEGATIONS:

1. Patricia Flores failed to make timely distributions to estate beneficiaries.
2. Patricia Flores failed to timely close the estate.
3. Patricia Flores failed to timely communicate with estate beneficiaries.

DIVISION’S ALLEGATIONS:

None.

List of sources for obtaining information: (Investigative, records, outside resources, etc.):

- Written complaint and documentation submitted by Debhora Childress
- Written response and documentation submitted by Patricia Flores
- Review of applicable Certification and Licensing Division (“Division”) records
- Review of applicable sections of Arizona Revised Statutes (“A.R.S.”), Arizona Codes of Judicial Administration (“ACJA”) § 7-201 and § 7-202, and Arizona Supreme Court Rules

- Pima County Superior Court of Arizona docket for probate case number PB20190530.

PERSONS INTERVIEWED:

- Debhora Childress

Patricia Flores, through counsel, has historically requested the Division provide interview questions in advance of investigative interviews. Because this is not the Division's typical practice, Ms. Flores' request has been denied in past interviews. This resulted in unproductive interviews that required additional follow-up and obtaining written responses from Ms. Flores which have historically failed to fully address the Division's inquiries.

In the interest of obtaining more thorough interview responses in the investigation of this complaint, the Division elected to send written questions to Ms. Flores for her response prior to scheduling an interview. On August 8, 2024, the Division mailed by U.S. mail and emailed Ms. Flores eight questions concerning her administration of this estate. The letter also included a ninth item which was the Division's third request for additional documentation from Ms. Flores' case file. Ms. Flores was asked to respond by August 16, 2024. As of this report writing, the Division has not received a response to the eight questions or any of the requested documentation. Consequently, the Division does not believe additional efforts to pursue an investigative interview with Ms. Flores will yield results.

SUMMARY OF INVESTIGATION & ANALYSIS OF ALLEGATIONS:

Shirley Johnson ("Shirley") was the trustor and sole trustee of The Johnson Revocable Living Trust u/d/t dated August 23, 2002 ("Trust"). Shirley made three amendments to the Trust between 2010 and 2014. On June 11, 2013, Shirley amended the Trust and named Patricia Flores ("Flores") as the Successor Trustee. Shirley passed away on October 15, 2017, and Flores assumed her duty as Successor Trustee to administer Shirley's estate. The Trust has thirty-three beneficiaries, including Shirley's family members, friends, and several charitable organizations.

On September 2, 2023, the Division received a written complaint from Shirley's niece and Trust beneficiary, Debhora Childress ("Childress"). The complaint was forwarded to Flores at her valid contact points on October 30, 2023, via email and certified mail. United States Postal Service Certified mail tracking confirms Flores' receipt of the complaint on November 9, 2023. Flores did not respond within thirty days, nor did she submit a timely request for an extension of time, as required by ACJA § 7-201(H)(3)(c).

On December 11, 2023, the Division sent a follow-up letter to Flores via email and U.S. Mail at her valid points of contact advising her that the investigation would proceed without her response to the complaint. Flores responded via email and requested a 14-day extension

due to “unusual personal events.” On December 15, 2023, the Division notified Flores that Director, Aaron Nash, formally denied her request for a good cause extension based on insufficient information to find good cause exists. The Director informed Flores that she could still submit a response to the complaint, which the Division would note as untimely. The Division received Flores’ written response to the complaint on January 4, 2024, one month past the 30-day timeframe required (December 9, 2023). Flores’ untimely response did not include full and complete responses to the Division’s requests. Likewise, Flores’ responses to follow-up requests for information were ignored or incomplete, subjecting Flores to possible separate code of conduct ACJA violations.

Allegation 1: Patricia Flores failed to make timely distributions to estate beneficiaries.

At the time of her September 2023 written complaint, Childress said Flores had made three distributions from Shirley’s estate over five years. In an April 6, 2024, follow-up email to the Division, Childress said she contacted Flores for an update on the estate administration in March or April 2023 because it had been two or three years since Flores’ last communication. Email records provided by Childress, show Flores responded in June 2023 and provided the 2021 and 2022 accountings. In her September 2023 complaint, Childress said Flores has not made any additional distributions.

In her January 4, 2024, response to the complaint, Flores said most of the estate had been distributed. Flores said she was retaining approximately \$56,000 of estate funds pending the liquidation of \$1,960 in recently located “very old” U.S. savings bonds. Flores opined that it would be more prudent for her to wait to receive the bond funds before making final distributions. She said she was not sure how many distributions Childress expected.

Upon a review of the Pima County Superior Court of Arizona docket for probate case number PB20190530, the Division noted that on April 22, 2019, approximately 18 months after Flores assumed responsibility as Trustee, five beneficiaries filed a petition to remove Flores as Trustee. In the petition, the beneficiaries also sought monetary damages from Flores for breach of trust. Childress was not a petitioner in that action.

In the five beneficiaries’ April 22, 2019, petition, the beneficiaries alleged, in part, that Flores breached her fiduciary duty by failing to distribute the assets of the Trust timely. The case was resolved through a settlement agreement on August 30, 2019. As part of the settlement, Flores agreed to distribute \$1,000,000 of the Trust assets by September 30, 2019, and to place Shirley’s home on the real estate market by September 13, 2019. Attached to this Investigation Summary as Exhibits 1, 2, and 3, respectively, are the beneficiaries’ petition to remove Flores, Flores’ answer to the petition, and the court’s August 30, 2019, minute entry showing the settlement agreement terms.

The October 2017- July 2019 Trust accounting Flores provided with her response to the complaint shows the Trust had a beginning balance of \$2,451,690.45 at the time of Shirley’s death in October 2017. The accounting shows the Trust was comprised of \$1,889,074.45 in checking, savings, money market, certificate of deposit, individual retirement, and investment accounts; and \$562,616 in real property; a vehicle; jewelry; and

furniture. The estate did not have any encumbrances or creditor claims. A case note provided by Flores said all bills “have been paid in full” as of December 11, 2017.

**SCHEDULE 1
BEGINNING BALANCE CONSISTING OF:**

<u>Asset</u>	<u>Value</u>
American Funds Account [REDACTED]	\$63,691.06
Wells Fargo Checking [REDACTED]	\$15,029.28
American Funds Account [REDACTED]	\$215,780.00
American Funds Account [REDACTED]	\$102,750.53
Pima Federal Savings Ac [REDACTED]	\$62,244.85
Edward Jones Account # [REDACTED]	\$356,126.69
Oppenheimer Account # [REDACTED]	\$94,164.66
Oppenheimer Account # [REDACTED]	\$13,129.93
Metlife Total Control Account	\$21,061.00
Wells Fargo Investment Account	\$833,837.87
Wells Fargo Savings	\$44,749.49
Wells Fargo Money Market [REDACTED]	\$7,672.37
Wells Fargo CD [REDACTED]	\$5,087.93
Wells Fargo IRA	\$53,748.79
2014 Toyota 4D	\$14,000.00
10818 N. Pomgranite	\$468,616.00
Jewelry & Furniture	\$80,000.00
Total	\$2,451,690.45

The beneficiaries’ April 22, 2019, petition to remove Flores as Trustee, said the Wells Fargo investment account held approximately \$800,000 in municipal bonds that were to be divided among the five petitioners. A November 2017 account statement provided to the Division by Flores shows the municipal bond balance was only \$158,739. Forty-five percent of the remainder of the Trust was to be distributed to the five petitioners and fifty-five percent of the remainder was to be distributed to the other beneficiaries. To further determine the distribution requirements, the Division requested a copy of the Trust document from Flores, but she did not provide it. The Division asked Childress for a copy of the Trust but she said she did not have her copy of the Trust.

The accountings provided by Flores and Childress show Flores made the following distributions:

December 2018	\$396,820.73
September 2019	\$1,163,811.50
January 2020	\$363,000.32
March 2020	\$141,166.10
October 2020	\$207,521.29
March/April 2022	\$28,368.12

The 2017-2019 accounting shows Flores also made a one-time distribution of \$5,000 to Shirley’s gardener in June 2018, \$5,000 to Shirley’s housekeeper in July 2018, and \$20,000 to Shirley’s long-time friend, Patricia Ocker (“Ocker”), in December 2018.

Although the accountings show Shirley's estate had liquid assets totaling \$1,889,074.45 when Flores began her administration, the first partial distribution to all the beneficiaries totaling \$396,820.73 was made 14 months after she began administering the Trust. Twenty-two months after Shirley's October 2017, death, Flores retained more than \$2,000,000 in estate assets. As part of the August 30, 2019, settlement agreement that was established to resolve the petition to remove Flores as Trustee, the court ordered Flores to distribute \$1,000,000 in estate assets by September 30, 2019. The settlement agreement also required Flores to distribute the proceeds from the sale of Shirley's municipal bonds to the five petitioners no later than September 30, 2019. A check register provided by Flores shows a September 20, 2019, distribution of \$163,811.50 to the five petitioners for the municipal bonds. Between September 20, 2019, and September 25, 2019, Flores also distributed approximately \$812,500 of estate assets to 28 beneficiaries. On October 4, 2019, Flores made additional distributions of \$187,500 to "correct" the distributions made to three beneficiaries. In January 2020, Flores made an additional distribution to 13 beneficiaries. In March 2020, she made distributions to two beneficiaries and 13 charities. In October 2020, distributions were made to 13 beneficiaries and one charity. Despite having more than \$80,000 remaining in the estate accounts at the end of 2020, Flores did not make distributions to the other 12 charities until March and April 2022.

The accountings provided by Flores with her response to the complaint show she made no additional distributions in 2022. The 2022 accounting shows the estate was comprised of one account holding \$51,842.14. In her response to the complaint, Flores said she is waiting to make final distributions until she liquidates the \$1,960.00 in U.S. savings bonds she recently located "squirreled away in an envelope in an old file." A footnote on the 2022 accounting shows that Flores located the savings bonds sometime in 2022. An email provided by Flores, dated July 31, 2023, shows she did not begin the liquidation process of the savings bonds until May 2023. In her January 4, 2024, response to Childress' complaint, Flores indicated that the funds from the savings bonds still have not been received from the U.S. Treasury Department.

At the Division's request, Flores provided the Trust accounting for 2023 on April 30, 2024. The 2023 accounting shows Flores made an additional distribution of \$41,991.63 to 27 of the beneficiaries in December 2023. The 2023 closing balance in the estate's only account was \$11,191.35. A note on the accounting indicates that the liquidation of the savings bonds is still pending. Case notes provided at the Division's request, show Flores placed a follow-up call to the U.S. Department of Treasury ("Treasury") around July/August 2023 to confirm the liquidation request was received. The case notes show Flores completed an "Agreement and Request for Disposition of Funds" sometime in November/December 2023. In March or April 2024, Flores placed another follow-up call to the Treasury for an update on the bond liquidation.

The Division notes that the case notes provided by Flores are only partial records and are not dated. Although the Division requested Flores' billing records, she did not supply the requested billing records; therefore, the Division determined dates for Flores' activities by comparing entries in the case notes with dated transactions on the annual accountings.

Although Flores made an initial distribution of just under \$400,000 fourteen months after Shirley's passing, she retained \$2,000,000 in estate assets for almost two years before being ordered by the court to make substantial distributions. Shirley died in October 2017, so it has been almost seven years since her passing and Flores still has not liquidated all the assets and made final distributions.

The evidence demonstrates that Flores failed to make timely distributions to the estate beneficiaries in violation of the following authorities:

ACJA § 7-201(H)(6)(a) Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibility as required by law, court rules, this section or the applicable section of the ACJA.

ACJA § 7-201(H)(6)(k)(6) Failed to practice competently by use of unsafe or unacceptable practices.

ACJA § 7-201(H)(6)(k)(7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer.

ACJA § 7-201(H)(6)(k)(8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice.

ACJA § 7-202(J)(6) A fiduciary acting as personal representative must settle and distribute the estate of the decedent efficiently, timely, and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.

ACJA § 7-202(J)(6)(d) A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative must observe the standards of care and duties applicable to trustees.

ARS § 14-10804 A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

Allegation 1 is substantiated.

Allegation 2: Patricia Flores failed to timely close the estate.

In her complaint, Childress expressed her frustration with the length of time Flores has taken to administer Shirley's estate. Childress noted that at the time she filed this

complaint, the estate had been open for more than five years. Childress said the house was sold, and items of personal property that were willed to beneficiaries had been distributed, yet the estate administration has “gone on for years.” Childress acknowledged that Flores was dealing with issues related to Flores’ husband from December 2022 to January 2023, but there had been no action on Shirley’s estate for years before those events.

Childress was referring to the fact that Flores’ husband was shot in December 2022, hospitalized for several weeks, and passed away in January 2023.

In a follow-up email, dated April 6, 2024, Childress told the Division it had been almost seven years since Shirley passed away, and the estate has not been formally settled. Childress said it seems there is “always something on the horizon that [Flores] “finds” [sic] and must deal with that keeps the estate closure from being finalized.” She said Flores always gives “excuses” that seem reasonable, but Childress questioned whether they are. She said she gets the sense that Flores is “riding this out until funds are depleted.”

In her response to the complaint, Flores did not specifically address allegations of the lengthy administration of Shirley’s estate. Aside from Flores’ discovery of the savings bonds and her efforts to liquidate them, Flores did not explain why the estate has remained open for more than six years.

During her June 10, 2024, interview with the Division, Childress said Flores would disappear for extended periods, during which nothing was seemingly being done to move the estate forward. Childress said she had not heard from Flores for two years before Flores’ husband passed away.

In the beneficiaries’ April 22, 2019, petition to remove Flores as Trustee, they claimed Flores breached her fiduciary duties by failing to list the estate property for sale in a timely manner. The petition alleged that in the 17 months following Shirley’s passing, Flores failed to list the property and marshal and distribute the estate assets in a timely manner.

In her answer to the petition, Flores said the delays associated with administering the Trust partially relate to lengthy delays in gaining access to Shirley’s Wells Fargo Advisors (“WFA”) account, removing personal property from the residence, and engaging in repair work to prepare the home for sale.

The Division reviewed available records regarding Flores’ claims that gaining access to WFA, removing personal property from the residence, and engaging in repair work to prepare the home for sale delayed the estate administration.

Delay Gaining Access to Wells Fargo Advisors

Based on the case notes and accountings, Shirley had an individual retirement account (“IRA”), a certificate of deposit, and a brokerage account with WFA. Regarding Flores’ statement to the court regarding the April 22, 2019, petition, that there were lengthy delays in accessing Shirley’s Wells Fargo Advisors account, the fiduciary’s case notes show

Flores first contacted WFA's Estate Team by telephone in September 2018 to discuss the IRA and brokerage accounts. Because the case notes provided by Flores are truncated, there are few additional details about the nature of that call. The Division again notes that the case notes provided by Flores are only partial records and are not dated. The Division determined dates for Flores' activities by comparing entries in the case notes with dated transactions on the annual accountings.

Case notes document that Flores completed and mailed paperwork including a beneficiary claim form for Shirley's WFA IRA account in November 2018. A case note from mid-December shows Flores received and completed the beneficiary claim form from WFA for Shirley's brokerage account. A few days later Flores had a telephone conversation with WFA about the IRA and certificate of deposit accounts. She had a third telephone conversation with WFA in mid-January 2019 and faxed them a "Beneficiary Packet" for Shirley's IRA account. However, the January 2019 case note references the account number for Shirley's brokerage account, so it is unclear if the paperwork was intended for the IRA or the brokerage account.

The next case note referencing WFA was on or around March 5, 2019, when Flores called WFA to discuss the liquidation of an account. WFA returned Flores' call and said they would FedEx the forms needed for the liquidation. In early April 2019, Flores contacted WFA again to discuss Shirley's IRA account. Flores emailed the WFA Estate Team regarding an updated Certificate of Trust and received an automated response on or around April 23, 2019. Flores contacted WFA again at the beginning of May 2019, faxed another Beneficiary Claim Form, and was given access to newly created Trust accounts.

Case notes show Flores received maturity notices from WFA for Shirley's certificate of deposit near the end of January 2019 and again in December 2019. However, the case notes show that rather than liquidating the certificate of deposit at either maturity date, the certificate of deposit account remained open until June 2020.

Based on the case notes, eight months passed between the time Flores first contacted WFA in September 2018 and when she was granted access to the new WFA accounts in May 2019. Although accessing the WFA account took several months, the estate administration was delayed an additional year because Flores failed to promptly start the process with WFA. In her answer to the beneficiaries' petition to remove her, Flores told the court that lengthy delays in accessing WFA accounts are not an "uncommon experience in dealing with fiduciary accounts associated with Wells Fargo."

Flores' statement to the court in the answer to the April 22, 2019, petition to remove her as Trustee, that it was not uncommon to experience these lengthy delays with fiduciary accounts with Wells Fargo, indicates that she has prior knowledge and experience. However, despite knowing or having experience with Wells Fargo, Flores did not act timely to being the process of accessing the accounts with WFA. It would have been prudent for Flores to start the process with WFA immediately after she began administering the Trust in October 2017, rather than waiting until September 2018.

Bank documents and case notes provided by Flores show she went to Wells Fargo on January 29, 2018, and gained access to Shirley's money market, checking, and savings accounts and on April 16, 2018, Flores received an annual distribution from Shirley's WFA IRA account, so it is unclear why Flores did not contact WFA until September 2018 to gain access to the other accounts. Additionally, case notes show Flores did not take steps to timely liquidate other estate assets until after the five beneficiaries filed their petition on April 22, 2019. For instance, she did not marshal Shirley's estate jewelry from Ocker until April 29, 2019, and did not check on seven potential accounts listed on the Trust instrument or search Arizona's unclaimed property for additional assets until early May 2019.

Removal of Personal Property

Regarding the time taken to remove Shirley's personal property, a fiduciary case note from January 2019 shows Margarita Vasquez ("Vasquez") told Flores that most of the furniture in Shirley's home was gone. The accountings show Flores paid Vasquez \$989 on December 11, 2017, and \$780 on June 5, 2019. Both payments indicate they were for Vasquez to "clear property." This would indicate that Vasquez completed the removal of Shirley's personal property from the residence in June 2019.

In response to the Division's request for documentation about the disposition of Shirley's personal property, Flores provided check copies that are referenced in the case notes as funds received from Ocker and others for the sale of household items. These funds do not appear as deposits on any accounting provided by Flores. Following are the only documents Flores provided the Division that represents money involving the sale of personal property, totaling \$3,944 and occurring in 2018 and 2019. The Division notes one of the checks is made out to Flores personally rather than the estate:

Green Chairs X 2	\$300.00
Green Sofa	\$250.00
Nesting Tables	\$85.00
Metal Lamp	\$40.00
Christmas Salad Thongs	\$5.00
Salt & Pepper	\$5.00
3 Christmas Pillows	\$10.00
Green Side Chairs X2	\$90.00
Headboard & Mattress	\$150.00
Night Stands X 2	\$80.00
Desk & Chair	\$450.00
Tall Chest	\$150.00
Lane Hope Chest	\$150.00
Iron Glass Table X4 Chairs	\$250.00
Ducks X3	\$30.00
Lanterns X 2	\$20.00
Shredder	\$20.00
Topiary Plant	\$20.00
Ficus Tree	\$20.00
Table w/Design	\$40.00
2 White Wingback Chairs	\$210.00
Dresser W/Mirror	\$150.00
Cart	\$5.00
Wreath	\$2.00
Christmas Wreath	\$3.00
Tree on Stand	\$10.00
Glass Christmas Trees	\$5.00
Gift Box Lights	\$4.00
Tree in Red Bag	\$3.00
Table w/Design	45.00
Steel Cabinet	\$10.00
Pillow & Stool	\$5.00
Gun	\$500.00

Total \$3,117.00

PATRICIA A. OCKER
R.L. OCKER
TRACEY J. GREEN

91-52771221 271

Dec. 27, 2018
Date

PAY to the order of *Estate of Shirley S. Johnson* \$ *3,117.00*

Three thousand one hundred seventeen and no/100 Dollars

WELLS FARGO Wells Fargo Bank, N.A. Arizona www.wellsfargo.com

For _____

Checking Savings Money Market Access Command

Account Number: [REDACTED] Date: 12/19/18

Johnson Revocable Living Trust

[REDACTED]

Total Credits 377.00	Total Debits 377.00
Subtotal 0.00	Minus Cash Back 0.00
Total \$ 377.00	

Bank Use Only (Other 001 to last Account)

CHARO DIAZ-RIVAS REAL ESTATE ACCOUNT

Date: 12-17-2018

Pay to the order of: **Shirley Samsay Trust's 222nd**
Two Hundred, Twenty Five

BBVA Compass

[REDACTED]

Bank of America

Timothy J Moriarty

Date: 1-11-2019

Pay to the order of: **PATRICIA FLORES LLC**
Two hundred fifty thousand

Bank of America

[REDACTED]

LARRY R WEIMER
SHIRLEY A WEIMER

Date: 1-14-19

Pay to the order of: **Shirley Johnson Estate**
One Hundred Ninety

WELLS FARGO

[REDACTED]

CHARO DIAZ-RIVAS REAL ESTATE ACCOUNT

Date: 1-15-2019

Pay to the order of: **Shirley Samsay Estate**
Two Hundred, Sixty

BBVA Compass

[REDACTED]

The case notes show that Ocker purchased additional household items for \$2,478.50 with a second check numbered [REDACTED] in or around January 2019. Flores did not provide documentation showing what Ocker purchased with the second check. The funds purportedly received from Ocker do not appear on the annual accountings provided by Flores.

According to case notes, Flores sold Shirley's 2014 Toyota RAV4 to Chapman Acura for \$16,900 in November or December 2018; however, the proceeds from that sale are not documented on any Trust accounting.

The accountings provided by Flores show five deposits for the sale of Shirley's personal property after the residence was sold:

12/21/2020	Sale of jewelry	\$3,500.00
02/05/2021	Sale of personal items	\$3,500.00
02/21/2021	Sales of personal items	\$4,300.00
09/02/2021	Sale of personal items	\$173.22
09/28/2021	Sale of personal items	\$1,055.27
10/03/2022	Sale of personal items	\$40.00
10/03/2022	Sale of personal items	\$1,290.00
06/27/2023	Sale of personal items	\$2,852.43
10/17/2023	Sale of personal items	\$38.50

The Division requested that Flores provide the following records:

- 1) Documentation showing the disposition of estate jewelry, coins, furniture, and 2014 Toyota.
- 2) All bank records and transaction registers for the Trust operating account(s) showing payment of fiduciary fees and costs, contractor payments, and deposits from sale of assets.

However, Flores did not supply any additional documentation showing what jewelry was sold on December 21, 2020, or what personal items were sold throughout 2021, 2022, and 2023. Based on case notes, the June 27, 2023, "Sale of personal items" for 2,852.43 was for the sale of costume jewelry. The case notes also show the sale of jewelry in March 2022 for \$2,782 and the sale of gold, silver, and coins in October 2022 for \$1,290.

Flores provided a computer file titled "Johnson TTE Cash Dep Old Currency No Value [REDACTED]." The file contained a Wells Fargo transaction record for a total deposit of \$1,938.50 to account [REDACTED]. See below:

Wells Fargo Branch Transaction Record

2 messages

Tue, Oct 10, 2023 at 11:57 AM

[Redacted]

Your transaction record

Here is the electronic transaction record you requested from a Wells Fargo branch.

Wells Fargo Bank Transaction Receipt	
Branch	[Redacted] Deposit
Account Number	[Redacted]
CHK	[Redacted]
Cash In	\$1,938.50
Cash Dispenser/Recycler	
\$100	\$1,900.00
\$1	\$4.00
Sub total	\$1,904.00
Loose Currency	
\$2	\$12.00
\$1	\$1.00
Sub total	\$13.00
Loose Coin	
\$1.00	\$15.00
\$0.50	\$6.50
Sub total	\$21.50
Total Deposit	\$1,938.50
Deposit Availability The full amount of your deposit is included in your available balance.	
Transaction [Redacted] 11:57AM 10/10/23 Deposit Credit Date: 10/10/23	
Thank you, ASHLEY	

The estate’s Wells Fargo account number at the time of the deposit was [Redacted]. None of the annual Trust accountings show a Trust account ending in [Redacted]. A case note entered by Carla Skinner (“Skinner”), Flores’ assistant and daughter, says the currency was “exchanged into check form for deposit.” However, the case notes show the deposit amount was \$38.50 rather than \$1,938.50. The case notes also show that Skinner charged the estate for mileage to conduct banking business on the same date as the deposit receipt:

- PAID - Check No. [Redacted]
C. SKINNER \$24.20 RE MILEAGE 10/10 & 10/17 BANKING
Read More 
- MANUAL DEPOSIT - Wells Fargo [Redacted]
\$38.50 RE: CURRENCY; EXCHANGED CURRENCY INTO CHECK FORM FOR DEPOSIT. DEPOSITED ...
Read More

The 2023 accounting also shows the deposit amount to be \$38.50 instead of \$1,938.50:

SHIRLEY JOHNSON TRUST
JANUARY 1, 2023 THROUGH DECEMBER 31, 2023
SCHEDULE 3 - RECEIPTS

<u>Date</u>	<u>Payor</u>	<u>Amount</u>
01/06/23	STATE OF AZ - UNCLAIMED ASSET	\$ 159.20
06/27/23	SALE OF PERSONAL ITEMS	\$ 2,852.43
10/17/23	SALE OF PERSONAL ITEMS	\$ 38.50
12/31/23	INTEREST EARNED TO DATE	\$ 5.26
TOTAL		\$ 3,055.39

It is unclear how \$1,938.50 was deposited into a non-Trust account ending in [REDACTED] and converted into a \$38.50 check deposited into the estate’s Wells Fargo account ending in [REDACTED]. It is also unclear why Flores still possessed \$1,938.50 in cash assets six years after Shirley’s passing.

Discounting the \$1,938.50 deposit, shown above, the checks, case notes, and accountings show Flores liquidated \$44,143.92 in estate assets over five years from 2018 through 2023. Despite the Division’s request for this information, Flores did not provide any documentation showing the disposition of the remaining jewelry—neither the case notes nor the accounting document the sale of any additional assets after October 2023.

As Childress said in her complaint, several items of personal property had been willed to various individuals. Childress said Flores had already distributed the bequeathed items.

Flores provided a three-page handwritten memorandum from the Trust showing the personal property Shirley left to specific individuals. Flores’ notes on the memorandum seem to confirm the distribution of the property:

Bees leather chair - Rick Ocker ✓
 Outdoor furniture - Pat Ocker # metal roadrunner
~~Large metal desk w/ small built-in seat - Cooper House~~
~~Thousand chair w/ seat, side table w/ desk - Mrs. Crandall~~ ✓ ^{said no, general}
 Aunt Nellie's desk in master bedroom - Debra Childress ✓
 Oak chair clock - ~~Pat Ocker~~ + computer and parts Doug (Kubler) ✓
 Stereo pieces (all) to ~~Pat Ocker~~ ✓
 All guns, pistols, ammo to Marty Scott in Mesa (30) (OK) ✓
 All jewelry pieces, Indian articles of any kind to: ~~Pat Ocker~~ & Bill Fied ✓
 Black antique safe of Smalls - Davis P. Ocker (also antique safe, also) Locant ✓
 Glass coffee table - bed room to Don & ~~Pat Ocker~~ + round drum table (front room) ✓
 42" TV - family room & computer to Jim & ~~Pat Ocker~~ + all other appliances, etc ✓
 20" TV - Doug to Marty Scott for his workshop (in ^{den} bedroom) (+ guns) ✓
 19" TV - ~~Pat Ocker~~ to ~~Pat Ocker~~ ✓
 32" TV, master bedroom to ~~Pat Ocker~~ (the pair) 400.00 - to ship it here ✓
 Home Shomerville credenza (front room) to: → Cindy does not want it ✓
 Home Shomerville China cabinet to Cindy Moore as sell ✓
 Tly Apodis dishes (4) to ~~Pat Ocker~~ + plates, mugs, & silverware ✓
 All tools to Jim & ~~Pat Ocker~~ (12 yrs work gear) + cash ✓
 Penny bank bag (if living) (all four bags) to: ~~Pat Ocker~~ ✓
 Antique plant stand w/ chair to: ~~Pat Ocker~~ or AZ state museum in Tucson ✓
 Bedroom furniture - Shomerville to: sell ✓
 Antique sewing ^{table} (Lara Davis) (for road) to: ~~Pat Ocker~~ ✓
 Antique wash stand w/ bowl, pitcher, potty to: AZ state museum in Tucson ✓
 Painting of flower (painted by Nelia Fisk (w)) front room - ~~Pat Ocker~~ or daughter ✓
 Extra rug in laundry room to: ~~Pat Ocker~~ ✓
 Extra rug in garage to: ~~Pat Ocker~~ ✓

~~Cardinal 2012 SUV - to be sold~~ ^{Sold} to Dad
 Toyotas RAV4 ~~limited white, 4 door~~ - to be sold * Barry
 Antiquer dishes w/ chairs colored (mexican floral) - sell (12 pieces) place setting ✓
 All quick racks to ~~Barry~~ ^{Barry} ✓
 Thomasville dining table, chairs, 2 accent chairs to ✓
 Dinette table + 4 chairs to: ^(w/ Robinsons) ✓
 Uncle Miro's watch to Gloyd, then to Jason (in glass dome key chain)
 Other watches in glass dome to David Johnson ✓
 Bed + top of set dresser to Alice Crandall ✓
 Cut glass, bowls + pitchers to: ✓
 Apple - ~~Barry~~ ✓
 Tim - ~~Barry~~ ✓
 Ann - ~~Barry~~ ✓
 Teresa - silver + bowl ✓
 Sharon - Betty ✓
 all Jim's Christmas statues to: contact Cathy Johnson for address
 Cathy: 3 Christmas statues in box ✓
 Deborah - hospital rug ✓
 Diana - Christmas wreath ✓
 Silverware - Mom's to Alice Crandall (mine in wood chest) to Sharon ✓
 Family Room:
 Couches - sell, lamps - sell, Books - on porch, plants Pat ✓
 Thomasville table and chairs, desk chair, to ~~Barry~~ ^{Barry} ✓
 deceased

Cont of Revised estate for Shirley Johnson
 Sept 28, 2014 Page 4A

If anyone does not wish to have these gifts, they
 will be sold at highest price in the Tucson area.
 Their money will then go to "household expenses"
 for the use of care of yard (Jim Turk) and cleaning
 house (Beth) and utilities.
 This will also cover any expenses my family may incur
 for traveling to and from here in Oro Valley.
 The amount left will return to the estate
 Plants - moveable plants to Pat ✓

Although Flores' case notes do not provide any insight into the time it took Flores to distribute the bequeathed personal property and that Flores failed to provide requested billing records to the Division, the accountings show several large UPS and FedEx charges between August 2018 and June 2019:

8/7/2018	UPS	\$2,608.18
2/20/2019	FedEx	\$56.85
3/28/2019	FedEx	\$195.35

6/12/2019 FedEx \$94.45

The timing of the last FedEx shipment coincides with the case note from June 2019, which shows that Vasquez informed Flores that the house was nearly empty.

During her June 10, 2024, interview with the Division, Childress said her aunt bequeathed her a Secretary Desk. She said she was surprised when the desk arrived at her house via UPS. Childress expressed concern about the cost to the estate of shipping the desk by UPS and thought it would have arrived more cost-effectively.

Although the disposition of the majority of Shirley's personal property took nearly two years, without Flores' billing records and complete case notes, it is difficult to determine if reasonable efforts were made to remove and dispose of Shirley's personal property timely. With no documentation of remaining inventory from Flores, the Division cannot determine if Shirley's personal property and jewelry contribute to Flores' ongoing delay in administering the estate.

During her interview, Childress said she does not know what personal property and jewelry Flores possesses. She said she did not receive a detailed inventory of Shirley's personal property or know what jewelry Shirley had. Childress said Flores has not provided any information about what has been sold and what remains to be sold. She said other than the savings bonds, she does not know what is left in the estate. Childress said Flores said the jewelry sale was delayed due to COVID-19 issues.

Repair Work and Home Preparation

Regarding Flores' claim that repairs to the trust property delayed the estate administration, the Trust accountings show she spent \$46,455.52 in estate funds categorized on the accountings as "Home Repairs." The Division requested from Flores, but did not receive, invoices for all repairs, renovations, and cleaning of the Trust property. The following chart shows the home repair charges listed on the 2017-2019 accountings. The charges were cross-referenced with Flores' case notes for additional details if available:

Date	Vendor Name	Amount	Information from Case Notes
1/26/2018	Margarita Vasquez	\$ 400.00	Partial payment of total due (\$1,091.32)
1/29/2018	Margarita Vasquez	\$ 691.32	Remaining balance of total due (\$1,091.32)
1/29/2018	24/7 Plumbing	\$ 729.38	
1/29/2018	24/7 Plumbing	\$ 729.38	
2/2/2018	24/7 Plumbing	\$ 1,004.98	
2/6/2018	American Leak Detection	\$ 375.00	
2/6/2018	Truly Nolen Termite	\$ 220.00	Annual termite barrier treatment
2/6/2018	24/7 Plumbing	\$ 1,521.21	final invoice
2/6/2018	American Leak Detection	\$ 375.00	
2/16/2018	24/7 Plumbing	\$ 1,004.98	Two invoices from December 2017 \$190 and \$814.98
3/8/2018	R. Vasquez	\$ 147.62	
3/19/2018	M. Vasquez	\$ 1,487.50	
4/17/2018	M. Vasquez	\$ 639.80	
4/30/2018	Truly Nolen Termite	\$ 220.00	Annual Treatment
6/12/2018	Young Alarm	\$ 299.88	Yearly Dues
6/20/2018	Town of Valley	\$ 23.50	Inspection Permit
7/16/2018	R. Vasquez	\$ 840.00	21 hrs/\$40 per hour
8/23/2018	J. Harrington	\$ 1,075.00	Electric Breaker Replacement
11/9/2018	M. Vasquez	\$ 1,068.17	
3/2/2019	M. Vasquez	\$ 960.00	
4/8/2019	Roman Moreno	\$ 665.00	
4/17/2019	Every Detail Construction	\$ 3,000.00	First half for repair and painting of inside of house
6/12/2019	Charo Diaz-Rivas	\$ 558.00	Avila Reimbursements
7/1/2019	Rigo Pest	\$ 125.00	
7/1/2019	Kent Mechanical	\$ 600.00	
7/9/2019	Family Air	\$ 1,128.98	
8/6/2019	Every Detail	\$ 4,500.00	Balance due for repairs and painting
8/7/2019	Family Air	\$ 95.00	
8/7/2019	Every Detail	\$ 2,475.88	
8/7/2019	Rigo Pest - Rodent	\$ 797.00	Termite Barrier Treatment
8/21/2019	R.C. Lynch	\$ 1,087.84	Rafael Lynch for final repairs
8/21/2019	Every Detail - Tile Repairs	\$ 500.00	Remaining balance to initial contractor
8/21/2019	Charo Diaz - Reimbursement	\$ 617.00	Plumbing reimbursement
9/3/2019	Cinderella Maid - Mid-Job Clean Up	\$ 360.00	
9/3/2019	Carpet Police - Bedrooms & Living Room	\$ 455.10	
9/3/2019	Charo Diaz - Reimbursement for Windows	\$ 414.00	
9/23/2019	Hallmark Roofing - Roof Repair	\$ 464.00	
10/31/2019	Every Detail - Water Heater and Rodent	\$ 3,500.00	
11/1/2019	R. Dean and D. Dean - PVC	\$ 7,600.00	Alta statement shows these are the home purchasers
11/8/2019	Charo Diaz	\$ 200.00	
11/12/2019	Every Detail - Final half prep/painting	\$ 3,500.00	
		\$ 46,455.52	

The home repairs figure includes \$5,246.79 paid to Vasquez in 2018 and early 2019. Based on Flores' case notes, Vasquez was overseeing the disposition of Shirley's personal property, but Vasquez does not appear to have been providing repair services.

The accountings demonstrate that the repairs in 2018 occurred primarily in January and February and were related to a plumbing/leak issue. Other than the replacement of an electric breaker in August 2018, there were no other repairs to the property throughout 2018. In January 2019, Flores received a quote from Every Detail Construction ("Every Detail") for repairs and painting the interior of the Trust residence. The first payment for repairs and painting occurred three months later, in April 2019, when Flores paid Every Detail \$3,000. Case notes show the payment was for the first half of Every Detail's fee for repairing and painting the inside of the house.

Case notes show that in August 2019, Flores' realtor instructed her to short pay Every Detail by \$500 because they did not complete some of the work. Case notes show a check for \$5,000 to Every Detail was voided, and on August 7, 2019, Flores paid Every Detail

\$4,500. However, an August 7, 2019, accounting entry shows a payment to Every Detail for an additional \$2,475. There is no explanation in the accounting or case notes for the \$2,475 payment.

Two weeks later, on August 21, 2019, another accounting entry shows Flores paid Every Detail an additional \$500. Case notes show the payment was for the remaining balance due to the “initial contractor.” On August 21, 2019, Flores paid a different contractor \$1,087.84 to complete the final repairs.

Despite the property sale closing in September 2019, additional accounting entries show two payments were made to Every Detail after closing. The accounting shows that on October 31, 2019, Flores paid Every Detail \$3,500 for “water heater and rodent,” and on November 12, 2019, Flores paid Every Detail another \$3,500 for “Final half prep/painting.” There are no corresponding case notes for the final two payments to Every Detail. However, Flores’ case notes show she took a \$3,500 cash withdrawal from the estate on or around October 31, 2019.

On or around November 8, 2019, Flores transferred \$3,500 in estate funds to her personal account for “Fees”; however, there is no corresponding \$3,500 entry in the accounting for her fees. The only transactions matching the timeframe and transaction amounts are the two \$3,500 payments to Every Detail. Flores paid Every Detail \$17,475.88 to make repairs and paint the residence's interior. Because Flores did not provide complete case notes, the exact dates and full descriptions of her activities were unavailable to the Division.

Aside from the plumbing issue, the repairs and preparation of the property for sale did not begin until April 2019 and concluded just five months later. The repairs alone do not account for the nearly two-year delay in listing the property for sale. Because Flores did not provide the Division with the requested billing records, bank records, complete case notes, and documentation of the repairs, the Division cannot determine that her seventeen-month delay in initiating the property repairs was reasonable.

The Trust accountings show that the almost two-year delay in selling the Trust residence caused the estate to incur additional expenses totaling \$21,737.76 for homeowner’s insurance, utilities, and property taxes. The cost of utilities for the uninhabited residence during those two years was \$6,581.73.

During her interview with the Division, Childress was asked if Shirley’s home was in disrepair at her passing. Childress said there might have been a plumbing problem, but Shirley was meticulous, and her home was well-maintained. Childress said Shirley built the custom home and took good care of it. Childress said she was surprised when Flores said many repairs were needed on the house before it could be sold.

Although the property repairs, disposition of Shirley’s personal property, and the delay in accessing Shirley’s WFA account are explanations Flores provided the court in 2019 for her untimely administration of the estate between 2017 and 2019, the only reason she offered for the estate still being open almost seven years after Shirley’s passing is the

\$1,960 in unliquidated savings bonds. This does not explain why the bonds were not located until approximately three years after Shirley’s residence was sold or why the liquidation process was not started for a year after the bonds were located.

Flores’ jewelry inventory notes show the value of the jewelry in her possession in 2019 was \$59,320. The accountings and case notes show Flores sold between \$9,100 and \$10,400 worth of jewelry between 2020 and 2023. This means Flores remained in possession of an undisclosed amount of Shirley’s jewelry and continued to sell pieces six years after Shirley’s passing. Because Flores did not provide the requested documentation showing the sale of the estate assets, the Division cannot determine how much of the jewelry remains in Flores’ possession. Additionally, Flores held over \$1,938.50 in estate cash for six years after the start of the administration before depositing \$38.50 of the \$1,938.50. It is unclear what happened to \$1,900.

Flores failed to make any distributions to beneficiaries between October 2020 and March 2022 and again from March 2022 to December 2023. Because Flores failed to provide the Division with her billing statements, it cannot be determined how many hours have been devoted to the estate over the past 80 months. However, the annual accountings show the following charges for her fees:

2017	\$0
2018	\$19,576.87
2019	\$11,902.08
2020	\$4,878.56
2021	\$4,291.38
2022	\$4,896.37
2023	<u>\$1,747.23</u>
	\$47,292.49

The charges show Flores completed the majority of work on this estate in 2019 and has likely billed for only a few hours per month for the last four years. The case notes provided by Flores show she was contacted by a beneficiary in or around February 2021 about the estate. The case note says, “TC with Cindy Moore Re: Closing Trust CINDY WAS VERY UPSET ABOUT THE TRUST NOT BEING CLOSED AND STATED SHE HAS TWO ATTORNEYS...”

The evidence demonstrates that Flores failed to timely close the estate in violation of the following authorities:

ACJA § 7-201(H)(6)(a) Failed to perform any duty to discharge any obligation in the course of the certificate holder’s responsibility as required by law, court rules, this section or the applicable section of the ACJA.

ACJA § 7-201(H)(6)(k)(7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder

engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer.

ACJA § 7-202(J)(6) A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely, and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will. (7) A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.

ACJA § 7-202(J)(6)(d) A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees.

A.R.S. § 14-10801 On acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries and in accordance with this chapter.

Allegation 2 is substantiated.

Allegation 3: Patricia Flores failed to timely communicate with the estate beneficiaries.

In her complaint, Childress said that the beneficiaries did not have contact with Flores until they demanded it. She said this occurred before the COVID-19 pandemic and the death of Flores' husband.

In her follow-up email to the Division, Childress said she filed the complaint because Flores would stop communicating for years. Childress said she contacted Flores in March or April 2023 because it had been two or three years since she had any contact with Flores. Childress said that Flores responded, saying she was dealing with her husband's death. Childress said that does not explain the lack of communication in prior years. Childress provided a copy of an email dated June 21, 2023, at 7:37 PM wherein Flores acknowledges she has not spoken to Childress in two years and explains her more recent lack of communication:

From: [Patricia Flores](#)
To: [Debbora Childress](#)
Subject: Accounting
Date: Wednesday, June 21, 2023 7:37:07 PM
Attachments: 2021 ACCOUNTING.xlsx
2022 ACCOUNTING.xlsx

Dear Debbora:

Attached are the accountings for 2021 and 2022. The accounting for 2023 with a final distribution to all beneficiaries will be processed and sent to the beneficiaries hopefully tomorrow. I don't know that you and I have spoken since 2021 but my husband was shot in December 2022, he spent a month in a coma, and then died at the beginning of February 2023. It has been a very difficult transition for me and my six daughters and granddaughters. Very unexpected. We were married for 42 years, and the tears just flow whenever the heck they feel like it. Focusing on anything has been almost nonexistent.

As I stated above, I will be preparing a hard copy of the attached and mailing it out to the beneficiaries and as soon the 2023 accounting is finished up, I will mail that as well with a small check to each of the beneficiaries to close out the trust.

Sincerely,

Patricia A. Flores

Flores also provided the Division an email dated June 21, 2023, at 7:37 PM with her complaint response. The date and timestamp of Flores' email appears consistent with the date and timestamp of the email provided to the Division by Childress. However, the content of the email Flores provided is absent any discussion of Flores' personal issues:



Subject: Accounting

Dear Debbora:

- Attached are the accountings for 2021 and 2022. The accounting for 2023 with a final distribution to all beneficiaries will be processed and sent to the beneficiaries.

As I stated above, I will be preparing a hard copy of the attached and mailing it out to the beneficiaries and as soon the 2023 accounting is finished up, I will mail that as well with a small check to each of the beneficiaries to close out the trust.

Sincerely,

Patricia A. Flores

The Division encountered a situation where the complainant provided one version of an email and Flores provided a different version of the same email in complaint number 20-0003. In that complaint, the Division substantiated the allegation that Flores committed material misrepresentation and made dishonest, false, or misleading statements to Division staff based on the altered email.

In her response to the Childress complaint, Flores said that she has spoken to Childress several times by telephone, email, and text. She said she does not believe she has left Childress "in the dark."

In their April 22, 2019, petition, the beneficiaries alleged that Flores breached her fiduciary duties by failing and refusing to respond to reasonable inquires. In an April 17, 2019, letter to Flores, the beneficiaries' attorney wrote, "We are gravely concerned about the long, and apparently inexplicable, delay in your marshaling and distributing the assets of the Trust;

your unresponsiveness to communications from the Beneficiaries; and your failure to have provided any Trust report as required by both the Trust instrument and Arizona law.”

In her answer to the referenced petition, Flores said that she had communicated with the beneficiaries “from time to time.” Flores pointed to a communication dated March 8, 2019, in which she informed the beneficiaries of her sister’s illness. Although Flores’ answer does not explicitly state that her sister's illness and death caused her lack of communication, that appears to be the implication.

During her interview with the Division, Childress said Flores would disappear for years. Childress said when she wanted an update on the estate administration, she called and left messages at Flores’ office, sent multiple emails to Flores, and even wrote Flores a couple of letters. She said Flores was difficult to contact and rarely answered the telephone. Childress noted that only after repeated attempts to speak with Flores would Flores eventually respond. Childress said after the first year of the estate administration she repeatedly asked Flores for a K-1 statement. Childress said Flores finally provided her with the K-1 for the first year but not subsequent years. Childress said she does not know if any of the other beneficiaries received any K-1 statements because Flores acted as though she had no intention of providing one to Childress until Childress demanded it.

Flores’ lack of communication has concerned the beneficiaries since the beginning of this estate administration. In their petition to remove Flores, the beneficiaries pointed to Flores’ failure to provide requested information, such as annual accountings and inventories, and her failure and refusal to respond to the beneficiaries’ inquiries. In her response to the complaint, Flores claimed to be in communication with Childress. However, her email demonstrates she made no contact and failed to provide accountings for at least two years.

During her interview, Childress said she did not recall receiving the 2017-2019 Trust accountings. She said she received the 2020, 2021, and 2022 accountings after demanding information in 2023. Childress said the incident with Flores’ husband did not happen until 2022-2023, but Flores had been uncommunicative for years.

Flores’ lack of communication and reporting does not allow the beneficiaries to be reasonably informed about the administration of the trust and the material facts necessary to protect their interests in the estate. The evidence demonstrates that Flores failed to timely communicate with the estate beneficiaries in violation of the following authorities:

ACJA § 7-201(H)(6)(a) Failed to perform any duty to discharge any obligation in the course of the certificate holder’s responsibility as required by law, court rules, this section or the applicable section of the ACJA.

ACJA § 7-201(H)(6)(k)(6) Failed to practice competently by use of unsafe or unacceptable practices.

ACJA § 7-201(H)(6)(k)(7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly

exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer.

ACJA § 7-201(H)(6)(k)(8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice.

ACJA § 7-202(J)(6)(d) A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative must observe the standards of care and duties applicable to trustees.

ACJA § 7-202(J)(6)(e) A fiduciary shall resolve questions in good faith and make decisions that are most beneficial to the estate.

A.R.S. § 14-10813(A) Unless the trust instrument provides otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless the trustee determines that it is unreasonable under the circumstances to do so, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

Allegation 3 is substantiated.

DISCIPLINARY HISTORY:

1. Licensee Name: Patricia Flores

Complaint number: 20-0003

Substantiated Allegation(s):

- Failed in duty to inform and report;
- Failed to timely settle the estate;
- Failed to timely control and protect assets;
- Material misrepresentation to Division staff;
- Charged estate for costs related to answering the complaint.

Date of Board Decision: July 23, 2021

Discipline: Consent Agreement and Censure

2. Licensee Name: Patricia Flores

Complaint numbers: 21-0045 and 21-0046

Substantiated Allegation(s):

- Failed to provide complete accountings and reports.
- Failed to provide a comprehensive inventory of estate assets and failed to provide an amended inventory of recovered/unrecovered assets.

- Failed to respond and/or timely respond to beneficiaries' communications, inquiries, and/or requests.

Date of Board Decision: March 14, 2024

Discipline: Censure and 12-month probation to include a compliance audit.

Date of Presiding Disciplinary Judge (PDJ) Decision: July 22, 2024

PDJ Recommendation: Letter of Concern, 12-month probation, and a compliance audit.

SUBMITTED BY:



8/20/2024

Janelle Bauserman
Certification and Licensing Division

Date

REVIEWED BY:

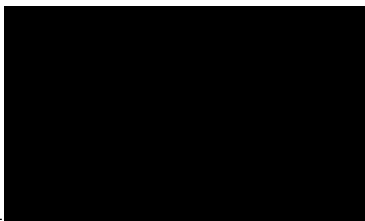


August 20, 2024

Pasquale Fontana, Manager
Certification and Licensing Division

Date

REVIEWED BY:



8/20/2024

Aaron Nash, Director
Certification and Licensing Division

Date

Exhibit 1
Petition to Remove Trustee and for Money
DDamages for Breach of Trust

4/22/19
FILED
GARY L. HARRISON, Clerk
Deputy

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Attorneys for Petitioners

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA PB20190530

In re THE JOHNSON REVOCABLE LIVING TRUST DATED AUGUST 23, 2002

Case No. **PB20190530**

SUSAN SWITZER; CYNTHIA MOORE;
ROBERT SCHERNER, JR.; DONALD
SCHERNER; ALAN SCHERNER,

Petitioners,

**PETITION TO REMOVE
TRUSTEE AND FOR
MONEY DAMAGES FOR
BREACH OF TRUST**

GILBERT ROSALES, JR.

v.

PATRICIA A. FLORES, trustee;
ST. MARK'S UNITED METHODIST
CHURCH; THE UNIVERSITY OF
ARIZONA FOUNDATION; HABITAT FOR
HUMANITY; AMERICAN CANCER
SOCIETY, INC., SOUTHWEST DIVISION,
INC.; AMERICAN HEART ASSOCIATION,
INC.; THE SALVATION ARMY; THE
GOSPEL RESCUE MISSION; CASA DE LOS
NINOS; THE HUMANE SOCIETY OF
TUCSON; THE AMERICAN LUNG
ASSOCIATION; INTERFAITH
COMMUNITY SERVICES; THE
COMMUNITY FOOD BANK; WOUNDED

1 WARRIOR PROJECT; DEBBORA
CHILDRESS; JANET ROBINSON; ROBERT
2 JOHNSON; LISA NEWARK; SAMANTHA
BREA JOHNSON LANCASTER; STEFANIE
3 MORGAN JOHNSON BAIRD; DEBRA VI
COOK; KIM JOANNE CARLIN; NONA
4 KAY BALES; SCOTT COOPER
RORIPAUGH; RUTH SALAZAR; JIM
5 TUCEK; PATRICIA OCKER; ALICE
CRANDALL; MARGARET SCHERNER;
6 GAYLE SCHERNER GROSCH;
CHARLOTTE MITCHELL,

7
8 Respondents.

9 For their Petition, Petitioners allege as follows:

10 **JURISDICTION AND VENUE**

11 1. On or about August 23, 2002, Shirley M. Johnson (“Shirley”) and
12 Ronald F Johnson created The Johnson Revocable Living Trust u/d/t dated
13 August 23, 2002 (the “Trust”) in Pima County, Arizona.

14 2. Ronald F. Johnson died on or about October 17, 2002, in Pima County,
15 Arizona.

16 3. Shirley died on or about October 15, 2017, in Pima County, Arizona.

17 4. Shirley was the sole trustee of the Trust from the establishment of the
18 Trust until her death.

19 5. Respondent Patricia A. Flores (“Flores”) is the successor trustee of
20 the Trust.

21 6. Petitioners Susan Switzer, Cynthia Moore, Robert Scherner, Jr.,
22 Donald Scherner, and Alan Scherner (collectively, “Petitioners”) are beneficiaries
23 of the Trust.

1 13. Shirley executed a Second Amendment to the Trust on or about June
2 11, 2013.

3 14. Shirley executed a Third Amendment to the Trust on or about
4 November 5, 2014.

5 15. There were no amendments to the Trust other than the above-
6 referenced First, Second, and Third Amendments.

7 16. There were only three sections of the Trust regarding distributions
8 after Shirley's death.

9 17. Section 7.5 of the Trust provides:

10 Our Trustee shall distribute the Survivor's tangible personal
11 property in accordance with any written, signed and dated
12 memorandum left by the Survivor directing the distribution of
13 such property. Any memorandum written, dated and signed by
14 the Survivor disposing of his or her personal tangible property
15 shall be incorporated by reference into this agreement. Should
16 the Survivor leave multiple written memoranda which conflict
17 as to the disposition of any item of tangible personal property,
18 that memorandum which is last dated shall control as to those
19 items which are in conflict. All tangible personal property
20 which is not disposed of by memorandum shall be sold and the
21 proceeds shall be added to the Remainder.

16 18. Shirley was the "Survivor" as defined in the Trust instrument.

17 19. The only written, signed, and dated memoranda left by Shirley
18 potentially directing distribution of tangible personal property from the Trust
19 were: (1) a memorandum dated August 20, 2017 directing that an iron wood tree,
20 patio furniture, and a green chair be given to Pat Ocker; and (2) a memorandum
21 dated August 25, 2017, possibly directing that a "10KT black hills gold ring" be
22 given to Charlotte Mitchell.
23

1 20. Section 7.6 of the Trust (as amended by the Third Amendment)
2 provides for distribution of municipal bonds then held in a certain Wells Fargo
3 account (the "Municipal Bonds") to Petitioners, as follows: 1/3 each to Susan
4 Switzer and Cynthia Moore; 1/6 to Donald Scherner; 1/12 each to Robert
5 Scherner, Jr. and Alan Scherner.

6 21. The estimated value of the Municipal Bonds is approximately
7 \$800,000.

8 22. Section 7.7 of the Trust (as amended by the Third Amendment)
9 provides for distribution of the remainder of the Trust as follows: 10% each to
10 Susan Switzer, Cindy Moore, Donald Scherner, and Alan Scherner; 5% to Robert
11 Scherner, Jr.; and 55% to various other beneficiaries.

12 23. Other than the Municipal Bonds to be distributed in accordance with
13 § 7.6 of the Trust, and the tangible personal property possibly subject to
14 distribution in accordance with § 7.5 of the Trust as set forth in ¶ 19 above, all
15 of the property of the Trust is subject to distribution under the remainder
16 provisions of § 7.7 of the Trust.

17 24. Section 10.12 of the Trust states:

18 Our Trustee shall report, at least annually, to the beneficiaries
19 then eligible to receive distributions of the principal from the
20 Trust created in this agreement, all of the receipts,
21 disbursements, and distributions occurring during the reporting
22 period, along with a complete statement of the Trust property.
23 The Trust's books and records along with all Trust
 documentation shall be available and open at all reasonable
 times to the inspection of the Trust beneficiaries and their
 representatives.

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(BREACH OF FIDUCIARY DUTY)

34. Petitioners incorporate the foregoing allegations as if fully set forth herein.

35. As trustee of the Trust, Flores owes a fiduciary duty to the Petitioners.

36. As trustee of the Trust, Flores owes the Petitioners certain statutory duties as set forth in the Arizona Trust Code, A.R.S. § 14-10001 *et seq.*

37. Flores has breached her fiduciary and/or statutory duties, without limitation, in the following ways:

- a. By failing to provide timely reporting to the Petitioners as required by the Trust instrument and Arizona statute.
- b. By failing and refusing to respond to reasonable inquiries from the Petitioners.
- c. By failing to list the Pomegranate Property for sale.
- d. By failing to timely marshal the assets of the Trust.
- e. By failing to timely distribute the assets of the Trust to the Petitioners.

38. The Petitioners have been damaged by Flores’s breach of her fiduciary duties.

39. Pursuant to A.R.S. § 14-11001(B)(8), disgorgement of any fees or other compensation obtained or sought by Flores as trustee of the Trust is appropriate in the circumstances as a remedy for her breaches of fiduciary duty.

COUNT II
(REMOVAL OF TRUSTEE)

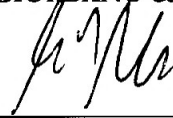
40. Petitioners incorporate the foregoing allegations as if fully set forth herein.

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- g) For attorneys' fees pursuant to the common fund doctrine or other applicable law; and
- h) For any other relief that the Court deems appropriate.

DATED this 18th day of April, 2019.

GIORDANO & HECKELE, PLLC



Gerald F. Giordano
Mark W. Heckeles
Attorneys for Petitioners

Exhibit 2
Amended Response to Petition to
Remove Trustee and for Breach of
Trust

FILED
5/28/19
GARY L. HARRISON, Clerk
[Signature]
Deputy

1 RUBIN & BERNSTEIN PLLC
2 Mark Rubin
3 382 S. Convent Ave.
4 Tucson, Arizona 85701
5 Phone: (520) 623-3038
6 Fax: (520) 979-3438
7 Email: mark@markrubinbernsteinlaw.com
8 By: Mark Rubin, #7092

9 Attorney for Trustee Patricia A. Flores

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF PIMA**

12 In Re: The Johnson Revocable Living
13 Trust Dated August 23, 2002

14 Susan Switzer; Cynthia Moore; Robert
15 Scherner, Jr.; Donald Scherner; Alan
16 Scherner,

17 Petitioners,

18 v.

19 Patricia A. Flores, Trustee, etc.

20 Respondents.

Case No. PB20190530

**AMENDED RESPONSE TO
PETITION TO REMOVE TRUSTEE
AND FOR MONEY DAMAGES FOR
BREACH OF TRUST**

21 For her response to the Petition Trustee Patricia A. Flores admits, denies, and
22 alleges:

23 **Jurisdiction and Venue**

- 24 1. Admits the allegations in Paragraphs 1 – 8.
25 2. Denies the allegations in Paragraph 9 for lack of knowledge.
26 3. Admits the allegations in Paragraphs 10 – 11.

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Trust Provisions and Assets

- 4. Admits the allegations in Paragraphs 12 – 27.
- 5. Denies the allegations in Paragraph 28.
- 6. Admits the allegations in Paragraphs 29 – 31.
- 7. Denies the allegations in Paragraphs 32 – 33.

Count I

- 8. The allegation in Paragraph 34 require no response.
- 9. Admits the allegations in Paragraphs 35 – 36.
- 10. Denies the allegations in Paragraphs 37 – 39.

Count II (Removal of Trustee)

- 11. The allegation in Paragraph 40 require no response.
- 12. Denies the allegations in Paragraphs 41 – 42.

Count III (Accounting)

- 13. The allegation in Paragraph 43 require no response.
- 14. Denies the allegations in Paragraph 44.

Affirmative Allegations

- 15. The Trustee received from counsel for Petitioners a letter dated April 17, 2019.
See, Attachment A. Letter was not attached to the first response. This amendment corrects that oversight.
- 16. The letter makes several requests, including a request that the Trustee resign, in favor of Bogutz & Gordon, P.C.
- 17. The letter requested a response within 4-1/2 business days which included Good Friday.
- 18. The letter did not disclose plans to file the Petition without waiting for a response from the Trustee and, in fact, Petitioners filed the Petition on April 22, 2019, the day before the “due date” for a response to the letter.

1 19. The Trustee has communicated with the beneficiaries from time to time,
2 including Petitioners.

3 20. One of the communications, dated March 8, 2019, advised all beneficiaries about
4 the Trustee's sister's illness, which caused her death on ...

5 21. Trustee has not handled this case perfectly, and her responses to the allegations
6 in the Petition reflect her acknowledgment that she has not complied with
7 certain statutory and trust requirements.

8 22. The delays associated with the administration of the trust relate in part to: (a)
9 lengthy delays in gaining access to the Wells Fargo Advisors account (a not
10 uncommon experience in dealing with fiduciary accounts associated with Wells
11 Fargo); and (b) the need to remove personal property from the personal
12 residence and engage in some repair work to ready the home for sale.

13 23. The Trustee is ready to make distributions and has forwarded a proposed
14 distribution schedule to counsel for Petitioners.

15 24. Ordinarily, the Trustee would make distributions; only the pendency of this
16 litigation has caused her to send the proposed schedule to counsel first.

17 25. The Trustee provided counsel for Petitioners with account statements and a
18 spreadsheet identifying all transactions on May 9, 2019.

19 26. This litigation was and remains wholly unnecessary.

20 27. The request to step aside in favor of Bogutz & Gordon, P.C. asks Trustee to
21 violate the terms of the trust, as amended, as it has a different process for
22 designating a successor trustee.

23 WHEREFORE, Trustee requests an order from this Court:

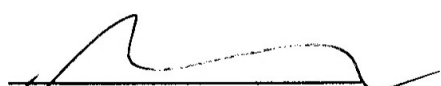
24 A. Dismissing this Petition, with a directive in the dismissal order that the
25 Trustee complete her work promptly; or
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- B. Staying this matter for an appropriate time period to allow the Trustee to complete her work; and
- C. Granting such other and further relief as the Court deems proper.

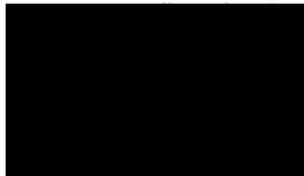
DATED: May 28, 2019

RUBIN & BERNSTEIN PLLC

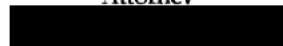

Mark Rubin

ORIGINAL FILED THIS DAY
PIMA COUNTY SUPERIOR COURT

COPIES MAILED THIS DAY TO:



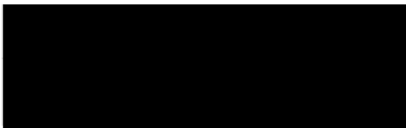
Gerald F. Giordano
Attorney



April 17, 2019

Sent via US mail and e-mail to:

Patricia A. Flores



Re: The Johnson Revocable Living Trust Dated August 23, 2002

Dear Ms. Flores:

This law firm represents five of the principal beneficiaries of The Johnson Revocable Living Trust dated August 23, 2002 (as amended, altogether the "Trust") – namely, Susan Switzer, Cynthia Moore, Donald Scherner, Alan Scherner, and Robert Scherner (hereinafter, the "Beneficiaries"). It is our understanding that you are the current Trustee of the Trust, and that your tenure in this position began immediately upon the death of Shirley M. Johnson on October 15, 2017. We are gravely concerned about the long, and apparently inexplicable, delay in your marshalling and distributing the assets of the Trust; your unresponsiveness to communications from the Beneficiaries; and your failure to have provided any Trust report as required by both the Trust instrument and Arizona law.

On behalf of our clients, we hereby demand that you provide the following no later than Tuesday, April 23, 2019:

1. A listing of the Trust assets and their respective market values, as of the date of Ms. Johnson's death and at present;
2. A report of the trust property, liabilities, receipts, and disbursements, including the source and amount of your compensation;
3. Copies of all books and records of the Trust along with all Trust documentation, including but not limited to all bank and financial account statements; and

4. Any information that you have relating to Shirley Johnson's estate, including her will, if any. (Our impression is that all of the relevant property was in the Trust, and we expect that she would have had a pour-over will but need your confirmation about these assumptions).

Further, we request that you agree to resign as Trustee and to appoint Bogutz & Gordon, P.C. as successor trustee, as authorized by Section 10.2 of the original Trust instrument. Be advised that we will be filing a petition to remove you as trustee, but your cooperation in this regard will avoid unnecessary expense for both the Beneficiaries and the Trust.

It is our understanding that Paul Willman has resigned as counsel for the Trust. If there is other counsel to whom we should direct our communications, please let us know immediately.

I. Background

Shirley Johnson and her husband Ronald established the Trust on August 23, 2002, naming Shirley as the sole trustee. It is our understanding that Ronald died later in 2002, making Shirley both trustee and "Survivor" under the terms of the Trust. There were three (3) amendments to the Trust.

The First Amendment on February 8, 2010, modified certain minor administrative provisions and made certain changes to the distribution provisions that were subsequently superseded by the Third Amendment. The Second Amendment on June 11, 2013, named you as Successor Trustee. The Third Amendment on November 5, 2014, affirmed you as Successor Trustee, appointed Patricia Ocker as a consultant to assist with the distribution and sale of tangible personal property, and changed the main distribution provisions in Section 7.6 of the Trust [municipal bonds] and Section 7.7 of the Trust [remainder].

Under Section 7.6 of the Third Amendment, the Beneficiaries (our clients) are entitled to receive, among the five of them, 100% of the municipal bonds identified therein (then held in a Wells Fargo account). Our best information is that the value of these municipal bonds is approximately \$800,000.

Under Section 7.7 of the Third Amendment, the Beneficiaries (our clients) are entitled to receive, among the five of them, 45% of the remainder of the Trust, with other beneficiaries receiving 55% of such remainder. Our clients have received distributions of approximately \$162,335.75 under this provision, as their share of a total distribution of \$360,746.10 held in Edward Jones account # [REDACTED]. It appears that you mailed this distribution on or about December 18, 2018.

We know that the residence located at [REDACTED] is titled in the name of the Trust, and apparently worth approximately \$525,000-\$550,000. The original Trust instrument lists thirteen (13) additional financial accounts, three (3) IRAs, and a life insurance policy on Shirley. We do not know if these assets remained in the Trust at the time of Shirley's death, or if there were other financial or intangible assets.

It is our understanding that you distributed various tangible personal property, including furniture, to a number of persons listed on certain handwritten notes apparently prepared by Ms. Johnson, and discussed in greater detail in Section III below. It appears that you distributed such property in or around August 2018. We are informed that the Trust property included certain jewelry held by Pat Ocker at the time of Shirley's death, the value of which is unknown to us.

Both the Trust instrument and Arizona law required you to provide financial reports to the Beneficiaries, at least annually. Section 10.12 of the Trust states:

Our Trustee shall report, at least annually, to the beneficiaries then eligible to receive distributions of the principal from the Trust created in this agreement, all of the receipts, disbursements, and distributions occurring during the reporting period, along with a complete statement of the Trust property. The Trust's books and records along with all Trust documentation shall be available and open at all reasonable times to the inspection of the Trust beneficiaries and their representatives.

A.R.S. § 14-10813(C) further provides:

A trustee shall send to the distributees or permissible distributees of trust income or principal and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values.

To our knowledge, you have provided no Trust accounting or report to the Beneficiaries, other than the Edward Jones account statement sent in connection with the partial distribution in December 2018.

II. Unreasonable Delay in Trust Administration and Distribution

Shirley died on October 15, 2017. Almost eighteen (18) months later, as far as we know, you have failed to provide the accounting report that is required,

at least annually, under the Trust instrument and Arizona law. Further, as far as we can tell, you still have not listed the Pomegranate Property for sale.

The only information that we have regarding the delay in the sale of the Pomegranate Property is an email dated April 24, 2018, from the Trust's former lawyer, Paul Willman, to a lawyer in California named Robert Cannon. Mr. Willman stated that: "The house is not yet listed because personl [*sic*] property is still being dealt with." This was a weak excuse even at the time, as we would expect listing and closing on a sale to take approximately 3-4 months. We can see no justification whatsoever for the further delay of almost a year.

It is also difficult to identify any colorable justification for your delay in marshalling the assets of the Trust, reporting to the beneficiaries (including our clients), and making proper and timely distributions. Your email of December 17, 2018 to two of our clients (*i.e.*, Don Scherner and Cyndy Moore) stated: "I understand how anxious the beneficiaries are to receive a distribution however, the trust gives me control of how and when to send the beneficiaries any or all monies directed to them."

This outrageous statement reflects a fundamental misunderstanding of your role as Trustee, which is shocking for a professional fiduciary. A.R.S. § 14-10802(A) provides: "A trustee shall administer the trust solely in the interests of the beneficiaries." It is ludicrous to suggest that you have some "discretion" to fail to do your job, delay the administration of Trust assets, and distribute the proceeds of Shirley's Trust to her beneficiaries at your whim.

Your delay is the principal reason that we will seek your removal as Trustee in a petition filed with the Court.

III. Shirley's Handwritten Notes

Shirley apparently left certain handwritten notes, possibly relating to further distributions from the Trust. We have two versions of such notes, each attached to a cover page titled "Fourth Amendment to the Johnson Revocable Living Trust Executed August 20, 2017." However, it appears that this cover page was added after-the-fact, and some of the notes include different dates.

An email dated April 27, 2018 from Paul Willman to our clients Cyndy and Sue stated that: "Ms. Johnson left 4 handwritten pages allocating personal property to various individuals." We have two versions of the so-called Fourth Amendment, one of which includes six pages of handwritten notes, and one of which includes a single page. We have enclosed copies of both.

Regarding the effectiveness of such handwritten notes, Section 7.5 of the original Trust instrument is clear (emphasis added):

7.5. Tangible Personal Property. Our Trustee shall distribute the Survivor's tangible personal property in accordance with any *written, signed and dated* memorandum left by the Survivor directing the distribution of such property. Any memorandum *written, dated and signed* by the Survivor disposing of his or her personal tangible property shall be incorporated by reference into this agreement. Should the Survivor leave multiple written memoranda which conflict as to the disposition of any item of tangible personal property, that memorandum which is last dated shall control as to those items which are in conflict. All tangible personal property which is not disposed of by memorandum shall be sold and the proceeds shall be added to the Remainder.

The version of the so-called "Fourth Amendment" with a single page of notes was apparently emailed on May 24, 2018 from Kathy Hawk (at Paul Willman's office) to Robert Cannon (Cyndy Moore's lawyer in California). This page is difficult to read, but appears to say:

8/20/17 Ruth – my helper cleaning I would like to leave \$5,000 from my estate to her

8/20/17 my gardner Jim Tucek I leave \$5000.00 from my estate

8/20/17 To Pat Ocker, I leave \$20,000.00 + iron wood tree, patio furniture, green chair.

8/20/17 [Signature]

There were also two witness signatures. This page was also included in the second version of the so-called "Fourth Amendment," which included five (5) total pages of handwritten notes. It is our understanding that "Ruth" is Ruth Salazar.

We would like your view on the effectiveness of this first page. Section 7.5 of the Trust allows distribution of *tangible personal property* by such a memorandum, provided it is written, signed, and dated. This first page is written, signed, and dated, but the principal property that it purports to distribute is cash - - \$5,000 to Ruth [Salazar?], \$5,000 to Jim Tucek, and \$20,000 to Pat Ocker. Cash is not *tangible* personal property, so it seems to us that these provisions are ineffective. The portion of the memorandum directing that the iron wood tree, patio furniture, and green chair be distributed to Pat Ocker appears proper.

We would like your views on this analysis.

The second version of the so-called "Fourth Amendment" includes an additional three (3) pages of handwritten notes apparently dated September 28, 2014. These pages are difficult to read but appear to relate to distribution of items

such as furniture and decorations to various individuals. It appears that this is all tangible personal property, but these pages do not appear to be signed by Shirley. Accordingly, it seems to us that these provisions may be ineffective. We would like your views about this issue, as well as information about the distribution of the tangible personal property of the Trust.

The second version of the so-called "Fourth Amendment" has a fifth page of handwritten notes, which is also difficult to read but which appears to state:

8/25/17

10KT black hills gold ring to Charlotte Michell from Shirley M. Johnson, given this day as of 8/25/17.

[Signed by Shirley M. Johnson]

This final page is written and signed, but it is unclear whether it directs the distribution of the referenced ring to Ms. Mitchell, or reflects a gift made at the time of the handwritten note. Please let us know whether any such ring was found among the assets of the Trust and, if so, the value of the ring and whether you consider this final page to be a valid distribution memorandum under Section 7.5 of the Trust.

The second version of the so-called "Fourth Amendment" has a sixth and final page of handwritten notes, which is also difficult to read but appears to be dated September 9, 2017, and to list a few individuals and tangible personal property, but it is not signed. Accordingly, these provisions may be ineffective. We would like your views about this issue.

IV. Conclusion

We expect you to promptly deliver the information demanded on the first page of this letter, no later than Tuesday, April 23, 2019. We would prefer to receive such information by email to [REDACTED]. If some of the Trust financial statements and other records are too large to be emailed, please contact our assistant, Christina Lesnewski, a [REDACTED].

Most importantly, let us know immediately if you will agree to resign as Trustee and appoint a successor (our recommendation is Bogutz & Gordon). As noted earlier, we are going to be filing a petition seeking removal, but if you agree to resign promptly, we may not need to serve it or incur additional expense.

Best regards,

GIORDANO & HECKELE, PLLC

/s/ Gerald F. Giordano, Esq.

GFG

Enclosures: 1. "Fourth Amendment" version 1 (handwritten notes, 1 page)
 2. "Fourth Amendment" version 2 (handwritten notes, 5 pages)

**FOURTH AMENDMENT TO
THE JOHNSON REVOCABLE LIVING TRUST
EXECUTED AUGUST 20, 2017**

Spring Rents - my papers claiming I should
 like to leave \$5,000 from my estate to her
 1/2 of my garden ~~and~~ Jim's Truck I leave
 \$5000.00 from my estate
 2/2 of Pat Dick's I leave ^{of twenty} \$10,000.00 + wood
 wood, trees, patio furniture, garden chairs,

8/20/17



Witness



Witness

**FOURTH AMENDMENT TO
THE JOHNSON REVOCABLE LIVING TRUST
EXECUTED AUGUST 20, 2017**

8/20/17 Ruth - my laptop cleaning I would
like to leave \$5,000 from my estate to his

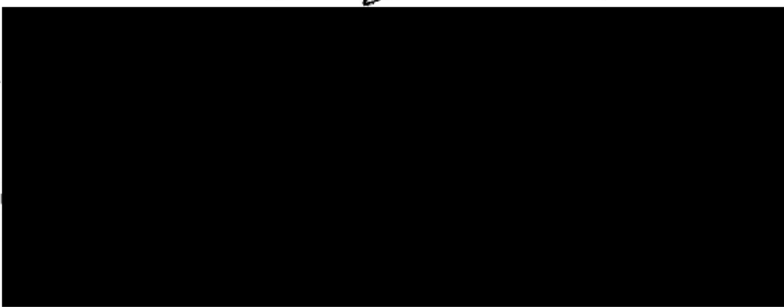
8/20/17 my garden ^{from} Jim Truck I leave
\$5000.00 from my estate

8/20/17 For Pat Clark, I leave ^{of Twenty} \$20,000.00 + wood
wood tree, patio furniture, green chair,

8/20/17 [Redacted]

Witness

Witness



Sept 28, 2014 Record review
to my estate material things

BEST COPY

- Green leather chairs - Pickie Zaker
- Outdoor furniture - Pat Ocker + metal roadrunner
- ~~Large metal sculpture on the wall - Pat Ocker~~
- Flower, each in row, side table in den - Alvin Kendall
- Ant. Redwood table in master bedroom - Deborah (children)
- Two chairs, clock - See front + computer and prints Doug Bentley
- Plaster pieces (all) to Chris Behrens
- All glass picture frames to Marty Blott in den
- All jewelry pieces, India articles of any kind to: Steve Furr + Bill Furr
- Black antique case of Lincolns - David + Cathy (possibly, possibly in it also) - Laurent
- Blues & coffee table front room to Doreen + Paul + sound system table (front room)
- 24" TV family room + components to Sara + all other speakers, etc
- 20" TV den to Marty Blott for his work shop (in den) + game.
- 19" TV. See front to Steve Ocker
- 22" TV. See front to Steve Ocker (see point 10 - to den, it is)
- Mirror - Shonacillo (front room) to: Pat
- Mirror - Shonacillo (den) to Candy More as well
- My Apoc. ticks (blue) to Candy More + placemat, map, and, pillow
- All tools to: Sara Furr (12 yrs work years) + cash
- Penicillin bottle see - if living + all front den, etc to: Pat + Pat Ocker
- ~~Ant. fragment stand in den to: Chris Behrens or AZ state museum in Tucson~~
- Bedroom furniture - Shonacillo to: all
- Antique sewing (den) see to: Steve Bentley
- Antique wash stand w bowl - pileus petty to: AZ state museum in Tucson
- Painting of flowers: see art in den (front room) - John Parry or deceptible John
- Extra frag in laundry room to: Pat Ocker
- Extra perfume jar to: Pat Ocker

Cadillac 2013 SRX - to be sold
Toyota RAV 4 limited white, beige - to be sold

Antique dishes in cabinet (about 200 items) - sell. 12 pieces place setting
All grill racks to St. Mark's N.M.C. call back kitchen to set up delivery

4" Thomsonville dining table 6 chairs, 2 splentons to:
Dorothy table + 4 chairs to Jim Robinson

Uncle Martin's watch to Glad, then to Jason (in glass case w/ keychain)

Other watches in glass case to David Johnson

Red & crystal set dishes: to Alice Crandall

Cut glass bowls & postcards to:

- Apples - huge fruit bowl
- Coin - picture
- Box - med fruit bowl
- Michael -
- Teresa - silverware + bowl
- Alison - Betty -
- Erin - Gladd

Gene Alison Christmas pictures to: contact Cathy Johnson for address

- Cathy: 3 Christmas pictures in box
- Bethann - Hospitality angels
- Diana - Christmas wreath
- Alison - Angel wreath, some in basket
- Jane - blue cat
- Lisa - Hallmark cat

Silverware - mom Alice Crandall (mine in wood chest) to Theresa Robinson & Alan
Family Room:

Coaches - sell, Lamps - sell, Books - on shelves, plants, Pat Decker
Thomsonville table and table cloth, oak chair, to Rich & Sandy Heitman

Committee of Revised, estate for Shirley Johnson
Sept. 23, 2011

Page 4A

BEST COPY

If anyone does not wish to have these gifts, they
will be sold at highest prices in the Tucson area.
The money will then go to "household expenses"
for the use of care of yard (Jim Tuck) and cleaning
house (Pats) and utilities.

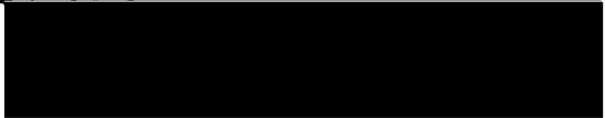
This will also cover any expenses my family may incur
for traveling to and from here in San Valley.
The amount left will return to the estate

Plants - moveable plants to Pat Chick

BEST COPY

8/25/17

10KT black^{HHS} & d. pins to Chand the
Mitchell from Shirley M. Johnson, grand
This day as of 8/25/17



1 (cont)

BEST COPY

9/9/17 White wrought iron furniture to go to Jan. Ave on 117th Street NY

9/09/17 All working tools to Gen. Tucci, garden

9/09/17 Pat. to have my circular table (feet on top provided)

9/09/17 give Roripang to have pic in front. some w flowers

Exhibit 3
Minute Entry
Settlement Conference
August 30, 2019

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. D. DOUGLAS METCALF

CASE NO. PB20190530

COURT REPORTER: Tracy Johnston (a.m.)
Barb Smith (p.m.)
Courtroom - 580

DATE: August 30, 2019

Mark D Rubin, Esq. counsel for Patricia A Flores

THE JOHNSON REVOCABLE LIVING TRUST

Gerald F. Giordano Jr, Esq. counsel for Susan Switzer, Cynthia Moore, Robert Scherner Jr, Donald Scherner, and Alan Scherner

MINUTE ENTRY

SETTLEMENT CONFERENCE

Petitioner Alan Scherner and the Trustee are present.

Mr. Giordano states that Mr. Scherner has authority to settle on behalf of all Defendants.

On stipulation of the parties,

THE COURT FINDS that it is appropriate to conduct ex parte communications.

IT IS ORDERED that, except as provided by statute or rule, all ex parte communications are confidential and private.

Settlement negotiations proceed off the record.

LATER SAME DATE

Same parties and counsel are present.

The Court has held a settlement negotiation with the parties and they have negotiated in good faith.

THE COURT FINDS that they have agreed to a settlement as follows:

1. The Trustee will distribute \$1,000,000.00 of the Trust assets by September 30, 2019, plus the municipal bond proceeds to the beneficiaries by the same date.
2. The Trustee will place the house on the market on September 13, 2019. Prior to that, Plaintiffs can pay for their own separate appraisal and provide that to the Trustee. Plaintiffs will be given the opportunity to have input to the Trustee as to the list price and the Trustee will consider that, but the Trustee retains the

L. McCormick
Deputy Clerk

MINUTE ENTRY

decision as to the list price.

3. As to the house, the Plaintiff, Alan Scherner, is to be given access to meet with the realtor today to see the house after 1:30 p.m. today. The Court has passed on the realtor's number provided by the Trustee so they can arrange that.

4. As to the jewelry, the Plaintiffs can see the jewelry by the Trustee taking photographs of the jewelry and sending them to her attorney who will provide them to the attorney for Plaintiffs. If there is any issue with respect to the jewelry, the Plaintiffs can see the jewelry thereafter through the attorneys.

5. The Trustee agrees to make no more payments to Pat Ocker as of today.

6. The Plaintiffs release their claims over (1) any delay in distributing the money to date, (2) the distribution of the \$30,000.00, and (3) any claim for interest.

7. The Trustee fees and legal fees will be submitted to the Court under Probate Rules for final approval if there is an issue.

IT IS ORDERED that the Arizona Department of Vital Records shall provide a certified copy of the Death Certificate for Ronald F. Johnson to the Trustee and Personal Representative, Patricia Flores.

9. The Trustee agrees to resign her position as Trustee if she does not make the distributions set forth in this agreement by September 30, 2019, absent extraordinary circumstances for not making those distributions, and by getting the house listed by September 13, 2019.

10. The matter is placed on the inactive calendar to be dismissed after the distributions have been made.

If the conditions are met, Plaintiffs' lawyer will prepare a stipulation to dismiss without prejudice. The release of the claims is with prejudice. The matter will be on the inactive calendar, with the case to be dismissed without prejudice if the conditions are fulfilled.

IT IS ORDERED vacating the trial dates of October 30 and 31, 2019, and November 1, 2019, before Division on 21 as well as all pending deadlines related to the trial.

The parties agree that this Court, Division 16, will serve as the arbitrator to arbitrate any claims over the terms of the agreement, including if the issue of whether extraordinary circumstances exists. This Court will not serve as the arbitrator or decision-maker with respect to Trustee fees and attorney's fees of the trust. However, the parties agree to arbitrate the terms of the settlement before this Court, with this Court being the final decision-maker but the fees issue will be resolved separately.

On inquiry of the Court, both sides agree to the settlement set forth herein.

L. McCormick
Deputy Clerk

MINUTE ENTRY

THE COURT FINDS that it has set forth all of the material terms of the settlement agreement, that the parties have both agreed to them and that they have the authority to enter into this agreement.

The minute entry will serve as the final expression of the settlement agreement.


D. DOUGLAS METCALF

(ID: 3a1d3914-658e-4485-8702-4dc18937d0ed)

cc: Hon. Cynthia T. Kuhn
Hon. D. Douglas Metcalf
Gerald F. Giordano Jr, Esq.
Mark D Rubin, Esq.
Mark Walter Heckeles, Esq.
Case Management Services - Probate
Clerk of Court - Probate Unit

L. McCormick
Deputy Clerk

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
REVIEW AND DECISION OF THE PROBABLE CAUSE
EVALUATOR**


REVIEW AND DECISION OF THE PROBABLE CAUSE EVALUATOR:

Under ACJA § 7-201(H)(5)(a), the deputy director, serving in the capacity of probable cause evaluator under ACJA § 7-201(D)(3)(a), having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number **23-0035**:

- Directs division staff to investigate further.
 - Determines probable cause does not exist demonstrating the certificate holder has committed any acts of misconduct or violations of the statutes, court rules, this section, or the applicable section of the ACJA and enters a written finding to that effect as to Allegation(s):
-

- Determines probable cause exists demonstrating the certificate holder has committed one or more acts of misconduct or violations of the statutes, court rules, this section, or the applicable section of the ACJA and enters a written finding to that effect as to Allegation(s):

1, 2, and 3

 9/3/24
Date
Marcus Reinkeismeyer
Probable Cause Evaluator

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
RECOMMENDATION TO THE BOARD**

LICENSE HOLDER INFORMATION License Holder: **Patricia Flores**
License Number: [REDACTED]
Type of License: **Individual Fiduciary**

RECOMMENDATION TO THE FIDUCIARY BOARD (“BOARD”):

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding **Patricia Flores** has committed the alleged act(s) of misconduct as detailed in the Investigation Summary, Determination, Probable Cause Review, and Recommendation Report in complaint number **23-0035**.

It is further recommended the Board enter a finding grounds for formal disciplinary action exists pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-201(H)(6) for act(s) of misconduct involving ACJA §§ 7-201 (H)(6)(a); and 7-201 (H)(6)(k)(6), (7) and (8); ACJA §§ 7-202 (J)(6); 7-202 (J)(6)(d), and (e); A.R.S. §§ 14-10801; 14-10804; 14-10813(A).

Mitigating factors under ACJA § 7-201(H)(22)(b)(1):

- The absence of a prior disciplinary record;
- The absence of a dishonest motive;
- The absence of a selfish motive;
- Personal or emotional problems;
- A timely good faith effort to make restitution or to rectify consequences of misconduct;
- Full and free disclosure to the division staff, the board or the hearing officer;
- A cooperative attitude toward any proceedings;
- Inexperience in the practice of the profession or occupation;
- Character or reputation;
- Physical or mental disability;
- Physical or mental impairment;
- Delays in the disciplinary proceedings;
- Interim rehabilitation;
- Imposition of other penalties or sanctions;
- Remorse;
- The remoteness of prior offenses;
- Other: _____

Aggravating factors under ACJA § 7-201(H)(22)(b)(2):

- A prior disciplinary record;
- A dishonest motive;

- A selfish motive;
- Multiple offenses;
- Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with this section, the applicable section of ACJA, court rules or orders of the hearing officer; (Failure to respond to Division requests sent to a valid point of contact reflects an uncooperative attitude toward the investigation)
- Submission of false evidence, false statements or other deceptive practices during the discipline process;
- Refusal to acknowledge wrongful nature of the conduct;
- Vulnerability of the victim;
- Substantial experience in the profession or occupation;
- Indifference to making restitution;
- Other: _____

Patricia Flores has demonstrated a pattern of failing to satisfactorily cooperate with regulators during regulatory investigations. Flores has demonstrated a pattern of practice that lacks the requisite degree of care, skills, professionalism, competency, and proficiency expected of a licensed fiduciary. Flores has further demonstrated a pattern of practice that is inconsistent with the essential and prevailing standards of professional fiduciary practice. This pattern predates, and has continued beyond, Patricia Flores' documented personal challenges between December 2022 and March 2023.

The Division made a third and final request for responsive documentation related to this complaint, giving Flores until August 16, 2024 to respond. Consistent with the pattern noted above, Flores obtained counsel and requested more time to prepare a response. The request for more time to prepare was days after the Division's third and final deadline and after the Division's report was sent to the Probable Cause Evaluator. Additional, untimely information from Flores might provide context to the allegations, but the Division's investigation documents that the allegations were substantiated.

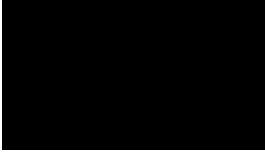
It is recommended the Board suspend Patricia Flores' fiduciary license for a period of six months, beginning on the date of the Board's final order, and subject to the reinstatement requirements of ACJA §7-201(E)(9).

It is further recommended the Board direct that during the suspension, Patricia Flores undergo a compliance audit of her fiduciary practice. If the compliance audit identifies deficiencies in Flores' compliance with statutes, court rules, administrative orders, court orders, local rules, the ACJA or other legal or ethical requirements relating to fiduciaries, Flores must implement a corrective action plan to provide the Board with reasonable assurance that Flores has cured any deficiencies and is in compliance with all requirements.

It is further recommended that if reinstated after suspension, the Board place Patricia Flores on probation for 12 months.

After reinstatement, completion of the compliance audit, implementation of any corrective action recommended by the audit, and Board concurrence that Patricia Flores is in compliance and has demonstrated reasonable assurance that she will remain in compliance, the Board may approve the early termination of probation.

SUBMITTED BY:

 9/3/2024
Aaron Nash, Director Date
Certification and Licensing Division

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
DECISION AND ORDER OF THE BOARD**

DECISION AND ORDER:

The Board having reviewed the above Investigation Summary, Determination, Probable Cause Review, and Recommendation Report, regarding complaint number 23-0035 and Patricia Flores, license number [REDACTED], makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and:

- Request division staff to conduct further investigation;
- Refer the complaint to another entity with jurisdiction;

Referral to: _____

- Determine no violation exists and dismiss the complaint
 - with prejudice
 - without prejudice
- Determine no acts of misconduct or violation occurred and no discipline is warranted; however the certificate holder's actions need modification or elimination and issue an advisory letter pursuant to subsection (D)(5)(c)(1)(g);
- Enter a finding the certificate holder has violated any provisions of the statutes, court rules, this section, or the applicable ACJA specific sections or subsection (H)(6) and order an emergency summary suspension, pursuant to subsection (H)(9)(d);
- Enter a finding the certificate holder has violated any of the provisions of the statutes, court rules, this section, the applicable ACJA sections or subsection (H)(6) and issue an order imposing any or a combination of the following information or formal disciplinary sanctions:
 - Issue a letter of concern
 - Issue a censure
 - Resolve any found acts of misconduct or violations by consent order or other negotiated settlement
 - Place specific restrictions on a certificate
 - Place the certificate holder on probation or a set period of time under specified conditions

- Mandate additional training for the certificate holder
- Issue a cease and desist order pursuant to subsection (E)96)
- Order suspension of a certificate for a set period of time with specific conditions for reinstatement
- Order revocation of a certificate with specific conditions for reinstatement
- Assess costs associated with the investigation and disciplinary proceedings; or
- Impose civil penalties associated with the investigation and disciplinary proceedings.

Order the preparation of documents necessary for informal or formal disciplinary actions under subsection (H)(7)(b), (H)(8)(b) or (H)(9)(b)

Request the license holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).

Enter a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the license and sets an expedited hearing for:

Date, Time, and Location: _____

Order the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).

Adopts the recommendations of the Division Director.

Does not adopt the recommendations of the Division Director and orders:



The Hon. Jennifer Perkins, Chair
 Fiduciary Board

09/13/2024
 Date