

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-121

Complainant: No. 1285310553A

Judge: No. 1285310553B

ORDER

The commission reviewed the complaint filed in this matter, as well as the recording of the hearings, and found no ethical misconduct on the part of the judge.

The complaint is dismissed pursuant to Rule 16(a).

Dated: September 18, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on September 18, 2006.

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

COMPLAINT AGAINST COMMISSIONER [REDACTED]

CJC-06-121

History of Conservatorship

In [REDACTED] the law firm of [REDACTED] was retained to represent [REDACTED] who was involved in an automobile accident on [REDACTED] [REDACTED] was a passenger in a vehicle being driven by his [REDACTED] who was determined to be the at fault driver. In [REDACTED], the case was settled for [REDACTED] and a Petition for Appointment of Conservator and approval of minor's settlement was filed [REDACTED]

On [REDACTED] [REDACTED] counsel for the Plaintiffs, appeared in front of Commissioner [REDACTED] for appointment of [REDACTED] as conservator for [REDACTED] [REDACTED] was thereafter appointed conservator pending Plaintiffs' counsel filing of a Notice of Publication for Minor's father and an Affidavit of Attorney's Fees (See Exhibit "1"). [REDACTED] complied with these conditions on [REDACTED] (See Exhibit "2") and [REDACTED] (See Exhibits "3" & "4"). The case was thereafter transferred to Commissioner [REDACTED] in [REDACTED]

On [REDACTED] Commissioner [REDACTED] issued a Minute Entry requesting Plaintiff's Counsel submit a supplemented Attorneys' Fees Affidavit which counsel filed [REDACTED] along with a proposed Form of Order as requested by the Court (See Exhibits "5" & "6"). On [REDACTED] Commissioner [REDACTED] issued a Minute Entry to show cause in the event that the Form of Order was not lodged with the Court by [REDACTED] (See Exhibit "7"). To Plaintiff's knowledge, no action was further taken by Commissioner [REDACTED] until [REDACTED] wherein Commissioner [REDACTED] issued a

Minute Entry requesting a Show Cause Hearing for failing to comply with a [] Minute Entry which Plaintiff's had never received. On [] through a status check of the Court's online docket, Plaintiff's downloaded a copy of the [] Minute Entry, contacted Commissioner [] Judicial Assistant and immediately submitted a **second** Order for signature that same day (See Exhibits "8" "9" and "10").

On [] Plaintiff's Counsel telephoned Commissioner [] and confirmed with his judicial assistant, [] that [] could appear telephonically for the [] hearing, and that [] an attorney with [] was handling all further matters regarding the conservatorship. This was approved of by Commissioner [] court. [] was informed that [] would be appearing telephonically (See Exhibit "11"). On [] [] appeared for the hearing telephonically to express to the Court that all conditions of the Conservatorship had been met and all that needed to occur was for Commissioner [] to sign the Order. For unknown reasons, Commissioner [] did not wish to speak to [] even though [] was the primary attorney on the case, had possession of the file and maintained full client and firm authority to complete all remaining matters regarding the Conservatorship. [] was personally present in the courtroom (See Exhibit "12"). Again, at that point, all procedural matters set forth in the formal written notice set forth by the Court had been compiled with by Plaintiff's Counsel.

In an effort to comply with the Court's immediate desire to speak with Attorney [] and based upon the anger expressed to [] that []

[] was not the attorney appearing telephonically, [] postponed his deposition meetings and appeared telephonically for the hearing wherein it was reiterated to the Court that all conditions of the conservatorship had been met. For unknown reasons, Commissioner [] insisted that Plaintiff's counsel failed to comply with the Court's orders, even though the record reflected differently, and ordered that the law firm of [] Attorneys fees be denied. Commissioner [] again for unknown reasons, gave the signed written Order to [] and directed her to mail a copy of appointment to [] instead of directly mailing the order to the law firm of [] for completion of the conservatorship. [] never received the order from [] and was unable to reach her for a period of several weeks as she had traveled to New York. As a result of continued frustrations with Commissioner [] Court, the inability to complete the conservatorship, and the potential increasing cost to the minor child, our client, [] informed [] Insurance that the settlement was null and void unless they paid for Counsel to finalize the disbursing of settlement monies and establishing the restricted account at their expense, not that of the minor child.

As a result of this agreement with [] insurance adjuster for [] Insurance, [] filed a Notice of Status Report with the Court on [] [] indicating that the previous settlement was null and void (See Exhibit "13"). [] retained Attorney [] to finalize the conservatorship on behalf of [] in which she informed [] in her letter dated [] (See Exhibit "14"). On [] Commissioner [] issued a Minute Entry requesting [] appear and Order to Show Cause in fear that

the settlement offer to the Minor may have lapsed due to the inaction of the minor's counsel (See Exhibit "15"). On [] [] appeared at the hearing on behalf of [] Insurance, [] and [] in an effort to assure the Court that the Settlement had not lapsed and in fact she was appointed to finalize the conservatorship (See Exhibit "16"). On [] Commissioner [] issued Judgment against the law firm of [] in the amount of [] the amount of the renewed settlement (See Exhibit "17").

[] placed numerous telephone calls to Commissioner [] Court requesting clarification of the [] Judgment. No ruling/clarification was ever made available. On [] [] filed a Motion for Clarification with Commissioner [] Court requesting clarification of the [] Judgment. (See Exhibit "18"). [] waited several weeks without an answer and was therefore was forced to file a Notice of Appeal on [] with the Superior Court, adding unnecessary costs and time delays to the matter (See Exhibit "19").

On [] the Matter of [] was transferred to Commissioner [] (See Exhibit "20"). Ironically, that same day, Commissioner [] issued a "Ruling" in response to the Motion for Clarification filed by [] which was originally filed on [] and received by [] on [] (See Exhibit "21"). Although Commissioner [] in his Ruling somewhat clarified his position in regards to the unclear sanctions issue, he blatantly misstated facts and was completely inconsistent with the record.

In its Minute Entry Order, Commissioner [] sanctioned [] for "failure to obey Court orders" as well as "mishandling and neglect of the lawsuit on behalf of their client". Clearly, Commissioner made these remarks without reviewing the record or consulting with the Conservator, []

First, all procedural orders issued by the Court were met by [] A review of the record will indicate that all filings and Minute Entry requests were Satisfied. Second, [] has been and still is pleased with the law firm of [] [] Although she has become frustrated with the procedural "red tape" involved in finalizing the conservatorship, she has always been pleased with the legal services performed by [] Additionally, the Ruling indicates that attorney [] appeared only to represent [] Insurance and was not appearing "on behalf of [] [] This is inaccurate and a misstatement of the facts. [] was hired by [] Insurance but also obviously appeared on behalf of [] to finalize the conservatorship. In addition, [] made it clear to the Court that she was appearing on behalf of [] as she was "asked to appear at the hearing". Finally, [] never indicated to the Court that [] Insurance had "withdrawn" its settlement offer as indicated by Commissioner [] Again, this is a misstatement of the facts.

On [] Commissioner [] curiously issued a Minute Entry deleting in its entirety, nunc pro tunc, the minute entry issue by Court Administration on [] [] transferring the matter to Commissioner [] in an effort to retain the file (See Exhibit "22"). In a recent conversation with [] it is still unclear when the conservatorship will be complete.

QUESTIONABLE CONDUCT

CJC-06-121

A thorough review of the file brings to light numerous questionable actions taken by Commissioner [] throughout his handling of this matter which are listed below as follows:

Excessive Sanctions - As mentioned, on [] Commissioner [] issued a Judgment against [] in the amount of [] for "mishandling the litigation and violating court orders". At first glance, the Sanction appeared to have been issued in an effort to protect the Minor in fear that the settlement may have lapsed. Given the fact that the sanction amount was the exact amount of the initial settlement, this would have made sense. However, it was unclear, based upon the wording of the judgment if that was indeed the ruling of Commissioner [] Several telephone calls were placed to Commissioner [] in an effort to clarify his Minute Entry but no clarification was presented. On [], [] filed a Motion for Clarification. Because Commissioner [] did not issue a response to Plaintiff's Motion until well after the Appeal deadline had passed, [] was forced to file an Appeal, spending additional time and money. The Appeal is currently pending [] [] Commissioner [] finally issued a Ruling indicating that the Sanction was separate from and in addition to the third party settlement. As a result, Commissioner [] effectively issued double sanctions in the form of Attorneys Fees [] and the Settlement sanction of [] Total sanctions therefore equal [] It is unclear for what purpose Commissioner [] sanctioned [] [] this excessive amount on a case where the client, [] was happy with the services of [] and the amount of the settlement for her minor

[] It should be noted that the settlement in the amount of [] was fair and equitable based upon medical expenses in the amount of approximately []

Sanctions/Perceived Personal Vendetta. - On [] [] appeared for the Show Cause Hearing which had been set by Commissioner [] As mentioned above, [] was assigned the task of completing all issues surrounding the conservatorship and had possession of the file. Again, for unknown reasons, Commissioner [] insisted that Attorney [] personally appear for the hearing even though all parties, including Conservator, [] knew that Attorney [] would be handling the matter. Attorney [] did personally appear telephonically at the request of Commissioner [] It is unclear to this firm whether Commissioner [] singled out Attorney [] for the sole purpose of embarrassing him in front of his client since he had not been briefed on the status of the case or Commissioner [] simply maintained a personal vendetta against Attorney [] for unspecified reasons. Regardless, Commissioner [] imposed sanctions against [] in the form of rejecting any and all attorneys' fees even though the record clearly indicates that all procedural issues were properly administered by [] At the hearing Commissioner [] finally signed the Order but for unknown reasons, gave the Order to [] with instructions for her to mail it to [] for completion instead of simply mailing the Order to [] [] This was an obvious mistake as [] shortly after the hearing, left for New York for vacation without mailing the Order to [] Blame should not be placed on [] as she is not an attorney and was very confused by the

entire process. Regardless, as mentioned above, being unable to complete the Order's outlined in Commissioner [] Minute Entry of [] [] with client consent, elected to withdraw the conservatorship after agreement with [] Insurance to complete the proceedings.

Withdrawal of Conservatorship – As mentioned above, on [] [] [] filed a Notice with the Court indicating that the conservatorship was withdrawn based upon an agreement reached with [] Insurance wherein they were to complete all conservatorship proceedings at their own expense. It is our understanding that at that point, Commissioner [] was no longer to be involved in any proceedings as the case pending in his court was withdrawn. Instead, Commissioner [] insisted upon maintaining the case in his Court and requested an Order to Show Cause hearing on [] At the hearing, Commissioner [] imposed further sanctions against [] despite the fact that Attorney [] appeared at the hearing in order to complete the conservatorship.

Severing of Attorney/Client Relationship – In the Court's [] Minute Entry, Commissioner [] issued an Order, unilaterally severing the attorney client relationship between [] and [] Commissioner [] made this Order without the consent of [] and/or [] Although Attorney [] was appointed to complete conservatorship proceedings on behalf of [] she was also a representative of and being paid by [] Insurance. As a result, Commissioner [] decision to sever the Attorney/Client relationship between [] and [] without consent of [] was highly questionable. At a minimum, [] should

have maintained a "monitoring counsel" relationship until completion of the conservatorship for the benefit of []

Delay – Perhaps the issue creating the most concern in this case is the continued delays which have occurred since Commissioner [] was assigned the case. Commissioner [] was assigned the case in [] as of today's date, the case is no closer to being resolved than when it was assigned to him. Obviously, these delays only hurt [] as he continues to lose interest which he would be receiving had the Order been signed and the restricted account funded when it should have. Any personal issues Commissioner [] had with [] or subsequent counsel should have been put aside pending the funding of the account.

Recuse - As mentioned above, On [] Commissioner [] curiously issued a Minute Entry revoking the transfer of the case by Court Administration to Commissioner [] Court. It is highly questionable as to why Commissioner [] would block a transfer of the file in this matter especially given the issues pending on Appeal.

