

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-207

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge had made erroneous rulings, had condoned the misconduct of the opposing party, and had constantly failed to start court proceedings on time, costing various parties time and money due to the delays.

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

After review, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of court rulings. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: August 6, 2014

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed
to the complainant and the judge
on August 6, 2014

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

Name:

Judge:

2014-207

A: Rule 1.2, Arizona Code of Judicial Conduct Dated 2014, Canon 1, Page 9: A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Complaint: Most beneficiaries have lost all confidence that Judge _____ can settle the Trust in a manner that shows an appearance of impartiality to both sides.

1. Judge _____ affirmatively determined that Ms _____ misused Trust monies for her own benefit prior to the death of _____ and also determined she did so after his death. He determined that she did not disclose much of the personal property of the Trust, and secreted the same to _____. A large amount of the personal property is yet to be accounted for. Judge _____ determined that Ms _____ violated the Power of Attorney that was afforded her in the Trust/Will. On _____ Ms _____ transferred the title of _____ pick up into her name in the State of _____ (Exhibit 4) Judge _____ approved the charge and discharge statement for the period of _____ to _____ which included this vehicle on the inventory. The vehicle was clearly an asset of the Trust. Ms _____ has not presented evidence that the vehicle was specifically identified in detail within the power of attorney (Exhibit 4) or within a written contract stating she was to receive the vehicle. During the hearing on _____ Judge _____ asked Ms _____ while she was under oath, how she transferred the vehicle to herself. She explained it, only leaving out the Vehicle Purchase Report in _____ (Exhibit 4, Car Fax Report, Page 4 of 6). Although she admitted transferring the vehicle to herself, Judge _____ erred when he did not impose any of the provisions of ARS 46-456. Yet, despite these factual findings affirmatively made by the Court, Judge _____ stated that he would not remove Ms _____ as Trustee/Personal Representative because it would be too expensive to the Trust. Ms _____ should have been responsible for all costs and fees her actions cost the Trust. Judge _____ determined the Trust was not worth enough, and stated that he needed to get the case off his docket. This begs the question: Can a Trustee misuse Trust assets/violate her duties as Trustee – completely using up the Trust assets, violate her trust/duties as a Power of Attorney, and then claim there is nothing left to fight for – the Trust is valueless?
2. During the course of this case, Judge _____ has allowed Mr _____ to administer the Trust and defend Ms _____ for her misuse of Trust assets and her negligence in following the established rules of ARS Title 14. Judge _____ allowed Ms _____ to charge all of the expenses for her defense to the Trust. This establishes an ethics issue that Judge _____ has allowed to continue throughout this case. He also allowed what appears to be a conflict of interest on Mr _____ part, as Mr _____ used the charge and discharge statements to cover some of Ms _____ misuse of funds. (Exhibit 0, Pages 9-13) Mr _____ has used Trust assets to defend Ms _____ misuse of Trust property that she has abandoned, donated, thrown away, or just didn't account for.
3. Judge _____ has not started any of the hearings I have attended at the scheduled time. It has been common for us to wait outside the courtroom for one hour or more while another case is

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Judge:

being heard before our hearing started. It has been commonplace for our hearing to be recessed by Judge [redacted] for one hour or more so that he can hear another case that he had scheduled for that time frame. A review of court transcripts will show these recess times. At the most recent hearing on [redacted] the scheduled start of the hearing was [redacted]. The hearing did not actually start until about [redacted] due to Judge [redacted] allowing the hearing before to run one hour over. At noon, Judge [redacted] called for a lunch recess. Mr [redacted] requested that the recess be extended to [redacted] to allow him to attend another hearing, which Judge [redacted] granted. Following is a list of the hearings that have been conducted with this case, and the time spent in court. Beneficiaries have traveled from [redacted] and [redacted] to attend these short hearings. They usually ended with no progress, due to Mr [redacted] having made a mistake or forgetting to do something.

- [redacted] hours. I did not attend. Hearing in [redacted] Judge [redacted]
 - [redacted] hours. I did not attend. Meeting in chambers with Judge [redacted] and Mr [redacted]
 - [redacted] hours. I did attend this meeting with Mr [redacted] to meet with opposing party at Mr [redacted] office in [redacted] (Meeting to try and work out Trust issues.) Meet requested by me.
 - [redacted] hours. I did not attend. Meeting in Judge [redacted] courtroom regarding sale of real estate and scheduling.
 - [redacted] hours. I did not attend. Petition to approve accounting.
 - [redacted] 8.7 hours. I did attend this hearing. Evidentiary hearing regarding first and second accountings.
 - [redacted] hours. I did attend this hearing. Hearing in Judge [redacted] courtroom on third amended account.
 - [redacted] hours. I did attend this hearing. Evidentiary hearing on third inventory and accounting
 - [redacted] hours. I did attend this hearing. Evidentiary hearing on third inventory and accounting.
 - [redacted] hours. I did attend this hearing. Third accounting and surcharge Trustee, disgorge attorney's fees paid to attorney of Trustee, and for removal of Trustee/Personal Representative.
4. Judge [redacted] did not schedule adequate time to conduct the hearing and get all matters and arguments presented.

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B: Rule 2.2, Arizona Code of Judicial Conduct, Dated 2014, Canon 2, Page 11: A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Complaint: Regarding ARS Title 14 – Trusts, Estates and Protective Proceedings: A petition (Exhibit 0) was submitted to Judge [redacted] that included the removal of Ms [redacted] from the duties of Trustee/Personal Representative for the [redacted] Trust. Judge [redacted] set a hearing for [redacted]. During this hearing, numerous examples of Ms [redacted] failure to perform the duties of a Trustee/Personal Representative were presented to Judge [redacted]. Numerous pieces of evidence were presented, showing these failures. Judge [redacted] asked [redacted] and [redacted] beneficiaries of the trust, what he should do with the personal property which was discussed during the hearing. Judge [redacted] also asked [redacted] and [redacted] under oath, what he should do to settle the case. (Exhibit 31) The infractions of Title 14 are covered on pages 9 – 18 (Exhibit 0), with additional exhibits to verify the infractions. Judge [redacted] affirmed all facts of Ms [redacted] misdeeds existed, but then ruled that no relief would be granted because the trust was too small and it would be too expensive to remove Ms [redacted] as Trustee/Personal Representative. Problematically, Judge [redacted] created two roles for himself – one as the judge of the case, and one as a settlement judge.

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C: Rule 2.2, Arizona Code of Judicial Conduct, Dated 2014, Canon 2, Page 11: A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Complaint: Regarding ARS Title 42 – Welfare, Chapter 4, Section 46-456, Duty to a Vulnerable Adult, Financial Exploitation; Civil Penalties; Exceptions; Definitions: A petition (Exhibit 0) was submitted to Judge that included a request that Ms (Durable Power of Attorney) be disinherited from the Trust because of her violations of the Duties and Requirements of ARS Title 14 and 46 of the Arizona Code. Ms transferred the title of the below mentioned vehicle to herself while holding Power of Attorney for (Exhibit 4)

Ms assumed the Durable Power of Attorney from on The Vehicle Purchase Report was posted on in the state of and titled in the state of Arizona on (Exhibit 4)

1: A pickup was registered to on at the Department, AZ under Title Number (Exhibit 4)

2: On a vehicle purchase was reported at the Department, (Ms has in the area. is also the area to which we believe Ms relocated.) (Exhibit 4)

3: On “Title registration issued, new owner reported” was recorded at the Arizona Department, AZ, Title Number A copy of this title can be found in Exhibit 4 of the attached petition. (Exhibit 4)

4: On the Department, recorded “Title issued or updated,” “Registration updated when owner moved the vehicle to a new location,” and “Vehicle color noted as silver,” Title Number (Exhibit 4)

5: On this vehicle was severely damaged in an accident, as reported on a damage report, and the vehicle was declared a total loss by an insurance company. (Exhibit 4)

Ms has brought forth no evidence that approved the transfer or that any money was exchanged. The Charge and Discharge Statement for the period to as approved by Judge included this vehicle in the Inventory of Trust Assets dated The assets per inventory on the Charge and Discharge Statement for the period to under Schedule 1 (Exhibit 24) indicate the vehicle was an asset of the Trust. The Amended Charge and Discharge Statement for the period to (Exhibit 25) does not indicate any income from the sale of the vehicle. The vehicle purchase reported on (Exhibit 4) in the state of should have caused a change in inventory to have been posted to the trust. This did not happen. On the current Charge and Discharge Statement for the period to under Schedule 4, this vehicle again appears as property of the Trust, even though it

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was titled to Ms in (Exhibit 25) If the vehicle is a property of the Trust, a credit should appear on the Charge and Discharge Statement for the insurance settlement.

At the hearing, Ms stated under oath that she *did* transfer the vehicle to herself. ARS 46-456 clearly states that an agent cannot use trust assets to benefit him/herself. See attached Durable Power of Attorney . (Exhibit 4)

Judge made an error when he did not disinherit Ms under the provisions of ARS 46-456. Ms clearly transferred Trust property to herself in and attempted to cover her actions by the methods she employed to complete the transfer. She and her counsel included the vehicle in Trust assets after she transferred the vehicle by falsifying the Charge and Discharge statements for
to and for to (Exhibit 25)

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COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**