

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 14-291

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Judge:

Complainant:

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**ORDER**

The complainant alleged that a superior court judge was not holding an adverse party accountable for misconduct in a probate and related proceedings.

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.

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

Dated: October 15, 2014

FOR THE COMMISSION

/s/ George A. Riemer

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George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on October 15, 2014.

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

Name:

2014-291

Judge:

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

Complaint: On \_\_\_\_\_ filed Case Number \_\_\_\_\_ "The Order of Formal Probate of Will and Appointment of Personal Representative and for Intervention of the Trust and Continuing Judicial Supervision of It" with the Arizona \_\_\_\_\_ Court, \_\_\_\_\_ County (Encl 1). On \_\_\_\_\_ filed Case Number \_\_\_\_\_ "Letters of Personal Representative with the Arizona \_\_\_\_\_ Court, \_\_\_\_\_ County (Encl 2). On \_\_\_\_\_ he also filed "Acceptance of Appointment as Personal Representative" (Encl 3) and "Order to Personal Representative and Acknowledgment and Information to Heirs" (Encl 4). Ms \_\_\_\_\_ signed the acknowledgment document on \_\_\_\_\_. On Page 1, lines 20-24 of Enclosure 4, it states, "The court will not review or supervise your actions as Personal Representative unless an interested party files a written request to the court. "

On \_\_\_\_\_ I filed, in writing, a request to Judge \_\_\_\_\_ that the court review and supervise Ms \_\_\_\_\_ as she performs her duties as outlined in the "Order to Personal Representative and Acknowledgment and Information to Heirs." Ms \_\_\_\_\_ Judicial Assistant to Judge \_\_\_\_\_ replied to me in a letter stating, "After review of your correspondence, the court is not inclined to respond to your request." On \_\_\_\_\_ after questioning my attorney, \_\_\_\_\_ about this letter, I was advised of the following: "Please be advised Ms \_\_\_\_\_ letter is inaccurate in the sense it may be interpreted that I spoke with Judge \_\_\_\_\_ Mr \_\_\_\_\_ spoke with Ms \_\_\_\_\_, not Judge \_\_\_\_\_ Judge \_\_\_\_\_ has refused to comply with the law and, by disregarding my request, has shown preferential treatment to the personal representative. As stated in the "Order to Representative and Acknowledgment and Information to Heirs" lines 22-24 (Encl 4), the personal representative is required to provide sufficient information to the beneficiary to protect his or her interests. Judge \_\_\_\_\_ has placed me and the rest of the beneficiaries in a position of trying to protect our interests with no information about the trust. This, again, is an example of Judge \_\_\_\_\_ inability to comprehend and apply the law, and to monitor and supervise his own court orders as they apply to this case.

The request for review and/or supervision was requested for the following reasons:

1. The Charge and Discharge Statement (Encl 13, Page 13 of 32) shows that Ms \_\_\_\_\_ has used \_\_\_\_\_ in the form of interest-free loans for her own personal use.
2. Enclosure \_\_\_\_\_ shows that Ms \_\_\_\_\_ retained \_\_\_\_\_ in cash from benefits paid by the \_\_\_\_\_. There are no records as to what happened to this money. The Charge and Discharge Statement, Schedule 8, Page 5 of 32 (Encl 13) does not account for the money that was removed in cash.
3. Enclosure 6 shows that Ms \_\_\_\_\_ retained \_\_\_\_\_ in cash from benefits paid by the \_\_\_\_\_. Association. There are no receipts other than a hand-written statement as to where the money went. The Charge and Discharge Statement, Schedule 9, Page 5 of 32 (Encl 13) does not account for the money that was removed in cash.

Name:

Judge:

4. Enclosure 7 shows that [redacted] was received in donations to the family at Memorial Service held in [redacted]. In reviewing bank records, only a check for [redacted] was deposited into the trust account. This check was not included in Enclosure 7, but is shown on Schedule 9, Page 6 of 32 (Encl 7). The cash donation of [redacted] is not entered as income on the Charge and Discharge Statement, nor are there any receipts to account for this money.
5. Since [redacted] I have requested financial information on the trust accounts, administrative accounting, receipts, invoices, and other information to protect my rights as a beneficiary of the [redacted] Trust. From [redacted] to [redacted] I, along with most of the other beneficiaries, did not have any way of contacting Ms [redacted] who was the Trustee/Personal Representative) to request any information from her (Encl 4). Mr [redacted] her attorney, sent out computer discs that held copies of files that took days to read and try to understand. Ms [redacted] returned to [redacted] and left no forwarding address, no new telephone number, or new email address. In [redacted] I received lease papers from [redacted] Ms [redacted] address was listed in the paperwork. Since [redacted] I have twice requested information from her about the status of the trust, and asking for receipts to justify the income and expenditures on the Charge and Discharge statement. I sent Judge [redacted] copies of the requests. To date, I have not received any response from Ms [redacted]

Judge [redacted] affirmatively determined that Ms [redacted] misuses trust monies for her own benefit prior to the death of my father, and also determined she did so after his death. He also determined that she did not disclose large amounts of personal property of the trust and secreted the same to [redacted]. Yet, despite these factual findings affirmatively made by the court, Judge [redacted] did not remove Ms [redacted] because, he said, it would be too expensive for the trust, that Ms [redacted] should have been responsible for all costs and fees that her actions caused the trust, that the trust was not worth enough, and that he needed to get the case off his docket.

This essentially begs the question: Can a trustee misuse trust assets or violate her duties as trustee, completely using up the trust assets, and then claim there is nothing left to fight for, that the trust is valueless? A trust is never valueless if family history and family heritage is involved. The loss of historic documents and property to the trustee/personal representative robs the rest of the family for generations of their right to that information. If the Judicial Commission will review the history of this case in the documents submitted in [redacted] and those attached here, I am sure you will see the same problem that I do. Judge [redacted] has created two roles for himself: one as judge of the case, and one as a settlement judge. With this in mind, I think you will agree that Judge [redacted] has not and will not be capable of making an unbiased ruling in this case.

Name:

Judge:

B: Rule 2.5, Arizona Code of Judicial Conduct dated 2014, Canon 2, Page 12: In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Complaint: I requested that the Court require Ms [redacted] to submit all trust records for review and verification of entries on the Charge and Discharge Statement. I also requested copies of the invoices for all fees that Mr [redacted] has charged to the trust. The court has stated it is not inclined to respond to my request. I requested the Court to review Mr [redacted] invoices and charges to determine which expenses are to be paid from the trust fund and which expenses are to be paid by Ms [redacted] and refunded to the trust. This review should also include fees Mr [redacted] charged for work he did not complete.

The following are the reasons these requests were made:

1. Per Enclosure D, Page 3-4, Mr [redacted] was assigned by Judge [redacted] at the hearing to receive inventories from Ms [redacted] of the items stored in a locker in [redacted], AZ. This inventory was completed on [redacted]. Ms [redacted] was present, along with a helper hired by Mr [redacted]. Ms [redacted] did not submit her inventory until [redacted]. The timeframe that Judge [redacted] assigned to Mr [redacted] to complete the sealed bid auction was [redacted] days. This auction was not completed as the Court instructed. At the [redacted] hearing, Judge [redacted] assigned Mr [redacted] to set up and conduct the auction, and to charge the trust for his fees. Any fees that Mr [redacted] received for the auction should be returned to the trust. Judge [redacted] did not require this. Judge [redacted] did not monitor or supervise the auction that he assigned to Mr [redacted] to complete. This inaction by Judge [redacted] has added unnecessary cost and avoidable delays to a court case that has been on his docket for [redacted].
2. Judge [redacted] has not monitored or supervised Case [redacted] to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. By not monitoring or supervising this case, Judge [redacted] has allowed the probate in [redacted], [redacted] to expire. Enclosure B is a letter to Mr [redacted] expressing concern that the [redacted] law firm had not heard from him for over a year and that the probate proceeding had not been completed. It also indicates that Mr [redacted] was not truthful about when hearings were conducted in Arizona Court. If Judge [redacted] had monitored or supervised this case, he would have realized that the probate proceedings in [redacted] County were considered and completed as of [redacted] at which time the law firm in [redacted] served the "Personal Representative's Sworn Statement to Close Estate." It has been more than one year without action, which will require the probate to be reopened. This will cause more delays and added expense to the trust.