

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-323

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge “ambushed, manipulated, coerced, and held [her] hostage” in a conservatorship proceeding.

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 judge’s rulings. 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: November 5, 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 November 5, 2014.

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

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State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

2014-323

COMPLAINT AGAINST A JUDGE

Name: _____ Judge's Name: _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

See attached complaint

Attachment A: Minute Meeting Records,

Attachment B: Audio Recording reference time

Attachment C: Court Reporter's Transcript reference page number, line number

Summary

This complaint concerns [redacted] and [redacted] conservatorship court proceedings. The family conservator, [redacted] was ambushed, manipulated, coerced, and held hostage by a court that disregarded the ward's medical and psychiatric condition, the conservator's lack of understanding of how to appear in court and represent herself and the consequences of what was happening in the proceedings. The Court failed to act in the ward's best interest. The Court demonstrated a bias denying the conservator's desire to act in behalf of the ward [redacted] without an intermediary attorney. The Judge did not act impartially or inform the non-professional conservator about legal choices. We distrust the Court because of a possible [redacted] meeting; too cozy a relationship between a Judge and a lawyer, and undocumented "blocked" charges approved by the Judge.

History

[redacted] year old [redacted] was diagnosed in [redacted] with a rare inherited, incurable, progressive disease called [redacted] that manifests by recurrent strokes, cognitive decline, physical impairment, and psychiatric disturbance. The latter was a likely factor in her [redacted] bankruptcies, financial support by the [redacted] divorces, a stroke in [redacted] that rendered her unable to work, in the [redacted] home on [redacted] occasions, and the [redacted] refurbishing and selling of her home in [redacted] that was destroyed by pets, hoarding, and behavioral dysfunction. [redacted] obtained [redacted] and [redacted] of Attorney in that year with the consent of [redacted] In [redacted] became privately admitted to [redacted] Center. [redacted] was in a pedestrian–auto accident leading to a court blocked account and [redacted] assignment as conservator in [redacted].

Judge [redacted] released [redacted] in [redacted] and [redacted] in [redacted] from the court blocked account with no objection. All told, [redacted] spent [redacted] of [redacted] money with no objection. In [redacted] she spent [redacted] In [redacted] she spent [redacted] In [redacted] she spent [redacted] In [redacted] she spent [redacted]

Court delays caused [redacted] to request [redacted] in [redacted] money from the court blocked account on [redacted] months later than we had budgeted for. The Court forced the ward's voluntary discharge from [redacted] by denying funding in [redacted]

Proceeding

Violation of Canon 3, A Judge shall perform the duties of judicial office impartially ... (5) A Judge shall perform judicial duties without bias or prejudice.

The conservator was allowed to represent herself and her ward in this hearing with no attorney present, however the Judge in essence required, by denying funding on [redacted] and ordering a trust Reference Minute Meeting Records [redacted] an intermediary lawyer to take over the [redacted] application process from the "start". This was an unnecessary exploitation of the conservator's vulnerability.

Access to the court blocked account would have kept [redacted] in [redacted] until the end of the year. Because of the unpredictable, ever changing and unique nature of her progressive disease, the concrete reality could have been drastically different in another [redacted] and we hope would have been less psychologically stressful on the ward and on us. It is not any Judge's or lawyer's prerogative to take over control from the "family" conservator in such a situation.

The Judge seemed to have not paid attention to the conservator's budget [redacted] He seems biased to deposit the [redacted] money in a lawyer's trust account, undisclosed at the moment, rendering the conservator's budget irrelevant.

The conservator informed the Judge that her desire was to find out what [redacted] could do for her that she could not do herself [redacted] The proceedings that follow reveal a biased belief that the conservator is not qualified to do anything by herself.

The Judge's objections [redacted] focused on the conservator spending "somebody else's money" [redacted] but [redacted] had implied by granting powers of attorney while still competent, that she wanted [redacted] to control her medical and financial decisions. A reasonable person would regard this as intimidation of the conservator intended to justify what we suspect was the Judge's desire to "take over" the money.

The Judge's objections focused on [redacted] a minor amount of money in comparison to the near [redacted] of a [redacted] dollars already spent, that the conservator's submitted budget showed would have gone to the [redacted] center, continuing the spending down that had been taking place for [redacted] years. Wouldn't it have been reasonable to continue trusting the conservator and approving appropriate funds as had been done in the past?

The Judge says that "... you want to do something more complicated" [redacted] than spending down that will preserve [redacted] assets beyond what [redacted] allows, making conclusions that are his and not the conservator's. Considering the history of approved spending, this was surprising. There is a difference between legitimate informing, advocacy, and compulsion. A reasonable person would consider the Judge's conduct to be coercive. We were to later learn that this "something" [redacted] would [redacted] control, and visibility away from the conservator.

The Judge promoted uncertainty [redacted] and fear about [redacted] disallowed expenditures. The conservator had not and will not make or allow expenditures made [redacted] in order to manipulate things [redacted]. The conservator's reported expenditures, approved by the Court for years, were consistent and would not change. Barring medical catastrophe, there is no reason to suspect that the conservator would do anything different than had been going on in the past, so this argument seems factious and biased. Our

worry was that the Judge and lawyer might do something more complicated in order to manipulate things.

We were in no predicament as the Judge claimed. With the blocked account funds, [redacted] could have stayed in [redacted] until the following year, or at least until the conservator had time to consider the alternatives. The money would not be "already gone" [redacted] because [redacted] has a gross income of [redacted] per month. We would hire a lawyer to write a [redacted] trust at the appropriate time.

We own a second home in [redacted] where [redacted] now resides and can be sustained indefinitely, barring inevitable medical deterioration. We can purchase a prepaid private admission to a facility using accumulating funds. The conservator, who is the only one understanding the particulars of the ward's condition and has no personal financial gain, is most qualified to determine the disposition of funds in the best interest of the ward.

The Judge's focus was exclusively on the immediately available [redacted] that would be spent over the next [redacted] months were the ward kept in the [redacted]. The discussion in this proceeding is not about a financial, medical, or humanitarian plan. It is about

Violation of Canon 2, a Judge shall avoid impropriety and the appearance of impropriety ...

The Judge's actions seemed suspiciously inconsistent. He manufactured a crisis. [redacted] did not receive fair notice of the Judge's adversarial role. [redacted] was intimidated and under duress because of the real-time disclosure, only and for the first time, in the courtroom. The relevant debate and complicated issues could not be adequately addressed by asking, "Your honor, may I ask a question?" Had she been advised of the Judge's changed behavior, she would not have appeared without a lawyer.

The Court recording reveals coercion that goes beyond the interpretation of the law. It shows a bias against non-professional conservators and long term care consultant firms as in [redacted] proposed budget. The Judge gives legal advice, not an interpretation of the law, that an expensive attorney should be hired as in intermediary, up-front, before any legal dispute exists.

The Judge claims that rich people stay rich because of lawyers [redacted] but [redacted] was not rich. She had no husband, home, car, or complicated financial arrangements, and little income. We had been spending down beginning in [redacted] and had only [redacted] in cash remaining.

The Judge says [redacted] he will not give carte blanche to spend somebody's else's money, and he that he will recognize a lawyer's "formal good request", but the conservator had submitted a budget, as she had done many times in the past, that did not request carte blanche funding.

The Judge sells [redacted] a lawyer's trust [redacted] did not know what a trust was at the time of this proceeding. We would later realize that it would gift the money to a lawyer and nullify the conservator's visibility and control of spending and possibly compromise the conservator's impartiality if any dispute over the disposition of those funds were to arise. The trust was not defined ahead of time

for our consideration, and we felt that any trust should be in writing, signed by the conservator, Judge, and lawyer. Depositing the ward's money in a lawyer's trust, as ordered by the minute entry would not satisfy our request. We did not want to be complicit in any scheme that anyone might consider unethical even if it is legal.

The Judge claims that it is too complicated for us to understand, when instead it is too secret. holds a . Her husband was an represented his company in the technical aspects of lawsuits, and was one of the original founders of a small business. Are we to believe that the only ones who can apply to are eldercare lawyers?

Does the Court have any obligation to inform the conservator of the facts and choices, or is it entirely a matter of twisting the facts in order to accomplish a sales objective?

The Judge explains that government rules are to trip people up Doesn't government make his job possible?

Putting words in mouth, the Judge explains "... and you recognize that you need the assistance of to get this all set up and my suggestion is that you get that done, you contact them first." Our situation started in the year when was no longer able to work and pay her bills. We were the ones who spent down her assets, personally financed and paid her bills, sold her arbitrated her auto accident lawsuit, and her to obtain disability and retirement benefits. We conjecture that high price could relate to cases with complex financial obligations that are starting from scratch. It seems like the Judge is reading from a scripted procedure that is not applicable to our situation.

The Judge, using the disapproval of funding, forces the conservator to contact lawyers who will make the "formal good request" he will recognize, not of which only approximately for an irrevocable cremation would be allowed but not for legal fees because they were quoted by a long term care consultant firm, and not the which would pay Long term care consultant firms will not be accepted. The Judge refers to them as "this outfit, they are not lawyers" "paralegal outfit that I don't know anything about" and "that paralegal outfit" that is not clearly appropriate and will take your money, but all the parties involved in elder care, except for the conservator, charge for their services. The Judge failed to empower the conservator's obligation to act in the best interests of the ward, which are more than just financial, by his micromanaging.

The Judge abuses his power and authority, takes sides, advocates for the legal firm, and instructs on how to proceed, and seems to not recognize any right for to go forward on her own with respect to application without a lawyer.

The Judge puts words into mouth that she did not say "The Court agrees with Ms. that she needs expert legal advice ..." It is not the Court agreeing with but the Court putting words into mouth. Throughout these proceedings, the Judge

repeatedly puts words into the conservator's mouth, a strategy making it awkward for the conservator to disagree with the Judge.

The Judge engaged in double talk, perhaps to take a firm position without being held accountable. does not know, but has a very good understanding. It is too complicated, but knows.

The Judge used faint praise to motivate but did not respect her judgment or recognize that she had any responsibility other than to follow his direction.

The Judge was not giving any advice, but what was his denial of funding and the advice to hire about?

Proceeding

Canon 3, B, a, i, ex parte communications not dealing with substantive matters and providing no advantage to no party are allowed.

had a paid consultation with Mr. of the law firm. We were informed that it was legal to move into our home or that she should be moved into an facility. There was no other discussion concerning Mr. plan. Contrary to page 9, line 16, Mr. never mentioned that "could try to do this herself". Nothing was quoted, estimated, or put in writing for our consideration. Mr. indicated that an ex parte phone call was necessary to be certain that the Judge's requirements were met and to smooth our next meeting with the Judge, and that he would charge an fee for service. We assumed that this is how business is normally conducted. We exchanged the respective phone numbers of the Judge and lawyer with each party. Subsequently, this would destroy our confidence in the Judge and the lawyer. Considering budget proposal, previously denied by the Judge, are there not sides to this issue? The problem is that the ex parte communication gives Mr. a business advantage.

Mr. was becoming the Judge's attorney, not ours. Later, we regarded the proposed call as inappropriate because it involved opposing sides and could lead to substantial and long lasting consequences that could impact the ward's well-being and arrangements for the remainder of her life

Mr. had a medical procedure on followed by vacation to . This meant that we had to find an home in days

had resided at for nearly years, and was evaluated on their Assessment and Negotiated Service Plan as at level out of a possible that come before a skilled nursing requirement. No home would accept because of her weight, immobility, and psychiatric problems. was not ready for skilled nursing. A hospital-like environment would have been incompatible with her mental condition and damaging to her. Mr. cannot see into the future as claimed by the Judge (page 14, line 12). The placement of in a facility does not relieve our responsibility or prevent the possibility of future problems.

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