

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-250

Judge:

Complainant:

ORDER

The complainant alleged a superior court commissioner did not afford her an opportunity to be heard and applied the wrong burden of proof in a guardianship proceeding.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the commissioner 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 commissioner did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

Dated: January 29, 2018

FOR THE COMMISSION

/s/ Margaret H. Downie

Margaret H. Downie

Executive Director

Copies of this order were distributed to all appropriate persons on January 29, 2018.

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

2017-250

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.

Commissioner _____ did not make herself cognizant of all information knowingly available to her, and pertinent to the application of _____ for Guardianship and Conservatorship of _____ at a hearing at _____ in the _____ staff made available to Commissioner _____ signed documents from _____ relating to, and providing details of, evidence related to fraud and forgery on the part of _____

Commissioner _____ had access to these documents in advance of the _____ hearing on _____ and chose not to access them.

The documents cast doubt on _____ fitness to be a Guardian and Conservator and were of direct relevance to the matter under consideration by Commissioner _____ at that time.

Failure to view and take into account matters raised in these documents constitutes judicial misconduct by Commissioner _____ in that the Commissioner omitted to consider relevant evidence that she knew to be available to her, and the evidence made available to Commissioner _____ passes the Test for Relevance (Rules 401 and 402 of the Federal Rules of Evidence):

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

Rule 402 FEDERAL RULES OF EVIDENCE 4

(b) the fact is of consequence in determining the action.

The evidence from _____ to which Commissioner _____ had access, made it more or less probable than would have been without it. that _____ was not a fit and proper person to be Guardian or Conservator of _____ and that fact was of consequence in determining the action. Moreover, the probative value of the evidence was not outweighed by a danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence, as described in Rule 403 of Federal Rules of Evidence :

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following:

unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Commissioner _____ also engaged in judicial misconduct in that she did not obtain or require clear and convincing evidence of an incapacity of _____ to make decisions on his own initiative and behalf. Commissioner _____ seems to have relied on a " _____ interpretation which, however, is contrary to the decision of the _____ who considered this issue in the _____

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2017-250

COMPLAINT AGAINST A JUDGE

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In fact, _____ initiated a phone call to his court appointed lawyer and also made a phone call to the _____ to enquire about funds in his trust account and to authorize the bank to share information with me, his _____

There is no doubt or argument that _____ is suffering some _____. However, Commissioner _____ appears to have made little, if any, effort to obtain clear and convincing evidence of his ability or otherwise to make decisions on his own initiative and behalf, and appears to have relied instead on a _____ " _____ argument, contrary to _____ who considered this issue in the _____

Lastly, Commissioner _____ expressed no interest in knowing the reason for my presence in Court. She only concerned herself with the fact that I had withdrawn my Petition for Guardianship and Conservatorship in _____. My presence was brought to her attention by my _____ who did not want me to attend the hearing and subsequent trial. During an unannounced _____ visit to my _____, _____ suggested he write a will for my _____ naming _____ executor. My _____ told him he did not due wills only _____ and he did not need him in that capacity.

I submitted my Petition in _____ because _____ wanted me to have his Power of Attorney (POA); and his _____ POA revoked. She was desperate to prevent this from happening and interfered in anyway possible including misusing the courts for orders of protection that were promptly dismissed by Judge _____

Continuances of the initial hearing for my Petition caused by the way in which the investigator interviewed _____ with _____ present and only the _____ of them together, and other errors on the part of lawyers, began to weigh heavily on _____

This additional time benefited his _____ because the full extent of her embezzlement of _____ had yet to be fully revealed to us by _____ in _____

And so, under UNDUE DURESS, _____ relented to his _____ and asked me withdraw my Petition. Promises were made by her to him. Per _____ wishes I RELUCTANTLY withdrew my Petition for guardianship in _____. This was opposed by _____ concerned for him under her duress.

Within _____ after I had withdrawn my petition, his _____ filed _____ stopped going to see _____ and did not keep any promises made to him regarding reconciling _____

On _____ called me in _____ asking I return to _____ to " _____ with my Petition for Guardianship/Conservatorship, because he regretted having me withdraw it. On arrival in _____ the following week, I was not allowed to do this per the _____ but told to attend the hearing on _____ I went to work on an affidavit with Exhibits to be presented to Commissioner _____ in _____ time for the hearing. _____ chose to ignore it (see pg. 2).