

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-170

Judge:

Complainant:

ORDER

September 24, 2020

The Complainant alleged a justice of the peace failed to follow the law in two protective order proceedings.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission member Barbara Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on September 24, 2020.

Our brother, _____, contacted our mother's physician and instructed their office that, should _____ or I call, we were prohibited from receiving any information about our mother.

_____ sent us an email stating that he was taking control over our mother's finances (finances that _____ and I had been personally managing at her request since our father died in _____), changed all of her user and passwords and, within _____ days, spent her entire social security check [while not paying any of her bills] and overdrew her checking account to _____. This was alarming to us as we were aware of his _____ prior felony theft convictions.

_____ and I obtained an Emergency Guardianship and a Conservatorship over our mother to protect her and stop _____ from taking her money and assets. Later that evening, we discovered (after running her credit report), that _____ had secretly assisted our mother in obtaining a _____ Reverse Mortgage. We would later learn that a _____ distribution was supposed to be made into _____ new joint account that he opened with our mother on _____ however, the document preparer had made a mistake and the distribution was now set to fund on _____

In retaliation and in an attempt to quiet and distract us from learning of the reverse mortgage distribution that would happen in only a _____ days, _____ filed for Orders of Protection against _____ and I. When served with the Orders, no exhibits were attached (**see attached amended certificates of service**).

Immediately after service, _____ and I filed for a hearing to defend the OPs. I submitted one sole piece of evidence – the Emergency Petition for Guardianship/Conservatorship which outlined _____ actions, the beginning signs of theft and warned of the fraud that was about to occur. The Petition contained _____ pages of supporting documentation proving the allegations in the Petition. Had Judge _____ bothered to read the Petition for Guardianship, he would have realized that his court had been used, not to seek a valid protection order, but to quiet us from learning of the magnitude of _____ fraud and to prevent us from stopping him.

_____ and I attended our OP hearings. My hearing was scheduled first, and it was immediately apparent that Judge _____ did not review the Emergency Petition attached to my request for hearing. When I asked Judge _____ he received my exhibits, he said, "*With this COVID 19 stuff I am not sure. Let's see what I've got here*". Later in the proceedings he said, "*I am not going to read through your _____ some pages of exhibits*."

OP referenced only a few text messages. Not having received the exhibits attached to his OP, I was under the assumption we were only arguing these few text messages. I was unaware that Judge _____ (during _____ OP request hearing), had already determined those text messages did not constitute threat. However, the Judge allowed me to waste my time arguing these text message for approximately _____ minutes and then he began to realize there was an existing guardianship in place. At this point, I attempted to continue with my defense, but was repeatedly told to be quiet. The Judge did not allow me to finish my defense and, instead, allowed _____ to testify. _____ began by referencing events that occurred _____ months prior in _____. I immediately objected because the events were outdated and irrelevant, but I was overruled.

Additionally, I had brought witnesses to the hearing, but the Judge would not allow me to call my witnesses.

After [redacted] finished speaking, I again tried to continue with my defense but was only able to get in a few words because the Judge continued to quiet me. I was also blindsided when the Judge asked me if I knew our mother was at the initial hearing and gave testimony. Instead of having our mother obtain her own OP, the Judge listed her as a protected person under [redacted] order. By listing her as a protected person, she was not required to be present at the OP hearing, so we were never afforded the right to confront our accuser. This is a critical point since Judge [redacted] made a big issue about what our mother said in the proceedings, and said he issued the orders based on what she said. Since Judge [redacted] already opined that [redacted] text messages did not constitute threat, I specifically asked on what basis did he issue the orders of protection. He said, “I had a basis”. In my defense, I attempted to produce text exchanges that I had with our mother, but the Judge said they were hearsay. I then asked Judge [redacted] to call our mother so that she could appear telephonically. Even knowing that an emergency guardianship/conservatorship had been granted, the Judge refused to call our mother for telephonic appearance and testimony. We later found out that our mother failed to produce one piece of evidence to support the claims she made during the issuance.

Judge [redacted] then decided to transfer the OP case since there was a guardianship case. Thus, I never even had a chance to finish arguing my defense. I had no idea what the real argument was, since I had not seen the exhibits, and since our mother (the accuser) was not present at the hearing. Judge [redacted] requested that [redacted] come into the courtroom. She was never sworn in and was not allowed to speak a single word in her own defense. She was not afforded a hearing whatsoever. He then proceeded to tell us both that he was transferring the case as part of standard operating procedures. However, he said he was leaving the Orders in place heavily based upon our mother’s statements at the issuance hearing. Knowing that our mother had no reason to seek an order of protection against us, I asked Judge [redacted] if he had a basis for issuing the order. All he said was, “I have a basis.” We asked him what she said to constitute a legal basis, but he would not provide an explanation. He told us that we would have to get a copy of the transcript. Knowing that a guardianship was in place and realizing that he took testimony from a person who had been deemed incapacitated by the Superior Court, he still relied upon that testimony as the reason for leaving the orders in place.

When Judge [redacted] ruled the Order would stay in place and he would transfer the case to Superior Court, I reiterated our concern that we had an existing guardianship in place and that the Order was preventing us from protecting our mother. Judge [redacted] gave us the impression that the transfer would be immediate and said, “Well for only a matter of hours. You can get into Superior Court”.

Judge [redacted] failed to realize that the Superior Court Order trumped the Justice Court Order of Protection and his failure prevented us from acting as guardians and protecting our ward. Judge [redacted] **grossly erred** by making a ruling in the case and then transferring the case to Superior Court which created a jurisdictional nightmare and prevented us from getting into Court within days to defend ourselves and, further, prevented us as guardians from protecting our ward which

allowed the fraud to continue. He never should have ruled on the case (emphasis added). I never had the opportunity to complete my defense and never had a hearing whatsoever. The Attorneys who were representing us in the Guardianship case were unsure how to handle the improper transferring of the case. At the initial Guardianship hearing, Judge was even unsure how to handle the transfer and went off the record to determine how to resolve the issue. When he came back on the record, he determined that he could take jurisdiction and set the matter for hearing.

The proceeding ended.

Upon obtaining and listening to the audio transcript, I was literally sick to my stomach. I learned that our mother was in the back of the courtroom while was up at the plaintiff table. At some point, the Judge invited her up to the front of the courtroom because she could not hear. The Judge began questioning her. It is clear from the transcripts that was coaching our mother and the Judge allowed it. repeatedly said, "Go ahead mom. Tell him." Our mother and made it sound as if there was a constant and continued barrage of harassment. She referenced a prior event about her heart attack that occurred back in ; however, she gave the impression the heart attack was recent.

Even worse, after reviewing exhibits, I found documents from over a year prior. I discovered the exhibits were documents and communications that had with other people and did not even involve me. The **only** evidence that involved me was a few text messages that the Judge had already ruled were not threats. At the OP hearing when the Judge ruled keeping the Orders in place, the Judge said that, it was because of our mother's statements and evidence. It is clear that Judge never reviewed evidence. The synopsis that attached to his OP motion was riddled with lies (see attached rebuttal).

Judge violated our Constitutional Right of Due Process. We were not served with exhibits, were not allowed to present our defense, we were not allowed to confront our accuser, we were not informed of the legal basis Judge had for both, issuing the orders, as well as leaving them in place.

We never had the chance to inform Judge that both and I held Durable Power of Attorney over our mother and had every right (and obligation) to confront about his alarming suspicious actions involving our mother's finances and assets. Not having been served with the exhibits, I never realized that the orders were based on harassment. Our mother is years old and has been diagnosed with cognitive impairment. It is not harassment to try to stop someone from committing financial exploitation.

Had I known the Petition was filed based upon supposed harassment, I would have been able to present evidence showing that nothing was further from the truth. I would have produced evidence showing that I had been loaning hundreds of dollars (immediately preceding the filing of his OP), I had invited him to holidays, and I was paying him to run errands for several months immediately preceding the text exchanges. I would have produced evidence that I had graciously paid to have our mother's house painted days before the text exchanges. I would have produced evidence where I had generously spent for facial

treatments for our mother in the past couple of months. It is unfathomable to think that I would be gifting [redacted] and our mother [redacted] of dollars yet supposedly harassing them at the same time.

Although [redacted] claimed there was “continued” harassment by [redacted] and I, he did not submit **any** evidence other than documents relating to [redacted] separate family/sibling disputes; one in [redacted] and another in [redacted]. There were no other family/sibling disputes other than these [redacted] dates. I was not afforded the right to produce evidence showing that these [redacted] sibling disputes were [redacted] and [redacted] months old and that, ironically, I was the family peacekeeper in both circumstances. Both family disputes involved [redacted]: one where he was threatening to fight another brother in the street and the other when [redacted] was overhead telling our mother that he was going to kill himself if he didn’t get money which resulted in a failed attempted family intervention. Other than these [redacted] limited family/sibling disputes, there were no other disputes or “harassment” until the family dispute on [redacted] when [redacted] informed us that he was locking us out of our mother’s checking account and taking over all of her finances.

Most important, the Emergency Petition for Guardianship/Conservatorship that Judge [redacted] had in his possession clearly detailed serious allegations of [redacted] fraud, manipulation, and alienation upon our mother. Had he bothered to read it prior to our hearing (or even at the hearing) he would have had enough information to realize that his courtroom was being abused and that there was no evidence whatsoever of legitimate harassment.

Harm Suffered as a Result of Judge [redacted]

Denial of Our Due Process:

Judge [redacted] discounts the severity of the impact of what an Order of Protection actually limits. It is more than just a ban prohibiting a person from being around another person. The effect of Judge [redacted] denial of our due process has created damages well beyond repair.

[redacted] and I were ordered the guardians of our mother and were unable to speak to her or care for her or we risked being jailed. Judge [redacted] led us to believe that we could resolve the OPs after a couple of hours. Most individuals are entitled to a hearing within [redacted] days of being served. Due to the denial of our due process by Judge [redacted], and the jurisdictional nightmare he created, we would not get a hearing date until [redacted]. We were unable to speak to the ward (our mother) whom we were ordered in Superior Court to protect and care for.

Judge [redacted] legally tied our hands and, not only prevented us from caring for and protecting our mother as we were Court ordered to do, he prevented us from stopping the major criminal theft that was about to take place. Since [redacted] when [redacted] first informed us that he was taking over our mother’s finances, we have been one step behind him the entire time. Judge [redacted] actions caused the following damage.

- [redacted] forged our mother’s signature on her reverse mortgage withdrawal slip and had the reverse mortgage company deposit [redacted] into a new joint account that he secretly opened with our mother.

- [redacted] withdrew [redacted] of those funds (he used [redacted] of that money to make his car and insurance payments, to pay his girlfriend, [redacted] car payments and to pay expenses for [redacted] children. The remaining funds were put into [redacted] bank account to harbor from the Conservatorship).
- [redacted] withdrew another [redacted] of those funds.
- [redacted] The Superior Court Judge ordered [redacted] to return the money within [redacted] hours. To date, only [redacted] the [redacted] has been recovered. (There have been ongoing investigations with the [redacted] County Sheriff's Office, [redacted] Fraud Department, [redacted] Mortgage Fraud Department, and Adult Protective Services).
- For [redacted] painstaking days, we endured horrific things being said about us. With our hands tied by Judge [redacted] and unable to talk to our mother, others continued to manipulate her and steal her money and we could do nothing to protect her or risk going to jail in violation of the OP. We endured [redacted] grueling days of watching this unfold without being able to do anything about it. Judge [redacted] allowed the perpetrators to have unfettered access to our mother. And the [redacted] children, who were trying to protect her money, had no access and could do nothing to stop them. Our mother is [redacted] years old. She has been diagnosed with cognitive impairment and it is unlikely, at this point, that she will ever fully understand what occurred. We feel we have now lost our mother forever.
- Judge [redacted] **grossly erred** by making a ruling in the case and then transferring the case to Superior Court which created a jurisdictional nightmare and prevented us from getting into Court within [redacted] days to defend ourselves and, further, prevented us as guardians from protecting our ward which allowed the fraud to continue. He never should have ruled on the case (emphasis added). I never had the opportunity to complete my defense and never had a hearing whatsoever. The Attorneys who were representing us in the Guardianship case were unsure how to handle the improper transferring of the case. At the initial Guardianship hearing, Judge [redacted] was even unsure how to handle the transfer and went off the record to determine how to resolve the issue. When he came back on the record, he determined that he could take jurisdiction and set the matter for hearing.
- [redacted] : [redacted] dropped his order upon realizing the amount of trouble he faced due to the pending criminal investigations against him for forgery and fraud he committed against our mother. He acknowledged and apologized to our lawyer for his behavior. Our Guardianship Attorney, [redacted] told us that in conversations she had with [redacted] he essentially admitted that he had been manipulating our mother.

Conclusion:

To sum up Judge [redacted] Actions:

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
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.**