

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-130

Judge:

Complainant:

ORDER

December 26, 2023

The Complainant alleged a superior court judge committed multiple Code of Judicial Conduct violations in three separate guardianship cases.

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).

Copies of this order were distributed to all appropriate persons on December 26, 2023.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

23-130

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.

PLEASE SEE ATTACHED.

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PLEASE SEE ATTACHED.

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In re:

In re:

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I have appeared before Judge _____ in the above-captioned cases as an attorney in the case. In each of these cases, Judge _____ has violated certain sections of the Arizona Rules of Judicial Conduct, including:

- Rule 1.1, Compliance with the Law
- Rule 1.2, Promoting Confidence in the Judiciary
- Rule 2.2, Impartiality and Fairness
- Rule 2.5, Competence, Diligence, and Cooperation
- Rule 2.6, Ensuring the Right to be Heard
- Rule 2.9, Ex Parte Communication
- Rule 2.10, Judicial Statements

I believe Judge _____ has violated these provisions, and, in support thereof, I state as follows:

RELEVANT FACTUAL ALLEGATIONS

In *In re:* _____, I represent _____ before the Court. There is a question as to her competency and her capacity. The Court had issued temporary letters for both guardianship and conservatorship at an emergency hearing. _____ elected not to object to the emergency appointment as she did not have time to prepare and her opponents, licensed fiduciaries who were petitioners, apparently were well prepared with multiple witnesses and

exhibits. When the temporary guardianship and conservatorship was granted, a hearing on the permanent appointment was set.

My client had informed me that she would like to exercise her right to a trial by jury. I had discussed with her the cost associated with this, but she was steadfast in her decision to have her case in front of a jury, as is her right pursuant to Ariz.R.Prob.P. Rule 29, A.R.S. §14-1306 and A.R.S. §14-5303(C). We had discussed, however, that the jury would try the question of whether a guardian was necessary, the scope of the guardianship, and the choice of guardian, if one was necessary. We further discussed that the Court would try the questions related to the conservator.

On _____, I filed a Demand for Jury Trial requesting, “. . .

. . .” See Demand for Jury

Trial, _____, attached hereto as **Exhibit A**.

I appeared before Judge _____ on _____ in this case. See Transcript, _____, attached hereto as **Exhibit B**. Attorney _____, attorney for the petitioners, was present. At such hearing, Judge _____ attempted to discourage me from requesting a jury trial. He explained that post-COVID, the number of jurors in a panel were limited, the attorneys would need to submit their juror questionnaires months in advance, and the attorneys would need to appear for several hearings to approve questionnaires and eliminate potential jurors, as Judge _____ apparently believed that any juror who knew someone with dementia would be excluded from sitting on the jury. Judge _____ explained that probate jury trials were rare and that the attorneys would have to create their own jury instructions. Judge _____ advised me to reconsider my request

for a jury trial, as the cost would be borne by _____¹ (disregarding the possibility that she could prevail, requiring payment by petitioners).

On _____, attorney _____, who at the time had associated with my firm to defend _____, appeared before Judge _____ on the above-referenced case. See Transcript _____, attached hereto as **Exhibit C**. At such hearing, the judge began by, again, discouraging counsel from having a jury trial in this case. Judge _____ incorrectly stated that a jury trial in a probate matter would only be limited to the issue of incapacity. The judge stated that a jury trial would be a large commitment of attorney billable hours, and he was concerned the process would be quite expensive. Judge _____ specifically advised us that the statutes state that attorneys must make a cost/benefit analysis before any actions are taken on behalf of the ward. Judge _____ stated that if there was no doubt as to _____ incapacity, the Court would impose sanctions against counsel, as there is no reason to “run up” attorney’s fees without a reasonable basis. Even though I stated that a jury trial was the request of my client, rather than my request, Judge _____ stated again that he did not want counsel to waste the resources of a conservatorship.

Judge _____ actions in this case violated many provisions of the laws of Arizona and the Rules of Judicial Conduct. First, Judge _____ was attempting to discourage a ward from exercising her right to a jury trial, even though such right is guaranteed by A.R.S. §14-1306 and the Rules of Probate Procedure, Rule 29. Rule 29(a) states that “[o]n any issue triable of right by a jury, a party may obtain a jury trial by filing a written demand at any time after the proceeding is

¹ Pursuant to A.R.S. §§ 5314(A) and 5414(A), if a petition is denied then the petitioner bears the costs associated with such petition. Apparently, Judge _____ had already decided that _____ would not prevail in the petition, which would mean she would bear the costs associated with such petition. By making this statement on the record, Judge _____ was basically telegraphing his belief that _____ would not prevail and, in essence, Judge _____ was prejudging the case before ever hearing the evidence.

**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.**