

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-274

Judge:

Complainant:

ORDER

The Complainant alleged a superior court commissioner made improper rulings and issued a delayed ruling in a probate case.

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.

After review, the Commission found the judge issued a substantially delayed ruling. The judge's conduct violated Rules 1.1 and 2.5(A) of the Code of Judicial Conduct, along with Art. 2, §11, and Art. 6, §21 of the Arizona Constitution. Respondent's conduct also violated §12-128.01, A.R.S., relating to payroll and certifications of compliance. The Scope Section of the Code provides that not every transgression will result in the imposition of discipline. The Commission decided, after considering all the facts and circumstances, to dismiss the Complaint pursuant to Commission Rules 16(b) and 23(a), but to issue a warning letter to the judicial officer reminding of the obligation to issue timely rulings.

Commission member Joseph C. Kreamer did not participate in the consideration of this matter.

Dated: February 20, 2024

FOR THE COMMISSION

/s/ Christopher P. Staring
Hon. Christopher P. Staring
Commission Chair

Copies of this order were distributed to all appropriate persons on February 20, 2024.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

23-274

COMPLAINT AGAINST A JUDGE

Name: [] Judge's Name: Commissioner

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.

A. (1) Commissioner issued a Judgement, This Judgement stated in BOLD and CAPS, TWICE, the Following Ruling. (a) Page 6 ALL CAPS/BOLD, " . (There was nothing ordered)

(b) IT IS ORDERED denying requests for attorney's fees. (bottom of page, before Judicial Officer Signature). See Electronic Attachment # 1

(2) The timeline of Appeal by the Petitioner either to Appellate Court or to County Court expired.

(3) Attorney for the Petitioner ignores the timelines and does not file a Motion for Reconsideration or cites a Rule that supports his Motion. See Electronic Attachments #2 - Petitioner's Motion, #3 Demandants Response, #4 Petitioner's Reply All after 20 days and 30 Days (Appeal)

(4) Despite the previous Judgement and wording of such Judgement by Commissioner the Petitioner's submitted Order is expanded past her ruling. Electronic Attachmnts #5

B. PRE-TIAL TIMELINE and ERRORS WHICH AFFECTED DEMANDANTS (who could not afford counsel)
*During the Entire timeframe, the Demandants made GOOD FAITH ATTEMPTS to comply with Arizona Rules of Civil Procedure.

(1) Commissioner during the hearing held gave the Petitioner a FIRM date for disclosure to the Demandants. This Date was Attachment #6 ME

(2) The deadline had passed and only 1 requested item had been received from the Petitioner's/Counsel. Following the Arizona Rules of Civil Procedure regarding a Motion to Compel, Demandants tried to initiate a Conference Call with Commissioner Demandants, and Petitioner's Counsel. An EMAIL REQUEST to the Commissioner was sent out after Petitioner's Counsel told Demandants that they would not initiate or participate. There was no response from Commission regarding this breach of her order and the request for a conference before filing a Motion to Compel. Attachment #7-email to This lack of response caused the Demandants to lose time and started a huge drain by Petitioner's Counsel of the funds.

(3) A Hearing was scheduled over a month past our request for a Conference. Hearing Date Attachment #8 ME At that time Commissioner addressd: Discovery, Disclosure, Ordered anElectronic Discovery Hearing regarding the Demandant's PRIVILEGE claims, and also ordered the Plaintiff to sign an Affidavit Oath that she had disclose all records required to.

(4) A hearing was held on This was an Electronic Discovery Hearing. Commissioner ordered that we give up our " AFTER when our Motion of Stay and Appeal to the Appellate Court was ' or she would signed an order forcing the unmasking. We were preparing our Motion of Stay and Appeal to the Appellate Court when the day before,

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As stated, Commissioner signed an order on before our order from her for our Appeal.
 (4 continued) THIS Action taken by Commissioner effectively ended our Appeal which was our
 RIGHT. Attachment #9 (Petitioner's signed order on

During this hearing, the Demandants also brought forth the NEGLECT of the PETITIONER to sign an
 OATH AFIDAVIT regarding records. Demandants had three subpoenas which Commissioner
 signed. Attachment #10 (signed subpoenas with DATES DUE BY)

(5) Demandant filed with the court, the compliance of TWO of the Subpoenas and the non-compliance of
 the third entity. Attachment #11 (Compliance and Non-Compliance)

(6) Demandant also filed a Subpoena for the since the Doctor in question was in
 NON-COMPLIANCE with the Subpoena signed Attachment #12 (subpoena
 non-answered by Commissioner)

(7) On Demandant's subpoenaed records arrived at Commission office.
 Commissioner was reportedly on vacation, and arrived back on
 Neither Commissioner or her J.A. contacted Demandant regarding these
 nor a newly retained Demandant's attorney. These IMPORTANT RECORDS which should have
 been released by which would not have required a subpoena, and extended the time of
 Discovery out to This delay was NOT the fault of the demandant, but from the
 NON-Compliance and the Petitioner's Attorney claiming multiple times that the Demandant's subpoena
 was not valid. (Digital Hearing minutes)
 Commissioner having the records since more than 2 months since the
 was served by subpoena, more than a month after the records delivery date, gave Demandant
 only TWO days to go through the records and disclose to the Petitioner. This was two days after the trial
 exhibits were due. Attachment #12 (M.E.)

Trial (Evidentiary Hearing was) Days later, the Judgement was issued.

(8) Had the Demandants known that the law would not be followed and that a full months later that
 we were going to be hit with attorneys fees, (previously Judgement stated NO FEES), We
 effectively lost our Right to Appeal. Had we been assessed Attorney's fees in the Judgement (signed by
 Commissioner we WOULD HAVE APPEALED.

*Additional note regarding Court. At no time was the protected. Her Rights, her assets
 (paying for a Petition that only benefitted the Petitioner, certainly not the . My Mother had a small
 estate and what was done to her in kidnapping her out of a nursing home and violating the State Trust
 Laws. There were no requests to " out of this " , other than
 the Demandant's multiple requests.
 Definition from Commissioner - Commissioners handle specific assigned cases and uncontested
 matters.

COUNTY

HONORABLE

IN THE MATTER OF

COMM.

MATTER UNDER ADVISEMENT

The Court has reviewed a Petition for Declaratory Judgment, as well as responses and previous litigation and agreements by the parties that have significantly narrowed the issues. While the original Petition requested Declaratory Judgment on five issues, the Court found that issue two was moot. The Objectors stipulated not to contest issues one, three, and four. As to the final issue—the validity of estate planning changes, the Court has taken evidence and heard testimony in this matter and taken the matter under advisement. This Ruling follows.

FACTS'

is approximately years old with children. The children are:

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served as trustee of the Trust dated until she
suffered cardiac arrest on On she was declared incapacitated

COUNTY

by On she was declared incapacitated by

At that time, were named as Co-Trustees of the Trust and began to serve in that capacity. On retained counsel to represent him as Co-Trustee and as agent under healthcare and durable powers of attorney.

On Dr. determined that had regained capacity and documented this in a letter on that same date. Dr. signed a letter on also finding that had regained capacity.

On revoked powers as power of attorney and requested that the named alternate agent, act in his stead. She also elected to remove them as co-trustees of the Trust.

On began rehabilitation at Multiple records from have been further relied on in this case as evidence of capacity at certain times. That same day, she signed Powers of Attorney appointing as Durable Power of Attorney and as Health Care Power of Attorney. She also signed documents again revoking as co-trustees.

On determined no longer had capacity. Dr. also determined no longer had capacity on

On entered into an Appointment of Successor Trustee and Resignation of Co-Trustees. resigned as Co-Trustees and accepted Trusteeship. On counsel for sent a letter to all of children informing them of the Agreement and the was Trustee and Healthcare power of attorney and was durable power of attorney.

On or about the Objectors filed complaints against Dr. and Dr. with the

On Objectors filed a complaint with alleging estate planning changers were invalid and contesting the validity of Dr. letter.

Ongoing family strife resulted in filing the Petition for Declaratory Judgment at issue. have objected to the Court ruling that estate planning documents are valid.

COUNTY

TIME BAR FOR CHALLENGING ESTATE PLANNING DOCUMENTS

argues that the time for to challenge the validity of the estate planning documents has passed pursuant to § 14-10604. However, that statute references when a person may **commence** a proceeding to contest the validity of the trust. There is little case law on what happens when is the one to raise the legal argument. And filed the Petition for Declaratory Judgment.

This is not to say that came up with this idea out of nowhere. between them, filed claims with the the

all complaining of the estate planning changes. In all cases, have been advised to bring a valid challenge to court if they have one. They have not done so.

Additionally, § 14-10604 (A)(2) requires have been advised not only of the changes to the trust, but the time allowed for commencing a proceeding. They allege they were not so informed and the Court has seen no evidence that they were so informed. Finally, laches cannot apply in a circumstance where did not bring the litigation themselves. They correctly point out laches is a defense.

The Court is unconvinced that the statute of limitations bars the right to object to the Petition for Declaratory Judgment and evaluates the objections on their merits.

HAD TESTAMENTARY CAPACITY

The challenger of a testamentary instrument has the burden of showing by a preponderance of the evidence that the testator lacked testamentary capacity at the time it was executed.³ Even a determination of incapacity, whether made by a doctor or even by the courts, does not necessarily preclude testamentary capacity. This even includes circumstances where a testator has been granted a legal guardian, and those where the testator has a consistent, life-long intellectual disability.⁴

A testator or, in this case, a trustor, must have sufficient mental capacity to know the natural objects of his bounty, to comprehend the kind and character of his property, to understand the nature and effect of her act, and to make a disposition of her property according to some plan formed in his mind.⁵ That plan does not need to be logical, or objectively fair. It does not need to conform with some outside observer's (or judge's) concept of a testator or trustee's moral duties and obligations to their heirs.⁶

**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.**