

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-034

Complainant: No. 1385310330A

Judge: No. 1385310330B

ORDER

The complainant alleged that a superior court judge demonstrated bias by engaging in ex parte communications and failing to take appropriate action, and he was rude. The commission reviewed the issues and the judge's response and found no evidence of ethical misconduct on the part of the judge. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: June 14, 2010.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on June 14, 2010.

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

TO: JUODICIARY COMMITTEE ON JUDICIAL MISCONDUCT
FROM:
DATE: December 20, 2009
RE: JUDGE
PIMA COUNTY SUPERIOR COURT
PROBATE COURT

As per the Arizona Rules of Court, 2009, VII of Judicial Ethics, Cannon #1 it states a Judge shall uphold the integrity and independence of the Judiciary, and Cannon #2 states that the Judge shall avoid impropriety and the appearance of impropriety in all of the Judge's activities.

Impartiality or impartial denotes absence of bias, or classes of parties, as well as maintaining an open mind in considering issues that may come before a Judge.

In Cannon #3, it states that a Judge shall perform the duties of judicial office impartially and diligently. In Section B, Adjudicial Responsibilities, (number 4) a judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity

In #5 of the same section, a judge shall perform judicial duties by words of conduct, manifest, bias or prejudicial, including, but not limited to bias or prejudice based upon race,

sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status and

Also in Number 7 of this section, a Judge shall accord to everyone who has a legal interest in a proceeding or that person's lawyer the right to be heard according to law. (The same should be accorded to those persons who represent themselves as pro per petitioner according to the undersigned).

Also, a Judge shall not initiate, permit, or consider ex-parte communications or consider the presence of the parties concerning a pending or impending proceeding except that: a) where circumstances require ex-parte communication for scheduling administration purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized.

Also, in Section F of Cannon # 3, a Judge shall disqualify himself in which the Judge's impartiality might be questioned, including but not limited to instances where a judge has a personal bias or prejudice concerning a party.

Lastly on page 814 of this text in the commenting section I Cannon # 3, (1993), 5, it was added that a judge must perform judicial duties impartially and fairly. A judge who manifests bias in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. A Judge must be alert to avoid behavior that may be perceived as prejudicial.

FACTS

On February 13, 2009, I filed a Guardianship and
 Conservator Petition in Probate Court in Pima County Superior
 Court for my Uncle _____ in case _____ . An
 initial hearing was scheduled for March 19, 2009, before
 Commissioner Judge _____

It was my belief that my uncle's placement in Devon Gables, a nursing home in Tucson, Arizona by my relatives, was questionable and improper.

I filed the above petition as a pro per petitioner because I was familiar with the general operation of the Superior Court, and I did not have the necessary funds to obtain legal representation. Probate attorneys were requiring an up front retainer of \$2,500 to \$6,000 to commence representation, the amount does not include more expenses as the court process continues.

Self representation is a constitutional right afforded to us as citizens; however, it is not an easy task. It becomes further complicated when the probate court does not have adequate guidelines and direction for pro per petitioners.

Along with the above it becomes even worse when the judiciary is disrespectful, rude, impatient and has the nerve to treat pro per petitioners as second class citizens.

On March 7, 2009, I submitted a motion for an emergency hearing before Commissioner [redacted] In the above motion I stated that it was my belief that my relatives were compromising my uncle's mental and physical condition by moving him from Devon Gables, a nursing home in Pima County and transferring him to Maricopa County during a scheduled guardianship/conservator hearing without my knowledge nor that of the Courts.

On March 9, 2009 at a scheduled Order to Show Cause Hearing
on my Emergency Motion, Commissioner ordered that
the Court-Ordered Appointed Attorney for my
Uncle, determine my uncle's location since he was moved to
Maricopa County by my sisters, the objectors to the petition
without notice to me nor the Court. A court date was scheduled
for March 19, 2009 at 9:00 a.m. (See attachment).

On March 16, 2009, my Uncle's case was re-assigned to Judge [REDACTED] because of a formal objection by my relatives to my petition and a Status and Scheduling Conference was scheduled for April 10, 2009, at 9:00 a.m. before the Court.

On March 31, 2009, I submitted a Motion for continuance of the court hearing of April 10, 2009 to address some immediate issues related to my uncle's well being. The motion was for the court to seriously consider my uncle's medical state which was in jeopardy because he had suffered a hip fracture at

the Veteran Administration's Nursing Home and that correct medical decisions were necessary.

I requested that my uncle be returned to Pima County when medically able to be present for interviews to determine guardianship and conservator by Court-appointed professionals or to make arrangements to cause the above.

It was also my opinion that they should be held responsible by the Court for removing my uncle from Pima County without notice to me nor the Court. It is felt that my relatives were guilty of obstruction of justice by their misconduct of moving my uncle to Phoenix, Arizona.

Along with the motion, I also called Judge secretary, to advise the Court of my concerns about my uncle's well-being. She refused to speak with me. She stated that she was unable to communicate with me under any circumstance because of ex parte concerns.

It clearly appears that the Court's secretary, along with the Court, ultimately over reacted and misinterpreted the true definition and application of ex parte communication.

I believe that Judge and his Court violated Cannon #3 as it relates to ex parte communication because communication with the Court is allowed provided it does not jeopardize the merits and the outcome of the case. It also does not apply to emergencies such as my motion since it would help

determine his exact location and his medical well-being as soon as possible.

After I submitted the aforementioned motion of continuance, I did not receive a response from Judge in any form, therefore I attended the scheduled court hearing of April 10, 2009.

On April 10, 2009, I attended the scheduled hearing for my uncle before Judge Surprisingly, Judge did not call my uncle's case nor did he personally address me to advise that the hearing was continued. Instead Judge instructed the Court Appointed Attorney for my uncle, to report to his chamber for a conference.

Unaware of what was taking place, I spoke with the Court Bailiff who informed me that the hearing was continued to April 28, 2009 at 9:00 a.m.

Personally and professionally I feel that proper procedure for Judge would have been to call the case and to have advised of the continuance directly in front of his bench. He also should have accorded me the opportunity to participate in the ex parte communication conference in his chambers, along with the lawyer for my uncle.

Mr. the Court Appointed Attorney, was well aware that I was in the courtroom since we had a brief conversation and he should have advised Judge that I

was present. Judge should have ordered that I participate in the conference.

It is my understanding he may have violated Cannon #3, number 7 of ex parte communication by not allowing me in the conference. He also appears that he may have violated Cannon #3, Section B, Number 4, by being discourteous to me, a litigant, by not being fair and impartial by not recognizing me in Court by calling the case and therefore I was denied self representation.

Also, but not related to my case, it should be noted that Judge on the court date of April 10, 2009 was noticeably rude, disrespectful and unprofessional to other litigants in the courtroom.

On or about April 15, 2009, I received Judge Court Minute Entry of April 9, 2009, via mail stating that the hearing of April 10, 2009 was continued to April 28, 2009. Along with the continuance, he decided to admonish the undersigned, the petitioner, for not properly routing court documents to his court.

On April 20, 2009, after receiving Judge Minute Entry of April 9, 2009, I prepared and personally delivered a packet of all my legal documents along with a handwritten letter explaining that his probate court system did not address the proper routing of legal documents to his court

in their guidelines and manuals. The packet was taken to area in Superior Court where Judges receive personal and legal documents. (See attachment of 4/20/09 letter)

It is evident to me that Judge clearly violated the letter and spirit of the aforementioned Cannons of the Judicial Code of Conduct by personalizing and becoming vindictive toward me for commenting to him on April 20, 2009, in a handwritten letter about the lack of procedural information in his court's guidelines and handbooks for the proper routing of court documents to his court for pro per petitioners.

Along with the handwritten letter to Judge I also attached all the court documents in a packet that he allegedly did not receive but instead were only routed to the Probate Clerk of the Court. I had a reasonable belief and expectation as a pro per petitioner that all the said court documents would be routed directed to his Court by the Clerk of the Court.

Also, Clerks of the Court refuse to provide simple instructional information, like the proper routing of documents to the public out of fear they are giving legal advise which is the furthest from the truth. Assisting members of the public and potential litigants should be the practice and not the exception. It would greatly improve the operation of the Court

for pro per petitioners whom are at a disadvantage due to finances and/or experience.

In my letter to Judge I also commented that it was inappropriate for him to admonish me in his minute entry of April 9, 2009, especially since his guidelines do not address the routing of Court documents. I feel that he basically misused his authority and attempted to discredit my efforts in assisting my uncle in his hour of need without any justification for his admonishment.

The tone and tenor of his Minute Entry of April 9, 2009, was harsh and improper especially since he did not respond to the contents of my motion which related to my Uncle's well being. Instead of being proactive and recognizing the seriousness of my uncle's situation, Judge did nothing and consequently he jeopardized my uncle's life. If he had agreed to my motion, my uncle may be alive today.

On April 23, 2009, I regrettably submitted a motion to withdraw my G/C petition for my uncle, due to stay at St. Joseph Hospital in Phoenix, Arizona, in their ICU area due to a hip fracture while at the VA Nursing Home.

On April 27, 2009, Judge granted the withdrawal without any statement of compassion for my uncle, but instead in his minute entry he adds insult to injury by ordering that I pay for all the Court costs.

In his Minute Entry, he directs Mr. the Court Appointed Attorney for my Uncle whom I feel failed in duties of representing my Uncle to bill me by May 31, 2009. He ordered no specific rate.

Generally, from what I have gathered for some attorneys that the Court rate is \$50 per hour. Mr. charged a \$200 an hour rate for a total of \$900 for an alleged 4½ hours of work.

(See attached Minute Entry of April 27, 2009 from Judge and the billing letter of Mr. .)

Once again I feel that Judge inappropriately billed me at an open rate out of his anger and bias toward me. He should have disqualified himself earlier having full knowledge that he was prejudiced toward me for commenting on his court procedures.

He violated Cannon # 3, Section E of Disqualification by not removing himself from this case because of being partial, bias, prejudice, unfair and hostile toward me.

Ultimately and unfortunately my Uncle, died on Memorial Day, 2009, at the VA Nursing Home as a result of the hip fracture!

It is also my belief that his bias and prejudicial attitude toward me because of my comments, coupled with his inaction and

lack of due diligence, greatly contributed to the death of my Uncle

His Court had several opportunities to address my Uncle's potentially life threatening situation. In my Motion to Continue of March 31, 2009, I clearly explained my concerns about my Uncle's well-being. He also failed and refused to take any action regarding the contents of the motion to cause my Uncle to be returned to Pima County.

He did not address any of my concerns in his Minute Entry of April 9, 3009, but he instead decided to display his anger and poor judgment to admonish my efforts.

As a Judge of the Probate Court, he was sworn to defend the rights of the proposed wards and pro per petitioners to the fullest extend of the law and he failed to do so!

It also appears to me that Judge violated Cannon #2 by being partial and non-open minded in his Minute Entries of April 9, 2009 and April 27, 2009, by admonishing me inappropriately on a procedural manner that his Court failed to address in his directives of the proper routing of Court documents.

Mr. equally contributed to my Uncle's death and a formal complaint will be submitted to the Arizona Bar Association.

It should also be noted that on September 10, 2009, I personally reviewed the Court's file on my uncle's case, and I surprisingly discovered that the handwritten letter to Judge Harrington was not in the file.

Even though it was a handwritten letter, it was still a legal document to the Court from a pro per petitioner that should have been in the file.

It appears that Judge may have removed or not included my handwritten letter to avoid the appearance of bias, prejudice and it would have provided evidence that he may have taken my comments personally. (See attachment of the letter of April 20, 2009.)

My experiences with Judge have obviously been personal because of my closeness to my Uncle a World War Two Marine Veteran. Regardless of the personal nature of the case, Judge has been the most arrogant, disrespectful, rude, biased and unethical judge I have ever encountered in over thirty years experienced as a (Ret) street supervision adult probation officer in Pima County Superior Court.

Judges like him do not deserve to serve on the judicial court especially since he has the responsibility of dealing with defenseless adults and children. It appears he does not possess

the personality, character, temperament, and compassion to serve the citizens of Pima County.

I am one hundred percent certain if made public, the Court of Public Opinion would find that Judge guilty of judicial misconduct and that there is a systemic problem in his administration of probate court.

I only wonder how many other litigants have experienced his judicial misconduct and how many potential wards of the Court have been disrespected by Judge along with their families. His rudeness and arrogance to attorneys is another issue that also needs to be addressed by someone.

Judge treated my representation as a pro per petitioner as a second class citizen and he basically violated my constitutional rights of self representation.

All the Court documents contained in the file such as petitions, motions, orders and other supporting material are attached in chronological order to help facilitate the much needed investigation.

In conclusion, I am requesting that your Committee fully investigate my complaint and that Judge be disciplined to the full extend of your authority. It is also suggested that your Committee seriously consider conducting a confidential poll as to his temperament and demeanor throughout