

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 17-085

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Judge:

Complainant:

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**ORDER**

The complainant alleged a superior court judge exhibited improper demeanor, treated her unfairly, and issued an erroneous ruling.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge 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.

The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judge 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: June 14, 2017

FOR THE COMMISSION

/s/ George A. Riemer

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George A. Riemer  
Executive Director

Copies of this order were distributed to all appropriate persons on June 14, 2017.

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

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

**2017-085**

**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.

See attached explanation

Name of Complainant:

Name of Judge:

**I. Complaint**

This Complaint arises from \_\_\_\_\_ conduct towards Complainant during a telephonic status conference on \_\_\_\_\_ on \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ minors, in which Complainant represents the \_\_\_\_\_; the minors' mother. A description of the case leading up to the telephonic status conference is set forth below in Section III. During the telephonic conference on \_\_\_\_\_ tried to coerce Complainant into accepting responsibility for her own fees on the case and for the fact that a Guardian ad litem (GAL) was needed in the case to represent the minors. The Judge accused Complainant of negligence at a minimum and he strongly hinted that Complainant had misled the court early on in the case. \_\_\_\_\_ however, gave no evidence of his intention to attack Complainant's handling of the case at the outset of the status conference and he even dismissed the GAL, \_\_\_\_\_ from the case and the conference call, leaving the remaining attorneys, \_\_\_\_\_ from \_\_\_\_\_ who was appearing *pro hac vice* in the matter. and Complainant on the phone with the Judge. Unbeknownst to however, \_\_\_\_\_ was still in the room and could hear what was taking place on the phone call because Complainant was in \_\_\_\_\_ office and sharing her speakerphone. This was because both \_\_\_\_\_ had a meeting with other parties and their counsel on another case at \_\_\_\_\_ in \_\_\_\_\_ office immediately following the status conference. However, upon hearing \_\_\_\_\_ attack on Complainant's conduct in the case, \_\_\_\_\_ immediately rejoined the conference call and contradicted claims as to what facts were available to whom and when, and in particular, she clarified the facts that she obtained as a result of her investigation which were not available to Complainant at the outset of the case. These facts, which are more fully described below, had been discovered by the GAL due to her authority provided by the court and \_\_\_\_\_ had no reason to believe that Complainant had any reason to be aware of the facts prior to the GAL's investigation. \_\_\_\_\_ tried to ensure that the GAL would not be present on the phone conference while attacking Complainant's conduct in the case, but did not succeed.

This conduct violates Rules 2.2, 2.4, and 2.8 of the Arizona Code of Judicial Conduct.

**II. Complainant's visible efforts opposing \_\_\_\_\_ interpretations of probate rules and statutes.**

Complainant believes that it is no coincidence that this unwarranted attack on Complainant's integrity and the attempt to coerce Complainant into admitting fault and/or negligence in a case in which neither allegation has any basis occurred at this particular time. Within the \_\_\_\_\_ Complainant has assumed an increasingly visible role in various efforts to bring some continuity to the handling of cases by both of the \_\_\_\_\_ at \_\_\_\_\_ namely \_\_\_\_\_ and \_\_\_\_\_ who have adopted similar and singular interpretations of the various rules and statutes governing probate, in particular those related to notice provisions and attorney and fiduciary

fees. Complainant's efforts have included: (1) Communications with [redacted] regarding problems to be addressed at the so-called [redacted] the purpose of which are to address inconsistencies in the handling of cases by the various members of the [redacted] (2) Using the [redacted] and [redacted] to initiate a discussion the intent behind [redacted] which Complainant believes that both [redacted] erroneously interpret in recent rulings disallowing fees; and (3) Appealing the portions of two recent orders in two matters by [redacted] disallowing Complainant's attorneys' fees in cases using the identical but erroneous interpretation of Section 3-303 of the ACJA adopted by both [redacted] While Complainant does not know whether [redacted] either probate judicial officer at the [redacted] has direct knowledge of Complainant's efforts to persuade the [redacted] to address these inconsistencies at their [redacted] and Complainant has carefully framed her initiation of and participation in the online discussion at the [redacted] in neutral terms and without identifying judicial officers or specific cases, a growing number of [redacted] are aware of the increasing disparities between the [redacted] and the rest of the [redacted] More to the point, neither [redacted] could have failed to know [redacted] of the [redacted] and which directly focused on the language in Section 3-303 of the ACJA which they are (mis)interpreting as an excuse to disallow fees in probate matters. The online discussion with the [redacted] was initiated by Complainant on [redacted] and [redacted] Complainant entered an appeal in two conservatorship matters after requesting [redacted] enter his orders as judgments in appealable form, which he did [redacted] Therefore, at the time of the status conference on [redacted] could not have failed to know of Complainant's assumption of a leadership role in focused efforts to oppose his continuing efforts to apply his increasingly unusual interpretations of the probate statutes and rules to his cases, and those of [redacted]

**III. Summary of the [redacted] matter:**

Ir [redacted] Complainant was contacted by [redacted] regarding the need for local representation for a settlement involving [redacted] proceeds payable to minors residing in [redacted] for which a conservatorship would be required. Complainant was advised by [redacted] that [redacted] the minors' mother, had executed a contingency fee agreement that permitted him to retain [redacted] of the proceeds upon payout of the settlement which was estimated to be about [redacted] half to each minor, but that he was willing to reduce his contingency to [redacted] Complainant provided [redacted] with a copy of the relevant Arizona statute governing court approval of fees for settlements and advised him that his fees needed to be deemed reasonable by the probate court based on the actual work done, the time spent, his expertise, the likelihood of success in the case, and other factors. Complainant emphasized that the contingency fee agreement was not [redacted]

enforceable against the minors, that the proposed conservator had no authority to sign a fee agreement, and that both the settlement and the determination of what were reasonable fees for securing the settlement would be approved by the probate court at the same time regardless of the fee agreement. Over the next few weeks, Complainant had a difficult time formulating an understanding of exactly what had done in order to secure this policy on behalf of the minors. Neither nor Complainant had the authority to communicate directly with the but from what Complainant knew, it appeared that the policy was for life insurance on the minors' deceased father, the conservator was divorced from him at the time of his death, and the minors should have been entitled to collect the proceeds subject to a conservatorship. Complainant was advised by that the did not believe that was a barrier to the policy being paid out. Complainant was however, unable to persuade that he had no chance of collecting ever of a policy that had likelihood of being paid out to the minors upon receiving proof of the Decedent's death. Complainant therefore instructed that he needed to apply for *pro hac vice* admission to the Arizona Bar so he could appear and defend his fees, and he applied for and was granted said admission.

In the meantime, Complainant also learned that after the death of the minors' father, the deceased's parents had initiated a probate proceeding in Arizona and they had cut off access to information. Complainant reviewed the probate docket for the decedent and saw that a probate had been opened and closed. advised Complainant that the children had received no information regarding the probate and no inheritance came to them as a result despite the fact that the Decedent had died intestate and they would have been his sole heirs. Immediately prior to the hearing on which had been initially set during but was then continued, Complainant interviewed at the courthouse and learned that, like Complainant and the proposed conservator, also believed that fees were unreasonable given the actual work done as described by him. Complainant found to be quite poised and Complainant urged her that when she was asked in the hearing as to whether she agreed with request for fees, she should speak her mind and say that she did not. That is exactly what happened at the hearing and appointed a GAL for the minors, exactly as Complainant expected he would do. Complainant then requested that the GAL's authority include more than just investigating the facts behind the insurance policy, but that it also include the authority to investigate any other assets payable to the minors due to the death of their father, including the status of the probate. The GAL was granted the authority requested.

was appointed as GAL for the minors and eventually learned that the insurance proceeds had been paid to a restricted fund in each minor's name and would be held by the insurance company until the minor's reaching This is a duplication of what would have happened with a minor conservatorship. Even more to the point, the insurance funds had been paid out and the accounts established months prior to the time that contacted , claiming that the insurer had stopped communicating with her and that she did not know the status. and Complainant essentially advised that that Judge would not approve any contingency payment for settling a case that didn't need settling, and then changed his request to simple

reimbursement for a fee that he had advanced to Complainant for initiating the probate in Arizona and the he paid to the State Bar to be admitted *pro hac vice* in this matter.

At the next hearing, which was in late was appointed as Conservator for the minors and given the authority to obtain the release of funds held by and to set up restricted conservatorship accounts in Arizona. This was done in early due to delays in the processing of the request and errors in the bank's initial handling of the proofs of restricted accounts. In the meantime, discovered a retirement account that was owned by the Decedent that is believed to be valued at about

Complainant obtained amended Letters to include the authority to collect that account and has requested same, but the proceeds have not been received as of today. In

submitted her fee statements totaling Complainant submitted her fee statements totaling covering a period of nearly exactly of which remains outstanding. had previously altered his request to include reimbursement of out-of-pocket advances and fees paid by him. The minor's accounts are each valued at approximately and another approximately is expected. The status conference on was set to wind up anything remaining that needed to be done as well as to approve the fees and release the funds for payment of same. That was what was expected, but not what happened as described above. The matter had not been contested. but it had been difficult, it spanned a year, and required Complainant was utterly shocked at accusations. The recording of the status conference will confirm what occurred.