

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-256

Complainant: No. 1428810428A

Judge: No. 1428810428B

ORDER

The complainant alleged that a superior court commissioner allowed a conservator to breach fiduciary duties.

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

After reviewing the information provided by the complainant, the members of the commission found no evidence of ethical misconduct and concluded that the commissioner did not violate the Code in this case. The commission has no jurisdiction to determine the legal sufficiency of the commissioner's decisions. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: November 23, 2011.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on November 23, 2011.

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

**National
Association**



**to
Guardian
Abuse**

2011-258

OCT 13 2011

October 7, 2011

E. Keith Stott, Jr., Executive Director
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

RE: Honorable

In his former capacity of Commissioner of Maricopa County Superior Court
Northeast Court Building
18380 N. 40th St., Ste. C
Phoenix, AZ 85032
and

Dear Sir:

NASGA is an organization dedicated to reform in the area of unlawful and abusive guardianships and conservatorships, nationally.

This grievance is filed in accordance with the 2009 Arizona Code of Judicial Conduct, and ARS Title 14, Sec. 1501 et seq.

Because "The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society," we file this grievance on behalf of our member, _____ granddaughter of _____ previously adjudicated as incompetent.

Our complaint is simple and straightforward: Managed Protective Services, Inc. (MPS), the Conservator in this case, failed to protect the "best interests" of the ward, failed to conserve and account for her property and assets, which breaches of fiduciary duty were actively permitted by then Commissioner

In his oversight of the case, then Commissioner [redacted] failed to comply with judicial canons 1.1, 1.2, 2.2, and 2.5, and also failed to properly implement and enforce specific state statutes designed for financial protection of wards of the state.

Then Commissioner [redacted] acted in direct violation of:

- ARS 14-5418 by failing to require compliance by the Conservator with the mandated filing of an initial inventory.
- ARS 14-5419 by failing to require annual accountings from the Conservator.
- ARS 14-10813 by failing to require the Conservator, in its position as Trustee of the Family Irrevocable Trust, to keep the qualified members of the trust reasonably informed as to the administration of the trust; failing to require the Trustee to respond to a beneficiary requiring information as to the administration of the trust; and failing to require the Trustee to send beneficiaries who request it, a (at least annually and at the termination of the trust) report of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values.

The Conservator did not file the mandated accountings nor did then Commissioner [redacted] require the Conservator's compliance with law. Nor did the Conservator, in its position as Trustee, comply with ARS 14-10813, and then Commissioner [redacted] did not require said compliance.

Although we don't know the exact value of [redacted] estate when MPS was appointed as Conservator on March 5, 2008 (because then Commissioner [redacted] failed to require an initial inventory from MPS and also failed to require a final accounting from [redacted] the previous Conservator), we do know that [redacted] had assets in excess of \$220,000 as of 2/5/2009, excluding the value of her home. (See Exhibit A)

On April 5, 2009, the Court Administrator notified Larry Scaringelli (attorney for MPS) that the annual accounting was due no later than 6/30/2009. (See Exhibit B.)

See Exhibits C and D: On May 11, 2009, the attorney for MPS, in filing their "Stipulated Petition for Termination of Conservatorship, Waiver of First and Final Accounting and Exonerated Bond," and in requesting waiver of the first and final accounting, stated that MPS was appointed as Conservator on March 5, 2008 and:

"...after investigation determined that all of Ms. [redacted] remaining assets were held by the trust and that no assets were held by Ms. [redacted] personally and therefore no assets were contained within the Conservatorship Estate. MPS filed an inventory asserting that the Estate had no assets and a value of \$0.

As there are not assets in the Estate, there have been no transactions in relation to the Estate and nothing to report in an annual accounting."

Yet, prior to this waiver request and on December 12, 2008, (see Exhibit E) Glen Gloria Financial Director for MPS, in a letter to Attorney Theut discussing resolution of the "expenses" of the conservatorship, states:

- Ms. total monthly income (from Social Security, an annuity, and a monthly disbursement) is \$4,549.44.
- Ms. expenses at that time were \$2,775.32 per month.
- In order to meet the over \$134,000 "debt" of the conservatorship Ms. home worth approximately \$310,000 (and held in the trust) ultimately would have to be sold.
- Ms. Mason's monthly annuity could be sold at a value of \$127,911.77.

On December 18, 2008, MPS filed a "Petition for Approval of Sale of Annuity and Real Property" and then Commissioner signed the Order approving the Conservator's petition on 2/5/2009. (See Exhibits F & G.)

Said "Petition for Approval of Sale of Annuity and Real Property" itself is a contradiction of MPS's statement that ward, had no assets.

Because we know the value of estate was over \$220,000 (excluding the value of her home) in 2009, it is safe to assume the value of her estate was greater in 2008 when MPS was appointed as her Conservator.

The ostensible purpose of conservatorship law is to "CONSERVE" the assets of the protected person. Then Commissioner neglected his duty to and the law by allowing the Conservator, MPS, to "hide" the value of Ms. assets from the court's access, and more importantly, the then Commissioner's own oversight. In MPS's "Inventory and Appraisal and Estate Management Plan", filed 06/03/08 (See Exhibit H), MPS states:

"Pursuant to the current investigation by the Conservator, MPS, all of Ms. assets are being held in the Family Trust and are being managed by MPS pursuant to the recent Order of this Court.

Accordingly, there are no assets currently held in the Conservatorship Estate and therefore there are no assets to list in an inventory. The appraised value of the Estate is (\$0) zero.

In addition, as there are no assets held in the Estate there is no need for an Estate Management Plan."

According to the case docket (See Exhibit I) and a physical examination of the court file, there appears to be no record of then Commissioner either approving or denying MPS's motion (Exhibit H) resulting in his failure to protect his ward's assets, leaving those assets exposed to exploitation by the Conservator through exorbitant fee billings – with no oversight.

Further, MPS's request for a waiver of the "first accounting" was filed 13 months after their appointment, long after the 90-day mandated initial inventory was due under AZ Statute 14-5419, nor was there any petition requesting waiver of the initial inventory filed; the Conservator was already in breach of fiduciary duty when it filed the waiver request on May 11, 2009, and then Commissioner failed to take action.

Again, no inventory or accounting was ever submitted in the Mason matter, or ordered to be submitted by then Commissioner

As a result, a ward with a monthly expense of approximately \$2,800 covered by a monthly income exceeding her monthly expenses by \$1,700 per month, was "protected" into indigence.

In specific regard to the final accounting, AZ Statute 14-5419 clearly states:

F. Unless prohibited by order of the court, the conservator may file with the court, in lieu of a final account, a verified statement stating that:

1. The conservator has delivered a copy of a closing statement to the protected person's successors. The conservator shall attach a copy of the closing statement to the statement.

The Conservator did not deliver a copy of a closing statement to the protected person's successors, nor did then Commissioner require them to do so in lieu of filing a final account.

MPS was also appointed Successor of the Family Irrevocable Trust and failed to comply with mandates of ARS 14-10813 A. and C by not keeping the beneficiaries reasonably informed as to the administration of the trust, by not responding to the specific requests for information regarding the trust from the beneficiaries, and by not providing an annual accounting and a termination accounting as requested by the beneficiaries.

Then Commissioner failed to follow the law, failed to protect the ward and failed to hold the conservators accountable for breach of fiduciary duty.

Guardianship law is promulgated in the public interest to:

- "guard" the protected person to keep the ward from harming him/herself or anyone else;
- "conserve" the ward's assets (by means of prudent investment); and
- "protect" the public from the ward becoming a public charge.

In the conservatorship of _____ there was a failure to follow the intent and the direction in all three noble purposes of the law; and then Commissioner _____ is directly responsible for that failure.

For failure to follow clear and unambiguous mandates of law, we ask that Judge _____ be disciplined accordingly and not be permitted to sit as judge over guardianship cases.

Respectfully,

Enclosures:

Exhibit A: 02/05/09 Total Restricted Assets and Income

Exhibit B: 04/05/09 Court Administration notice to Atty Theut of annual accounting due 6/30/2009

Exhibit C: 05/11/09 Stipulated Petition for Termination of Conservatorship

Exhibit D: 05/13/09 Order Terminating Conservatorship, Waiving of First and Final Accounting and Exonerating Bond.

Exhibit E: 12/08/08 letter Glen Gloria (MPS)to Atty Theut

Exhibit F: 12/19/08 Petition for Approval of Sale of Annuity and Real Property

Exhibit G: 02/06/09 Order Approving Sale of Annuity

Exhibit H: 06/03/08, Inventory and Appraisal and Estate Management Plan

Exhibit I: Case Docket

Correspondence relating to the _____ family' request for information:
10/02/08: _____ letter to Commissioner