

**THE TENNESSEE  
COURT OF THE JUDICIARY**

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March 10, 2011

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**PERSONAL/CONFIDENTIAL**

Ms. Ginger L. Franklin  
184 A Brittan Street  
Hendersonville, Tennessee 37075

RE: Complaint against Judge Randy Kennedy  
File No. 10-4376

Dear Ms. Franklin:

I have enclosed Judge Kennedy's response to your complaint and invite your comments, if any. Please provide those within 20 days if possible.

Following your response, the case will be transmitted to an investigative panel of the Court of the Judiciary. That panel will review the matter and make further determinations.

Please advise if you have any questions.

Sincerely yours,

A handwritten signature in black ink that reads "Patrick J. McHale". The signature is written in a cursive style with a large, prominent "P" and "M".

Patrick J. McHale  
Assistant Disciplinary Counsel



**State of Tennessee**  
TWENTIETH JUDICIAL DISTRICT

RANDY KENNEDY, JUDGE  
SEVENTH CIRCUIT COURT  
e-mail: randallkennedy@jjs.nashville.org

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March 1, 2011

Mr. Patrick M. McHale, Esquire  
Assistant Disciplinary Counsel  
The Tennessee Court of the Judiciary  
5543 Edmondson Pike, #5A  
Nashville, TN 37211

RE: Conservatorship of Ginger Lynn Franklin, File No. 10-4376

Dear Mr. McHale:

With regard to the referenced Complaint of Ms. Ginger Franklin, my response is as follows:

1. Ms. Franklin's case was conducted in the Seventh Circuit Court. It commenced on August 25, 2008 with the filing of an Emergency Petition for Appointment of Temporary Conservator/Public Guardian ad Litem, and concluded with the following:
  - (a) Order to Dissolve Conservatorship entered December 2, 2010.
  - (b) Order for Fees Awarded to Ms. Franklin's attorney ad litem entered on December 20, 2010.
2.
  - (a) The name and number of the case is:

In Re: Conservatorship of Ginger Lynn Franklin  
Docket No.: 08P-1351
  - (b) This is a Conservatorship case.
  - (c) It is acknowledged that the Respondent, Ms. Franklin, is an adult and that Ms. Cece DuBois who now claims to be her "next-best-friend" is the landlord of Ms. Franklin.
  - (d) It is untrue that Ms. Franklin was not provided with an attorney ad litem as evidenced by the Order entered October 11, 2010. Further, it should be noted that until the hearing on September 24, 2010 which resulted in the Court appointing an attorney ad litem, that Ms. Franklin had not formally requested that an attorney be appointed for her. The Court had previously appointed attorney John Kitch as Guardian ad Litem, and his interim report of November 13, 2008 to which reference is made for a more complete

description states, in part, that the Guardian ad Litem noted “Dr. Groomes diagnoses Ms. Franklin with Traumatic Brain Injury resulting in Severe Cognitive Impairment and states in his report that Ms. Franklin needs to have a fiduciary appointed for all purposes.”

Because Ms. Franklin had been sent to Carbondale, Illinois for treatment at or about the time of the initial appointment of a temporary conservator, the Guardian ad Litem also reported in his interim report that although Ms. Franklin had informed the Petitioner (not the Guardian ad Litem) that “she does not want a Conservatorship. . . the Guardian ad Litem has been unable to confirm this or to determine whether she needs or desires an Attorney ad Litem.”

In addition and because the Guardian ad Litem had been unable to meet with Ms. Franklin, the final hearing was postponed from November 12, 2008 until December 2, 2008.

A doctor’s report from a second physician was filed on November 19, 2008 confirming that Ms. Franklin needed a conservator.

On November 25, 2008, the Guardian ad Litem filed a Supplemental Report and Recommendation of Guardian at Litem. In this final report, he states “Ms. Franklin told the Guardian ad Litem that she did not want an Attorney ad Litem at this time. (Emphasis added).”

- (e) It is accurate as stated in Ms. Franklin’s Complaint that the Petitioner, Betty Shockley, was represented by Wallace W. Dietz and Henry L. Hipkens, attorneys with Bass, Berry & Sims, PLC.

As a consequence of clear and convincing evidence including the Guardian ad Litem’s report, the two doctor’s reports, and the entire record, the Court signed an Order on December 2, 2008 converting the Temporary Conservatorship to a regular or Permanent Conservatorship. On December 7, 2009, the Conservator filed her Annual Report of the Fiduciary which informed the Court that Ms. Franklin ‘continues to be in need of a fiduciary due to mental. . . disabilities. . . significant cognitive impairment. . .’ On September 7, 2010, Ms. Franklin filed a document entitled a “Verified Notice of Jurisdictional Conflicts and Issues” to which reference is here made. This document was filed with the assistance of her landlord, Ms. DuBois.

- 3. I have examined Ms. Franklin’s list of documents that she relies upon in support of her allegations of judicial misconduct. None of them support her claim.

With regard to items 3.(a) thru 3.(c), these items have been discussed previously in this response.

With regard to 3.(d), this is an Order Approving Chapter 7 Bankruptcy entered May 8, 2009. It arose from a Motion filed by the Conservator, which was duly and properly served on Ms. Franklin and All Interested Parties, and which was supported by detailed financial information and documentation reflecting that Ms. Franklin’s estate was insolvent and in need of Bankruptcy protection. Neither Ms. Franklin nor any interested party filed anything in opposition to this Motion. Consequently, after a hearing on the Motion, I promptly entered an Order to authorize the Conservator to seek Bankruptcy protection for the benefit of Ms. Franklin.

Regarding 3.(e) "Verified Motion to Terminate Conservatorship and Discharge Conservator"; Ms. Franklin filed this document and the Court acted upon it in a timely and appropriate manner, all as evidenced by the Order entered on October 11, 2010 which has previously been referred to and

to which reference is here made for a more complete and accurate description of the Court's appropriate and ethical conduct.

With regard to 3.(f), "Notice of Action Taken in Federal Bankruptcy Court Motion to Disqualify/Recusal Judge," it should be noted that this document while filed with the Clerk of the Court was never properly docketed and appears to have been filed on the same day that the court conducted the September 24, 2010 hearing referred to above. Let me point out that filing documents with the Clerk of the Court does not insure that the trial judge will even see the document. Nor, pursuant to our Local Rules of Court, does the trial judge set motions on his own accord. Notwithstanding the fact that the "Notice" was not properly docketed, I examined the document in a timely fashion and I found no basis in this case for recusing myself. Ms. Franklin's claims of wrongdoing on the part of the Conservator, Ms. Jeanan Stuart, all as contained the 3.(f) "Notice," have never been shown to me to have any merit. Nor, has any evidence been presented to this Court suggesting that any action on Ms. Stuart's part was inappropriate in her service as Conservator in this case, as claimed by this "Notice." I am unaware of any action taken by the U.S. Bankruptcy Court in connection with the Notice that would lead anyone to a contrary conclusion. In short, there are no facts that have been presented in support of any claim for fraud or misrepresentation that have ever been presented to the Court in Ms. Franklin's case.

Ms. Franklin also relies on documents which she says are set forth in 3.(g), 3.(h) and 3.(i) and I will try to address each one of them individually:

First, with respect to 3.(g), Ms. Franklin's letter to the U.S. Trustee's Office, please note that this is Ms. Franklin's claim that the Conservator acted fraudulently or engaged in an act of misrepresentation of material fact in the filing of the Chapter 7 Petition for Bankruptcy. It is Ms. Franklin's allegations expressed to a third party. To the best of my information, knowledge, and belief, her claims as contained in that document regarding acts by the Conservator are untrue.

With respect to Ms. Franklin's (item 3.(h) letter to the Federal Bureau of Investigation (FBI) dated September 25, 2010, this document does not appear to have ever been a part of the Seventh Circuit Court's record, and since it is addressed to the FBI and contains the same types of claims by Ms. Franklin (unsupported by any factual evidence), I emphatically deny they have any merit. This document should not even be considered as a part of her claim against me. I would note that she states in her letter allegations against Ms. Stuart for which no evidence, nor any proof, has ever been submitted to this Court. She also suggests in her final paragraph of that letter that "lastly, please know too that I will be following up in the days to come with another correspondence concerning the white collar crime, public corruption, case fixing and bribery as I/we believe it exists in Davidson County Probate Court." This comment is indicative of the totally baseless and meritless assertions being made by Ms. Franklin and her landlord, Ms. DuBois. Furthermore, I am unaware of any justifiable reason for Ms. Franklin to make such an unsupported and inflammatory comment to any third party.

Likewise, (item 3.(i)) Ms. Franklin's letter to the United States Attorney's Office which appears to simply be a communication to the U.S. Attorney regarding her prior communications to the U.S.

Trustee's Office and the FBI respectively, are simply another method of making a meritless, scandalous and inflammatory claim of "Bankruptcy Fraud, Social Security Fraud, and Medicare/Medicaid Fraud." While they appear to be directed, in part, at Ms. Stuart, they appear to me to be also directed at this Court. And so, consequently, all that I can say is that these claims are without any merit whatsoever.

4. (a) Regarding Ms. Franklin's paragraph 4., wherein Ms. Franklin addresses a witness list that she has compiled; the Court is familiar with Ms. Cece DuBois and Mr. John Daniel Tate and has seen the name "Ms. Mary Anne Watson" as a signature on a notarized letter dated July 27, 2010. Regarding the other individuals whose names appear on her witness list, none of them are interested parties to this action. Further, it does not appear that any of them other than Ms. Franklin or Ms. Dubois participated in any of these proceedings.
  - (b) Mr. John Daniel Tate, who has been listed, is a former Conservatee of this Court who has a lengthy, protracted litigation history with the Court in an unrelated case. Consequently, I would challenge any testimony he might offer in this matter.
5. With regard to the allegations contained in paragraph 5. A), they are emphatically denied. Paragraph 5. B) is denied. Paragraph 5. C) is accurate in that I disposed of all judicial matters promptly, but I also did so efficiently, fairly, and consistently with the judicial Canons and the Rules of Civil Procedure, the Local Rules of Court, and the United States Constitution in all respects. The allegations contained in paragraph 5. D) are denied. The allegations contained in paragraph 5. E) are denied. The allegations in paragraph 5. F) are denied.

It should be noted that all Courts having jurisdiction over Conservatorship matters are required to receive "clear and convincing evidence" to establish a Conservatorship, as well as to terminate a Conservatorship. In every case of this nature, a presentation of evidence must be presented to the Court that supports both the creation and the dissolution/termination of the Conservatorship. In other words, the same high level of evidence is necessary to terminate a Conservatorship as is necessary to establish one.

In this particular case, it appears to me that the lightning rod that initiated Ms. Franklin's cause of action is, in part, her procurement of a handwritten note allegedly signed by physician Chris Taleghani, a physician who is licensed in the state of Kentucky, but apparently not licensed in the state of Tennessee, as evidenced by his office note referred to as Exhibit A/page 74 of Ms. Franklin's Complaint against me.

Apparently, Ms. Franklin saw Dr. Taleghani on July 28, 2009 and expected this Court to rely upon the note which stated "may return to work, no restrictions" as a basis for setting aside and ignoring two prior, properly submitted reports from physicians who were licensed in Tennessee on Report of Physician forms which are utilized by all courts in Tennessee in Conservatorship proceedings. It is critical to note that in establishing Ms. Franklin's Conservatorship, each of the Tennessee physicians reports had clearly demonstrated that Ms. Franklin was incapable of managing her own affairs, and was in need of a Conservator.

When the Taleghani document was ultimately presented to me by Ms. Franklin, I informed the Conservator that she would need to be examined by a doctor and a subsequent report would

need to be submitted to me in the proper form so as to allow me to discern that Ms. Franklin was truly restored to her capacity to manage her own affairs.

It should further be noted that while Ms. Franklin submitted a letter to the Probate Court Clerk's Office on May 27, 2009 informing Mr. Richard R. Rooker, the Clerk, that she was no longer in need of a Conservatorship; this document was not directed to me as the trial judge in the form of a Petition or a communication upon which the Court could properly act. This May 27, 2009 letter was also inconsistent with the Annual Status Report of the Fiduciary dated December 7, 2009 filed by Ms. Franklin's Conservator which stated she still suffered from Severe Cognitive Impairment. It should also be noted that Ms. Franklin's May 27, 2009 letter does not even appear to have been submitted to the Conservator for her review and, therefore, could not be acted upon either as a motion or some other pleading by the Court at the time it was filed with the Clerk.

I believe that you will find from an analysis of statewide statistics that the Seventh Circuit Court handles more Conservatorship cases than any other individual trial Court in Tennessee. Nevertheless, I hold myself to a high standard of ethical conduct in all of these cases and recognize my duty and responsibility in these important matters.

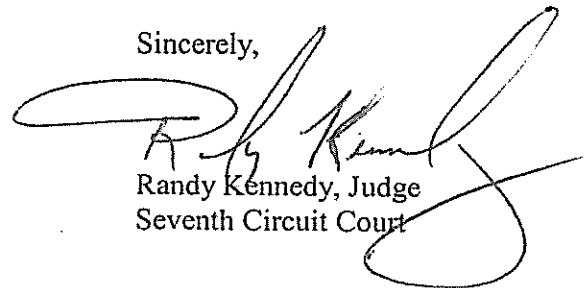
I have always and will continue to endeavor to seek out and to provide for the "manifest best interest" of each person for whom a Conservatorship is sought. In this case, I am confident that I did perform my duties and responsibilities to Ms. Franklin in conformity with my oath and my obligations as a trial judge.

It appears that Ms. Franklin believes that this Court should respond to every ex-parte communication and every claim that a Conservatee has regarding disagreements with the Conservator or with claims of restoration to mental capacity. I believe I made the appropriate response when I appointed an Attorney ad Litem for Ms. Franklin in a timely fashion once I became aware of her formal request to have the Conservatorship terminated. I believe that I took all reasonable and appropriate steps in bringing the Conservatorship to its proper conclusion.

Based on the foregoing, I think my actions are consistent with both the express language and the underlying intent of Rule 3.(b) 8.

I, therefore, respectfully request that this claim filed by Ms. Franklin be dismissed and found to be without merit.

Sincerely,



Randy Kennedy, Judge  
Seventh Circuit Court

RK/kl