

**In the
Supreme Court of Indiana**

IN THE MATTER OF)
)
THE HONORABLE)
)
ROBERT W. FREESE) Case No. 19S-JD-52
)
)
HENDRICKS SUPERIOR COURT 1)

NOTICE OF THE INSTITUTION OF FORMAL PROCEEDINGS

AND

STATEMENT OF CHARGES

The Indiana Commission on Judicial Qualifications (“Commission”), having found probable cause to warrant formal charges of judicial misconduct, now notifies Respondent, the Honorable Robert W. Freese (“Respondent”) of the filing of these Charges. These Charges are brought under Admission and Discipline Rule 25 and before the Indiana Supreme Court, which, pursuant to Article 7, § 4 of the Constitution of Indiana, has original jurisdiction over the discipline, suspension, and removal of all judges and judicial officers of this State. The Commission charges that Respondent, while judge of the Hendricks Superior Court 1, engaged in judicial misconduct as specifically charged below. Pursuant to Admission and Discipline Rule 25 VIII (F), Respondent may file a written Answer to these Charges within twenty (20) days of service.

BACKGROUND

1. Respondent was admitted to the Indiana Bar in 1985.
2. Since January 1, 2001, Respondent has served as the Judge of Hendricks Superior Court 1.
3. At all times pertinent to these Charges, Respondent presided over a general jurisdiction docket which included trust and estate cases.

HOCHREITER TRUST

4. In July 1996, Herbert K. Hochreiter executed a living trust called The Herbert Hochreiter Living Trust (“Hochreiter Trust”). The beneficiaries to his trust were Margaret M. Hochreiter Szper (“Margaret Szper” or “Szper”), Herbert Keith Hochreiter, and Kenneth L. Hochreiter (“Keith and Kenneth Hochreiter” or “Hochreiter brothers”).
5. In October 1997, the Trustee, Harleen Clark, petitioned to docket the Hochreiter Trust with the court, and it was docketed on the Hendricks Superior Court 1 calendar in *Trust of Herbert Hochreiter*, case no. 32D01-9710-TR-000003. According to court records, as of January 29, 1998, the Trust’s assets included real property valued at \$365,000.00 and personal property in the amount of \$348,410.00.
6. On April 10, 2003, Trustee Harleen Clark petitioned the court to resign as trustee and suggested that a trust department of one of the local banks and savings institutions would be an ideal successor to preserve the Hochreiter Trust.
7. On March 26, 2004, Margaret Szper petitioned to redocket the trust, for a medical examination of Herbert Hochreiter, and for the appointment of a neutral successor trustee. Keith and Kenneth Hochreiter objected to the appointment of a successor trustee.

8. On May 3, 2004, the parties appeared in court for a hearing. At that time, Respondent appointed Harlene Clark as Interim Emergency Trustee and set the matter for another hearing. The matter was reset for hearing several times but eventually was held on January 31, 2005.

FACTS GIVING RISE TO MISCONDUCT CHARGES

Respondent's Friendship with Successor Trustee and Failure to Disclose Mortgage Previously Extended to Successor Trustee

9. By January 2005, Respondent and Stephen Scott had known each other for about fifteen (15) years, previously worked together at the Hendricks County Prosecutor's Office, and regularly lunched together. Respondent considered Stephen Scott to be one of his closest friends.
10. Some time in 2004, Stephen Scott asked Respondent to look at a house he was contemplating buying, which Respondent did.
 - a. Stephen Scott needed \$122,400.00 to purchase the home, but he did not have good credit at that time due to a bankruptcy.
 - b. Respondent gave Stephen Scott access to a line of credit Respondent had with Huntington Bank to pay for the home, and the transaction was secured by the home and the mortgage.
 - c. On January 13, 2005, Respondent and Stephen Scott executed a Mortgage document prepared by Respondent, in consideration of \$1.00, whereby Stephen Scott mortgaged and warranted to Respondent his property and agreed to a promissory note of

\$122,400.00 to be paid monthly to a Union Federal Account.

- d. The understanding between Respondent and Stephen Scott was that Mr. Scott would be released from the mortgage once he obtained refinancing.
 - e. In October 2006, Stephen Scott obtained refinancing and a mortgage from a different bank.
 - f. On November 20, 2006, Respondent executed a Release of Mortgage to Stephen Scott.
11. On January 31, 2005, after a hearing, Respondent appointed Stephen Scott as Trustee over the Hochreiter Trust in *Trust of Herbert Hockreiter*, case no. 32D01-9710-TR-000003. At the time of this appointment, Stephen Scott's prior work history was as a sheriff's deputy at the Hendricks County Jail, and as an investigator and then Adult Protective Services Supervisor at the Hendricks County Prosecutor's Office.
- a. Respondent did not disclose on the record that he and Stephen Scott had entered into a financial arrangement with each other on January 13, 2005.
 - b. Respondent never disclosed to the parties or their attorneys outside of court that he and Stephen Scott had a financial arrangement with each other.
 - c. By not disclosing this relevant information and potential conflict of interest, Respondent did not act in a manner that promoted public confidence in the integrity, independence, and impartiality of the judiciary, as he deprived the parties of the opportunity to lodge an objection to the appointment of Stephen Scott as trustee due to his having a financial relationship with Respondent.

Appointment of Stephen Scott as Personal Representative Without Disclosure
of Personal Financial Relationship

12. On August 29, 2005, Herbert Hochreiter died.
13. On September 27, 2005, Margaret Szper filed a verified petition to appoint an independent personal representative for the estate, and the estate case of *In re: the Estate of Herbert Hochreiter*, case no. 32D01-0509-ES-000205, was opened in Hendricks Superior Court 1. According to Ms. Szper's petition, she estimated the Hochreiter Estate (which included Trust assets) to consist of the following: real property valued at approximately \$1,755,000.00 and personal property and accounts estimated at \$525,959.47.
 - a. A hearing was scheduled and held on October 17, 2005; Respondent took the matter under advisement.
 - b. On October 24, 2015, Respondent appointed Stephen Scott as personal representative of the Estate.
 - c. Respondent again did not disclose to the parties or the attorneys that he had entered into a financial relationship with Stephen Scott on January 13, 2005.
 - d. By not disclosing this relevant information and potential conflict of interest, Respondent did not act in a manner that promoted public confidence in the integrity, independence, and impartiality of the judiciary, as he deprived the parties of the opportunity to lodge an objection to the appointment of Stephen Scott as personal representative due to his having a financial relationship with Respondent.
14. In a Report to the Court filed on October 24, 2005, Trustee (and Personal Representative) Stephen Scott reported that the Trust assets included a 140-acre farm and two vehicles

(values to be determined), and brokerage, credit union, and bank accounts which totaled \$520,474.33.

Stephen Scott's Initial Failures to Comply with Reporting Requirements

15. At all relevant times to the Charges, I.C. § 30-4-5-12 set forth a trustee's obligation to provide an annual accounting as follows:

(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or his personal representative annually. The statement shall contain at least:

- (1) all receipts and disbursements since the last statement; and
- (2) all items of trust property held by the trustee on the date of the statement at their inventory value.

16. At all relevant times to the Charges, I.C. § 30-4-5-13 set forth the information required in an accounting for a trust, which includes:

(a) A verified written statement of accounts filed with the court under 30-4-5-12 or by the trustee under 30-4-3-18(b) shall show:

- (1) the period covered by the account;
- (2) the total principal with which the trustee is chargeable according to the last preceding written statement of accounts or the original inventory if there is no preceding statement;
- (3) an itemized schedule of all principal cash and property received and disbursed, distributed, or otherwise disposed of during the period;
- (4) an itemized schedule of income received and disbursed, distributed, or otherwise disposed of during the period;
- (5) the balance of principal and income remaining at the close of the period, how invested, and both the inventory and current market values of all investments;

- (6) a statement that the trust has been administered according to the terms of the trust;
- (7) the names and addresses of all living beneficiaries and a statement identifying any beneficiary known to be under a legal disability;
- (8) a description of any possible unborn or unascertained beneficiary and the possible beneficiary's interest in the trust estate; and
- (9) the business addresses, if any, or the residence addresses of all the trustees.

(b) The court may, either on petition or on its own motion, require the trustee to submit such proof as it deems necessary to support the trustee's verified written statement of accounts. The court may accept the unqualified certificate of a certified public accountant in lieu of other proof.

17. The terms of the Hochreiter Trust did not waive the annual required accounting. Rather, the Hochreiter Trust specifically provided: "My Trustee shall report, at least annually, to the beneficiaries then eligible to receive mandatory or discretionary distributions of the net income from the various trusts created in this agreement of the receipts, disbursements, and distributions occurring during the reporting period along with a complete statement of the trust property." Art. 13, Sect. 4 of Hochreiter Trust. Neither had any beneficiary waived in writing the annual reporting and accounting requirement.

18. From 2006 through November 2009, Stephen Scott failed to meet his statutory obligation as a trustee and did not provide any annual accountings of the Trust's assets during that time frame.

19. At all times relevant to the Charges, I.C. § 29-1-16-3 provided that:

Every personal representative may file in the court a verified account of his administration at any time prior to final settlement and distribution but every personal representative must file in the court a verified account of his administration.

- (a) Upon filing a petition for final settlement;

- (b) Upon the revocation of his letters;
- (c) Upon his application to resign and before his resignation is accepted by the court;
- (d) At any other time when directed by the court either of its own motion or on the application of any interested person.

20. On June 12, 2007, Hendricks Superior Court 1 staff advised Stephen Scott that a final report and accounting was due on the estate case.

- a. Mr. Scott requested an additional 180 days to complete those items, which was granted.
- b. Stephen Scott did not file a final report and accounting within that time frame.

21. On March 12, 2009, Hendricks Superior Court 1 staff advised Stephen Scott that a final report and accounting was due on the estate case within 30 days, but Mr. Scott did not file the required items within that time frame.

22. From approximately August 25, 2007 through July 19, 2011, Stephen Scott embezzled \$254,000.00 from the Hochreiter Trust and Estate. On April 12, 2016, federal charges were filed against Stephen Scott, and, on January 27, 2017, Mr. Scott filed a Petition to Enter Plea of Guilty and Plea Agreement to those charges.

Delay in Responding to Concerns about Stephen Scott's Activities

23. On October 29, 2009, a hearing was held on various issues regarding the Hochreiter trust and estate cases. At that time, Respondent ordered Trustee Stephen Scott to make an accounting by December 15, 2009 and that he was to provide all beneficiaries with quarterly accountings thereafter.

- a. On December 15, 2009, Trustee Stephen Scott submitted a partial accounting that was

not consistent with industry standards and did not comply with the requirements of I.C. § 30-4-5-13.

- b. Also, on December 15, 2009, Mr. Scott's recently-hired attorney submitted a report requesting additional time until January 29, 2010 to submit a complete accounting, which was granted by Respondent.
 - c. Margaret Szper objected to the request for additional time, pointing out that Trustee Stephen Scott was to have kept an ongoing accounting from the time of his appointment regarding the income and expenditures of the Trust. Ms. Szper also indicated concern that certain assets (gold bars) might be missing.
24. On January 5, 2010, Stephen Scott sent letters to his attorney and to Keith Hochreiter requesting to withdraw as Trustee of the Hochreiter Trust and to have the court appoint a new trustee.
- a. On January 25, 2010, the Hochreiter brothers filed an objection to Stephen Scott resigning as personal representative/trustee without submitting a complete accounting and filing appropriate income tax returns and other appropriate legal documents. This objection later was joined by Margaret Szper.
 - b. On February 2, 2010, Respondent issued an Order giving Trustee Stephen Scott thirty (30) days to respond to the Hochreiter brothers' objection.
 - c. On March 4, 2010, Stephen Scott's attorney informed the court that Mr. Scott recently had relocated to Florida. The attorney further requested that he serve as successor trustee and personal representative, upon consent of the parties.
 - d. In pleadings filed in late March 2010 and April 2010, the parties could not reach an

- agreement as to Mr. Scott's attorney serving as successor trustee and, instead, continued to voice concerns that Mr. Scott had not fully accounted for estate, trust, and insurance funds under his care for the Hochreiter Trust and Estate.
- e. Respondent set the matter for hearing on June 16, 2010, but the parties later submitted a proposed Agreed Order that counsel for the Hochreiter brothers and counsel for Trustee Stephen Scott would share information from client files and an accounting firm in order to complete an accounting sixty (60) days upon receipt of the necessary documents. Respondent signed the Agreed Order on August 25, 2010.
25. Beginning on August 5, 2010 and continuing through September 4, 2012, the Hendricks Circuit and Superior Courts Clerk received return-to-sender notices for summonses sent to Stephen Scott. The notices reflected that Mr. Scott had moved from various addresses in Florida. These notices were placed in the Hendricks Superior Court 1 court file for the *Hochreiter Trust* case.
26. Beginning November 10, 2010 through May 7, 2012, Respondent received various reports, by way of pleadings or other correspondence, that Trustee Stephen Scott was not compliant with court orders, was submitting deficient information on required accountings, and/or that there were discrepancies regarding the funds that Trustee Stephen Scott was entrusted with. These reports included the following:
- a. Stephen Scott's attorney submitted a November 10, 2010 status report to the court indicating that, since September 10, 2010, both he and the accountants had contacted Stephen Scott, by email and phone, requesting that certain bank statements and check registers in Mr. Scott's possession be provided to the accountant to prepare the required

accounting set out in the court's August 25, 2010 Agreed Order, but Stephen Scott had failed to provide the information. Mr. Scott's attorney specifically requested that Respondent intervene to find out when Stephen Scott would make the information available.

- b. On June 13, 2011, Margaret Szper filed an objection detailing numerous deficiencies under I.C. § 30-4-5-13 to an interim accounting submitted on February 22, 2011 by Mr. Stephen Scott's attorney on Trustee Stephen Scott's behalf. Within this pleading, Ms. Szper noted:

[E]ven though there are some financial statements and cancelled checks attached to the Interim Accounting, there are insufficient vouchers, cancelled checks or other documentation to verify all of the information or calculations. There is also no bank statement – or even the identification of an account number – for a savings account where some \$18,468.62 of Trust funds is supposedly held, and several statements for the checking account appear to be missing. Such documentation is required and essential where, as here and explained below, there are a number of questions raised regarding the propriety and accuracy of various transactions.

- c. On December 15, 2011, after Respondent had ordered Trustee Stephen Scott to provide his attorney with the names of all banks or other institutions and account numbers for all trust accounts by December 8, 2011, Trustee Stephen Scott's attorney filed a Report to Court on Trustee's Response to Order indicating that Stephen Scott had not provided the information, as ordered, and that the attorney had unsuccessfully attempted to contact Stephen Scott by telephone and email. As he had previously done on November 10, 2010, the attorney again requested the court's intervention to achieve Stephen Scott's compliance with a court order, but Respondent took no action based on this Report.

d. On May 7, 2012, Trustee Stephen Scott's attorney sent correspondence to Respondent at the court's address and carbon copied all other parties' counsel; in the letter, the attorney indicated that he had asked Fifth Third Bank to provide him with current balances in all accounts held at the bank under The Herbert Hochreiter Living Trust and learned that a particular Trust checking account contained only \$8.27 and the Trust savings account had been closed for more than six (6) months.

i. The attorney further wrote:

I expected that the Trust cash account balance would be in the approximate range of \$50,000-\$60,000. It is certainly possible that the Trustee, Mr. Steve Scott, had moved the Trust cash to another bank, but I have no information about that possibility. I have attempted to contact Steve to inquire of him about the location of these Trust funds, but he has been completely unresponsive to me.

ii. In the correspondence, Trustee Stephen Scott's attorney asked Respondent for guidance about how to proceed with the situation, but Respondent took no action based on this communication.

27. Continuing to express concerns about Trustee Stephen Scott's noncompliance with court orders and the law, beginning November 12, 2010 through July 27, 2012, Margaret Szper filed pleadings requesting rule-to-show-cause hearings and/or contempt hearings. These pleadings included the following:

a. On November 12, 2010, Margaret Szper filed a request to show cause indicating Trustee Stephen Scott's noncompliance with the court's August 25, 2010 Order and his failure to comply with the original order on October 29, 2009 to provide an accounting and quarterly accountings thereafter to the beneficiaries.

b. On January 31, 2011, Margaret Szper filed another motion for rule to show cause for

- Trustee Stephen Scott's failure to comply with a court order on December 10, 2010 to provide to the certified public accountants no later than December 15, 2010 all required documentation to complete a full accounting.
- c. On August 3, 2011, Margret Szper requested that Trustee Stephen Scott be held in contempt and ordered to provide a full accounting with complete documentation, after Trustee Stephen Scott submitted on his own behalf a written response to objections made to an interim accounting (submitted by Mr. Scott's attorney) indicating that he had not prepared the accounting nor reviewed or signed the accounting prior to filing.
 - d. In response to the May 7, 2012 correspondence that Trustee Stephen Scott's attorney sent to Respondent about missing monies from trust accounts, Margaret Szper filed on July 27, 2012 a Motion for Status Conference, to Show Cause, for Contempt, to Remove Trustee and to Terminate Trust.
28. Despite receiving the notifications, information, and pleadings set forth in ¶¶ 25, 26, and 27, Respondent routinely took no action or minimal action to address Trustee Stephen Scott's noncompliance with court orders and required statutes, even when Respondent was notified about potential financial improprieties; from November 12, 2010 through July 30, 2012, Respondent did not require Trustee Stephen Scott to appear in person in court to explain why he repeatedly had not complied with court directives.
29. It was not until July 31, 2012 that Respondent issued an Order setting the matter for a status conference on September 7, 2012 (which was later rescheduled to November 13, 2012), ordering all parties, including Trustee Stephen Scott, to appear in person. Respondent further ordered Trustee Stephen Scott to bring to the status conference all financial records

involving the Trust and to appear to show cause to explain why he should not be held in contempt for his failure to communicate with the beneficiaries, his counsel, and the court, and for his alleged ongoing failure to account for his actions as Trustee.

30. Trustee Stephen Scott did not appear for the November 13, 2012 status conference, but Respondent conducted a hearing and heard evidence, finding that Stephen Scott had not obeyed the court's August 1, 2012 Order to appear and to bring all financial records involving the Trust, had permitted substantial amounts of money to be removed from the Trust for purposes other than payment of Trust expenses, and was in contempt. A damages hearing was scheduled for January 7, 2013.
31. On January 14, 2013, Respondent issued an Order and Judgment on Damages Pursuant to Motion to Show Cause, after a hearing held on January 7, 2013, and found the following:
 - a. Between September 2007 and August 2011, transfers of funds were made from Trust bank accounts to Stephen Scott's personal bank accounts in the amount of \$140,550.00.
 - b. Additional withdrawals of \$101,217.00 in wire transfers or cash withdrawals were made from the accounts which did not correspond to legitimate disbursements.
 - c. In January 2010, transfers of funds from Estate bank accounts to Stephen Scott's personal bank account in the amount of \$16,800.00 were made.
 - d. In January 2010, a cash withdrawal of the remaining balance in the Estate's bank account in the amount of \$6,517.08 was made. This cash withdrawal is unexplained despite the court's repeated orders to appear and account for his administration of the Estate's assets.
 - e. Respondent found that, by law, the Trust was entitled to recover three times the amount

- of Stephen Scott's impermissible transfers of Trust funds for a judgment of \$421,650.00 (\$140,500.00 x 3) plus \$101,217.00 in additional damages for unexplained withdrawals from Trust accounts.
- f. Respondent also found, by law, that the Estate was entitled to recover three times the amount of Stephen Scott's impermissible transfers of Estate funds for a judgment of \$50,400.00 (\$16,800.00 x 3) plus \$6,517.08 in additional damages for unexplained withdrawals from Estate accounts.
- g. The final judgment entered was \$579,784.08.
32. To this date, due to Stephen Scott's incarceration, none of the embezzled Trust and Estate funds have been recovered.
33. At no time did Respondent make a referral of his findings or Order to the United States Attorney's Office or the local prosecutor's office.
34. During a deposition of Respondent taken on June 26, 2018, Respondent testified that, at one point while the Trust and Estate cases were pending and while Mr. Scott was living in Florida, Respondent called and left a message on Stephen Scott's phone to check on Mr. Scott's well-being, as he was concerned that Mr. Scott was behaving bizarrely. Respondent further testified that he "would have never thought [Stephen Scott] would have stolen anything."
35. Because of his relationship with Stephen Scott, Respondent's judicial judgment was affected by appointing Stephen Scott to positions to which he had no prior experience and by providing Stephen Scott with repeated opportunities to rectify his behavior as Trustee and/or Personal Representative and/or by failing to take action on multiple occasions

despite Stephen Scott's repeated failures to comply with statutory accounting requirements, court orders to appear and show cause, and despite receiving reports of concerns about financial discrepancies and possible improprieties with the Hochreiter Trust.

CHARGES

The Commission incorporates the facts set out in ¶¶ 1-35 into the Charges below.

Count 1

The Commission charges that, by appointing Stephen Scott as Trustee of the Hochreiter Trust and later as Personal Representative of the Hochreiter Estate, without disclosing to the parties or their attorneys Respondent's potential conflict due to having a financial relationship with Mr. Scott, Respondent violated Rule 1.2 of the Code of Judicial Conduct, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and to avoid the appearance of impropriety; Rule 2.4(B) of the Code of Judicial Conduct, which requires a judge to not permit family, social, political, financial, or other interests or relationships to influence the judge's conduct or judgment; and Rule 2.13(A)(1) of the Code of Judicial Conduct, which requires a judge in making administrative appointments to exercise the power of appointment impartially and on the basis of merit.

Count 2

The Commission charges that, by repeatedly failing to set the Hochreiter Trust and Estate cases

for a show-cause or contempt hearing in a prompt and diligent fashion, after repeated notifications that Stephen Scott was not complying with court orders and was not communicating with counsel and the court, Respondent violated Rules 1.2 and 2.4(B) of the Code of Judicial Conduct and Rule 2.5(A) of the Code of Judicial Conduct, which provides that a judge shall perform judicial and administrative duties competently, diligently, and promptly.

WHEREFORE, the Commission respectfully requests that, upon the filing of Respondent's Answer, the Indiana Supreme Court appoint three Masters to conduct a public hearing on the charge that Respondent committed judicial misconduct as alleged, and further prays that the Supreme Court find that Respondent committed misconduct and that it impose upon him the appropriate sanction.

1/30/19
DATE

Indiana Commission on
Judicial Qualifications
251 N. Illinois St., Ste. 1600
Indianapolis, IN 46204
(317) 232-4706

Respectfully submitted,

Adrienne L. Meiring
Adrienne L. Meiring
Counsel to the Commission
Atty. No. 18414-45

CERTIFICATE OF SERVICE

I certify that a copy of this "Notice of the Institution of Formal Proceedings and Statement of Charges" was sent by certified mail, postage pre-paid, to Respondent at Hendricks Superior Court, One Courthouse Sq., Ste. 106, Danville, IN 46122. A copy was also sent by first class United States mail, postage pre-paid, and electronically to Respondent's lawyer, Mr. James J. Bell, Paganelli Law Group, 10401 N. Meridian St., Ste. 450, Indianapolis, IN 46290.

1/30/19
DATE

Adrienne L. Meiring
Adrienne L. Meiring
Counsel to the Commission
Atty. No. 18414-45