

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

SEP 05 2013

FILED

BY _____
**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,**

**RODNEY M. MATHESON,
Bar No. 003434,**

Respondent.

PDJ-2013- 9081

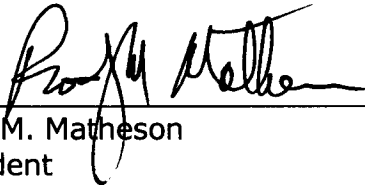
CONSENT TO DISBARMENT

Nos. 13-1253 and 13-1589

I, **Rodney M. Matheson**, residing at 2500 South Power Road, Mesa, Arizona 85209-6690, voluntarily consent to disbarment as a member of the State Bar of Arizona and consent to the removal of my name from the roster of those permitted to practice before this court, and from the roster of the State Bar of Arizona.

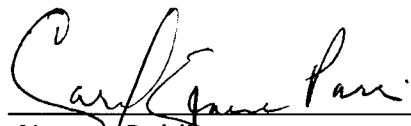
I acknowledge that charges have been made against me. I have read the charges, and the charges there made against me. I further acknowledge that I do not desire to contest or defend the charges, but wish to consent to disbarment. I have been advised of and have had an opportunity to exercise my right to be represented in this matter by a lawyer. I consent to disbarment freely and voluntarily and not under coercion or intimidation. I am aware of the rules of the Supreme Court with respect to discipline, disability, resignation and reinstatement, and I understand that any future application by me for admission or reinstatement as a member of the State Bar of Arizona will be treated as an application by a member who has been disbarred for professional misconduct, as set forth in the charges made against me. The misconduct of which I am accused is described in Exhibits 1 and 2.

DONE AT 4201 North 24th Street, Suite 100, Phoenix, Arizona 85016-6266,
Arizona, on this 4th day of September, 2013.



Rodney M. Matheson
Respondent

SUBSCRIBED AND SWORN TO before me this 4th day of September, 2013,
by **Rodney M. Matheson**, who satisfactorily proved his identity to me.



Notary Public

My Commission expires:
Nov. 15, 2013



EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In Re:)
)
The Matter of the Mary Jane)
Schalow Family Revocable Living)
Trust)

Case No:

In re:)
)
The Matter of the Estate of Fern)
S. Loehndorf)

PB 2013-000119
PB 2013-090188

BEFORE THE HONORABLE ANDREW G. KLEIN

PHOENIX, ARIZONA
AUGUST 8, 2013
9:04 a.m.



Carmelita E. Lee
Certified Electronic Transcriber
Certificate No. CET**D-499

Page 2

1 APPEARANCES OF COUNSEL

2

3 FOR MAYO CLINIC:

4 Mr. Mark C. Bohn
5 Boyer Bohn, PC
6 4250 North Drinkwater Boulevard
7 Scottsdale, Arizona 85251
8 480-505-3480

9 FOR MR. MANTHEY:

10 Ms. Clare F. Black
11 BLACK LAW GROUP
12 625 N. Gilbert Road, No. 205
13 Gilbert, Arizona 85234
14 (480) 794-1324

15 FOR MR. MATHESON:

16 RODNEY M. MATHESON
17 2500 South Power Road
18 Mesa, Arizona 85209
19 (480) 222-2549

20 Also Present:

21 Ms. Gloria Barr, Forensic Investigator
22 State Bar of Arizona

23 Mr. Daniel Thorup
24 Black Law Group

25 Ms. Kirsten Schultz
Black Law Group

Mr. Manthey, Trustee (by phone)

Page 3

1 August 8, 2013
2 9:04 a.m.
3 Phoenix, Arizona

4 PROCEEDINGS

5

6 THE COURT: This is the time set for PB 2013
7 000119 in the matter of the Mary Jane Schalow Family
8 Revocable Living Trust.

9 MR. BOHN: Your Honor, Mark Bohn representing
10 Mayo Clinic. No clinic representatives are with me today.

11 MS. BLACK: Clare Black on behalf of the Trustee,
12 Roger Manthey.

13 MR. MATHESON: Rod Matheson.

14 THE COURT: Mr. Manthey, are you on the phone?

15 MR. MANTHEY: I am, Your Honor.

16 THE COURT: All right. We will speak into the
17 microphone so you can hear us. Will you please speak as
18 loudly as you can if there are any questions directed to
19 you?

20 MR. MANTHEY: Yes, Your Honor.

21 THE COURT: And who do we have in the back of the
22 courtroom, just so I know?

23 MS. BARR: Gloria Barr on behalf of the State Bar
24 of Arizona.

25 MS. SCHULTZ: Kirsten Schultz, Black Law Group.

Page 4

1 MR. THORUP: Daniel Thorup of Black Law Group.

2 THE COURT: Thank you.

3 Mr. Bohn, has Mr. Matheson yet produced for
4 Mayo any kind of log or explanation for where the
5 distributions from his IOLTA account went, and for what
6 purpose, for the period that we talked about before, which
7 was November 2005 to June 30, 2013?

8 MR. BOHN: Not as we sit here today.

9 THE COURT: Okay.

10 Now Mr. Matheson, I was very clear in my
11 last order that you were to produce not just the bank
12 statements but also an explanation. Why hasn't that been
13 done?

14 MR. MATHESON: Your Honor, and perhaps it is a
15 lack of understanding on my part. We produced over 3,000
16 documents, not documents, but 1500 documents to 3,000
17 documents prior to coming in here today. I followed what
18 the Court had directed me to do, which was consult with a
19 lawyer, also with an accountant, which I did. My lawyer
20 will be entering his appearance if we don't resolve it.

21 If I may make a brief statement before we
22 start, I spoke with both other counsel. Upon the advice
23 of counsel, I offered a stipulation to them, if I could
24 recite that.

25 THE COURT: You offered a what?

Page 5

1 MR. MATHESON: I offered that we make a
2 stipulation, and the stipulation would be as follows:
3 That prior to the hearing scheduled for the 29th of
4 August, that we would provide both the attorney for Mayo
5 Clinic and the counsel for Mr. Manthey all of their
6 attorney fees and court costs. Mayo would stipulate not
7 to pursue anything further against Mr. Manthey. The Court
8 had directed the parties I think to submit some sort of
9 resolution on attorney fees and costs.

10 THE COURT: We will get to that. But did you
11 read my August 1st, 2013 Minute Entry?

12 MR. MATHESON: I'm sorry. Refresh my memory of
13 what you're referring to.

14 THE COURT: Okay.

15 Here is what the Minute Entry said. This
16 was a Minute Entry that was dated July 15, 2013. Let's
17 see if I can find it, the right one.

18 Okay. Here is what that Minute Entry said.

19 "It is ordered that within 10 business days
20 Mr. Matheson shall produce for counsel all records related
21 to his IOLTA accounts for the period November 2005 through
22 June 30, 2013. The information provided shall include
23 documentation, showing where distributions were made and
24 for what purpose. In the event that Mr. Matheson does not
25 comply with this order, the Court will set an Order to

Page 6

1 Show Cause hearing re contempt."
2 We had discussed at that hearing that simply
3 giving Mr. Bohn bank statements without an explanation for
4 where the money went would be of no use.
5 For example, you and I both know that there
6 is an entry made in the IOLTA account showing a payment of
7 \$374,187.79 to Chase. Most people never write a check of
8 that size in their lifetime. Mr. Bohn and Ms. Black have
9 no idea what Chase account that was deposited in, why it
10 was deposited, or where the funds came from.
11 Now, that's what I told you to do, and we
12 discussed it. Have you done that?
13 MR. MATHESON: Your Honor, not in any detailed
14 fashion.
15 THE COURT: Have you done it all?
16 MR. MATHESON: Well, I gave them the front and
17 back of approximately 3,000 checks as I recall. And I
18 thought that we complied with -
19 THE COURT: Mr. Bohn, did he give you the back?
20 MR. BOHN: Not the back, just the front, Your
21 Honor.
22 THE COURT: Okay.
23 So right there they have already indicated
24 that what you just said is not true.
25 MR. MATHESON: Well, I thought we had front and

Page 7

1 back.
2 THE COURT: No, you don't have the back. You
3 just gave him the front, and you gave him no explanation,
4 in violation of my court order.
5 Here is what I want to avoid, Mr. Matheson.
6 MR. MATHESON: I didn't - I'm sorry.
7 THE COURT: Let me tell you so that we don't have
8 to go through this again.
9 MR. MATHESON: I'm sorry.
10 THE COURT: I have listened to the hearings of
11 every appearance you made before Commissioner Nothwehr,
12 and those hearings are replete with you pretending that
13 you either didn't understand a previous order, you got
14 confused, you couldn't recall, and you would do it the
15 next time. It's not going to happen with me.
16 We are going to have an Order to Show Cause
17 hearing still, at the end of August. And you will come to
18 that courtroom having made a complete explanation to
19 Mr. Bohn and Ms. Black of where all of those funds went,
20 and for what purpose, to the best of your ability.
21 And if I am not satisfied at that hearing
22 that you have done that, you will be held in contempt, you
23 will be put in jail. And you will not be able to purge
24 that contempt until that explanation has been made.
25 Now, that explanation is going to be made in

Page 8

1 one of three ways; either you are going to come clean as
2 to what happened to those funds, or you are going to take
3 the Fifth Amendment, or you are going to say that you took
4 it. Those seem to me, from everything that I have heard,
5 to be the only three explanations that you can make.
6 Now, I am not here to ask you to incriminate
7 yourself. That is why I told you at the last hearing that
8 I highly suggested that you get a lawyer. I am not
9 telling you to incriminate yourself at that contempt
10 hearing. But if you continue to insist that you didn't
11 take the money, then you better be able to tell the court
12 where it went, or you will go to jail, and that is where
13 you will sit until you tell the court where the money
14 went.
15 Do you understand that?
16 MR. MATHESON: Yes, Your Honor, I do.
17 THE COURT: Now, let's get back to the comment
18 that I made earlier.
19 On December 15th, 2005, a payment was made
20 to Chase in the amount of \$374,187.79. Huge check.
21 Highly unlikely that a person such as yourself would not
22 be able to remember where that money went and why. So why
23 don't you tell me now what that check was for.
24 MR. MATHESON: Your Honor, I - and I know it
25 sounds unlikely, but I do not know. I will have to

Page 9

1 research that and find out. I don't.
2 THE COURT: How many times have you told the
3 court "I'll have to research it, I don't know." It seems
4 to me every time.
5 What Chase account did that go into?
6 MR. MATHESON: I don't know if it was a Chase
7 investment account or if it was some other Chase account.
8 I simply do not know.
9 THE COURT: Who set it up?
10 MR. MATHESON: I - I don't know that at this
11 point.
12 THE COURT: Do you understand that if you had
13 given Mr. Bohn the back of the check, as you were supposed
14 to, he might be able to trace what happened to that
15 account? He has no way of knowing.
16 MR. MATHESON: And I thought we gave him the
17 back, the front and back. I am a little surprised. I'll
18 go back and check my box full of checks because I have a
19 box that's a file box that is brimming with checks and I
20 have the fronts and backs.
21 THE COURT: Do you know what has become of that
22 money in that Chase account?
23 MR. MATHESON: I - I will have to go back and
24 research, I just do not know.
25 THE COURT: Did it just disappear?

Page 10

1 MR. MATHESON: Well, I am sure it hasn't, but I
2 don't know.
3 THE COURT: Well, we know that it was from the
4 Schalow Trust, and we know that there is nothing in the
5 Schalow Trust now. It sounds like that money wasn't used
6 to pay Mayo because you claim that that money came from
7 Mr. Manthey. So it has to be somewhere. Wouldn't that be
8 a fair surmise?
9 MR. MATHESON: Correct.
10 THE COURT: But you don't know where it is, do
11 you?
12 MR. MATHESON: I do not.
13 THE COURT: It disappeared?
14 MR. MATHESON: Well, it hasn't disappeared. I
15 just don't know, sitting here today, where it went.
16 THE COURT: Mr. Bohn, before I continue, is there
17 something that you wanted to say on that account?
18 MR. BOHN: Your Honor, the predicament that we
19 find ourselves in is that the subpoena now that goes back,
20 Chase only maintains records for seven years. This is
21 outside of the seven-year period, so therefore Chase is
22 unable to provide us with the back of that. Whether they
23 can tell us where – what Chase account it may have gone
24 into, I don't know. But at this point we simply cannot
25 get, by subpoena, the back of that check. So the only

Page 11

1 source of the back of that check or where it went will be
2 Mr. Matheson.
3 THE COURT: Okay. That's why he will have a lot
4 of time to think about it between now and the contempt
5 hearing, and if that doesn't satisfy us, he will have some
6 time to think while he is in jail. Because there has to
7 be an explanation. I am sure, Mr. Bohn, if I asked you to
8 explain over the last ten years every check you have
9 written for over \$350,000, you could probably figure it
10 out.
11 All right. Mr. Matheson, in light of the
12 revelation that two checks totalling \$568,000 were
13 deposited in March, made payable to the fund as Fern S.
14 Loehndorf Trust, do you still want to tell this Court that
15 the \$500,000 that you gave to Mayo by wire transfer came
16 from checks that were sent to you by Mr. Manthey?
17 MR. MATHESON: No, I didn't. I don't believe I
18 understood that they came from Mr. Manthey.
19 THE COURT: I believe you did.
20 I have listened to recordings. You told
21 Commissioner Nothwehr that, and you told me that. We got
22 Mr. Manthey on the phone and I asked him at that last
23 hearing if he did in fact send you checks for \$250,000
24 each that you used to pay Mayo. You have stuck to that
25 story for months. And if this thing becomes a criminal

Page 12

1 matter, you will be stuck with transcripts of comments you
2 have made in various court hearings.
3 Now, just in case I am somehow mistaken,
4 Mr. Bohn, you have been at various hearings. Am I correct
5 that Mr. Matheson has said on probably a half dozen
6 occasions that the money that was used to pay Mayo came
7 from two separate checks that were sent to him by
8 Mr. Manthey?
9 MR. BOHN: Correct, Your Honor.
10 MS. BLACK: Your Honor?
11 THE COURT: Yes.
12 MS. BLACK: May I interject one item? Can I
13 approach the bench, please?
14 THE COURT: You can.
15 MS. BLACK: First I am handing you – this is
16 actually a document that came out of Mr. Matheson's file
17 when he produced it to our office. The same thing, Your
18 Honor, this is a breakdown of the Chase account with the
19 exact checks that went in and the payments that
20 (inaudible.)
21 THE COURT: Yes, I have seen this. That was
22 attached as an exhibit.
23 So, Mr. Matheson, do you now want to correct
24 your earlier statements made to Commissioner Nothwehr and
25 to this Court that the money that was used to pay Mayo did

Page 13

1 not come from Mr. Manthey?
2 MR. MATHESON: As far as I know, the document
3 speaks for itself.
4 THE COURT: What does that mean? What does the
5 document show?
6 MR. MATHESON: Well, some of the funds, of
7 course, were not included in that 500 and whatever. But
8 apparently over 560 of it came from – came from – was it
9 RBC at Loehndorf, or whatever that – whatever it was?
10 THE COURT: So you used funds that belonged to
11 the Fern S. Loehndorf Trust.
12 MR. MATHESON: Well, not knowingly.
13 THE COURT: To pay Mayo on account of obligations
14 that were owed to the Schalow Trust?
15 MR. MATHESON: Not knowingly.
16 THE COURT: Not knowingly.
17 Well, when the checks came in, the checks
18 were written to the Fern S. Loehndorf Declaration Trust;
19 weren't they?
20 MR. MATHESON: I believe so.
21 THE COURT: So you saw that?
22 MR. MATHESON: Presumably.
23 THE COURT: Okay.
24 Is that the money that was used to pay Mayo?
25 MR. MATHESON: It must have been in part.

Page 14

1 THE COURT: Have you told the beneficiaries of
2 the Fern S. Loehndorf Trust that you transferred \$568,000
3 from that trust to your IOLTA account, and that you used
4 that fund to pay off obligations that were owed to another
5 trust? Have you told them?
6 MR. MATHESON: I have not.
7 THE COURT: Did you have their permission to do
8 that?
9 MR. MATHESON: No, I did not.
10 THE COURT: Okay.
11 Ms. Black, I am going to direct you and
12 Mr. Bohn to notify the beneficiaries. There are four
13 stepchildren of that trust. An informal probate was set
14 up in PB 2013 090188, and before we leave today, I am
15 going to have Connie, my clerk, go into ISIS and give you
16 the addresses of the beneficiaries.
17 Mr. Matheson, how much money was in that
18 trust?
19 MR. MATHESON: At what point? I'm sorry.
20 THE COURT: How much money was in the Fern -- is
21 supposed to be in the Fern S. Loehndorf Trust account.
22 MR. MATHESON: Well, I think there is two
23 portions of it. There is Andrew's portion of it, and
24 there is her portion, and I think all together it comes to
25 just a little over a million dollars, Andrew's being the

Page 15

1 decedent's portion, and hers being the survivor portion.
2 THE COURT: Okay.
3 I am immediately removing you as trustee and
4 personal representative of that trust. A minute entry
5 will go out and the beneficiaries will all be notified.
6 The Minute Entry will also say that you used 568 --
7 Was all 500,000 from that trust?
8 MR. MATHESON: I think there was other funds
9 there. I am not sure what the exact totals were.
10 THE COURT: The Minute Entry will say that you
11 have used anywhere between 250,000 and 500,000 from that
12 trust to pay off other obligations.
13 And they will be consulted by either Mr.
14 Bohn, Ms. Black or both of them, and they will get this
15 Minute Entry. You have no further obligations and
16 responsibilities, and you may not touch that trust.
17 In addition, Ms. Black or Mr. Bohn, I am
18 directing you to notify the bank and the financial
19 institution that those checks came from. And because
20 Mr. Matheson is no longer the trustee or the personal
21 representative, he should have no control over those funds
22 or access to those funds.
23 Now, Mr. Bohn, that puts Mayo in a strange
24 predicament here because Mayo was owed, we think a million
25 dollars. Mayo is totally innocent here. They thought

Page 16

1 after an eight year fight that they were finally getting
2 some of the money that they were owed, and now we know
3 that that money came from another trust.
4 What is Mayo's position on what they intend
5 to do with the funds that they received, which they were
6 entitled to but not from the place where it came.
7 MR. BOHN: Your Honor, we have talked a little
8 bit about that, but not knowing the outcome and not
9 knowing the answers, I wouldn't say that we have a
10 position, but those funds have been frozen and isolated,
11 and Mayo is not doing anything with them until we have
12 some idea whether those funds are free to use or need to
13 be disgorged.
14 THE COURT: At this point I am going to put a
15 freeze on those funds. I am not going to make them
16 disgorge them, but we have an acknowledgment from
17 Mr. Matheson today that he says he inadvertently used
18 funds that were belonging to a different trust to pay
19 obligations that were owed to your clients.
20 And Mr. Matheson, you knew that Mayo was
21 owed half a million dollars, and you said you were going
22 to pay it. You said you inadvertently used the Loehndorf
23 funds to pay it. If you take those funds out of the
24 account, there is no way you had anywhere close to
25 \$500,000 to pay Mayo. Would you agree with me?

Page 17

1 MR. MATHESON: I don't recall the exact balances,
2 but I'll -- I believe, I believe --
3 THE COURT: Well, no, no. Let's take a look at
4 what Ms. Black just gave us.
5 MR. MATHESON: Okay.
6 THE COURT: What Ms. Black just gave us shows
7 that \$268,000 came in on the Fern Loehndorf -- from the
8 Fern S. Loehndorf Trust in the month of March.
9 We also know that electronic withdrawals of
10 \$504,000 were made from that account. If you back out the
11 money that came from the Loehndorf Trust, you included all
12 other deposits that were made --
13 I think I checked. There was like a total
14 of \$160,000 that was possibly in that account. How else
15 would you have been able to pay \$500,000 if you only had
16 at most less than 200,000 in the account?
17 MS. BLACK: Your Honor, if I may.
18 THE COURT: Yes.
19 MS. BLACK: The Chase account shows that the
20 balance as of the beginning of that month in the IOLTA was
21 46,596.16.
22 THE COURT: We see that \$690,000 of deposits was
23 made in the month of March. Only 568 of that came from
24 Loehndorf, so presumably there were other funds that were
25 deposited into the account in March.

Page 18

1 MS. BLACK: Yes, Your Honor. The breakdown is
2 just below.
3 Actually, all of it was Fern Loehndorf.
4 There was another 81,000 that came in after he made the
5 disbursement.
6 THE COURT: Okay.
7 MS. BLACK: But there was 29,517 that belonged to
8 the Shanks (phonetic) Revocable Trust that he was also the
9 trustee of.
10 THE COURT: And how much was left as of today,
11 the balance?
12 MS. BLACK: I am not sure of today's balance,
13 Your Honor.
14 THE COURT: Have you used other Loehndorf funds?
15 MR. MATHESON: No, Your Honor, I have not. I
16 don't --
17 THE COURT: Are they still in your IOLTA account?
18 MR. MATHESON: No. I believe that some of them
19 are in the brokerage account that was -- I am not sure
20 what the amount is but that is where some of it is.
21 THE COURT: I see we have a State Bar
22 representative. I was going to suggest again to Mr. Bohn
23 and Ms. Black, if they haven't already done so, to notify
24 the State Bar.
25 At the last hearing I also notified -- or

Page 19

1 told Mr. Bohn and Ms. Black to notify law enforcement
2 authorities if you believe that a valid claim existed.
3 Have you decided whether you want to do
4 that?
5 MS. BLACK: Yes, Your Honor, we are preparing the
6 documentation necessary. I have spoken with Gilbert
7 Police Department and they have given me some guidance as
8 to what to put together, and we are in the process of
9 getting that prepared.
10 THE COURT: Okay.
11 Ms. Black, have you been the one, or has it
12 been Mr. Bohn who has tried to review the checks that were
13 produced?
14 MS. BLACK: Your Honor, we have done obviously
15 the preliminary review. We have given copies to Mr. Bohn
16 of everything that has come in, as well as to Mr.
17 Matheson. But because my client has a duty to try to see
18 if funds are there and collect them for the Mayo Clinic,
19 we have been the one that has instigated that review.
20 THE COURT: He admitted in previous hearings that
21 the balance of close to \$1.1 million in the middle of 2012
22 was accurate. That means he has acknowledged that there
23 was, at one time or another, \$1.1 million of Schalow Trust
24 funds that have since disappeared.
25 In looking at what you have been produced,

Page 20

1 even though there is no explanation, do you see \$1.1
2 million that has gone out, and can you tell where it has
3 gone?
4 MS. BLACK: Your Honor, I can to a degree. There
5 was a wire that came in. I believe it was like 1.089
6 million.
7 THE COURT: Right, that was from Minnesota.
8 MS. BLACK: So it did come into his account.
9 It has been -- a lot of it was disbursed to
10 Rodney Matheson. We did not pull his operating account
11 records, so I am not sure where they went from there.
12 There was the giant check to Chase. There was a lot of
13 funds paid to the IRS, there were funds paid to cash, and
14 I have a spreadsheet that has kind of been broken down.
15 THE COURT: Do you know how much -- have you been
16 able to tell how much was paid to Mr. Matheson and how
17 much was paid to cash?
18 MS. BLACK: Mr. Matheson's, we looked at over a
19 seven-year period just from when the funds started. There
20 was about 1.3 million in disbursements. Those were from
21 the records which he provided us, which were not complete
22 because we did find other checks once we got the records
23 from Chase. So I know that that number is actually
24 higher. I believe there was about 100,000 paid to the
25 IRS, about 100,000 paid to Bank of America. I think cash

Page 21

1 was maybe 160 or 170, and don't hold me to these exactly,
2 because I am just trying to think of them off the top of
3 my head.
4 THE COURT: I'm sorry, did you say 1.3 million
5 total, or did you say 1.3 million to Mr. Matheson?
6 MS. BLACK: To Mr. Matheson over a seven-year
7 period.
8 THE COURT: Okay.
9 MS. BLACK: I do know that by October of 2010,
10 his IOLTA was down to about 14,000, so at that point those
11 Schalow funds were exhausted.
12 THE COURT: Now, Mr. Matheson, I asked you at the
13 last hearing if you had paid any of the Schalow Trust
14 money to yourself, and you said no, I haven't paid
15 anything to myself. The only thing I have paid has been
16 legitimate administrative expenses.
17 Do you remember that?
18 MR. MATHESON: I think I indicated that I had a
19 trustee fee that was paid and also went to Mr. Manthey.
20 THE COURT: And that would be an administrative
21 expense if it was a legitimate trustee fee, but you said
22 you did not ever profit personally from it, and nobody in
23 your family.
24 Do you remember that?
25 MR. MATHESON: I recall indicating that we had

Page 22

1 not paid ourselves anything except for one small trustee
2 fee I believe.
3 THE COURT: Ms. Black has just told me that her
4 preliminary assessment is that quite a few amounts, quite
5 possibly from the Schalow Trust, were paid to you
6 personally. How do you explain that?
7 MR. MATHESON: I don't know. Like I indicated, I
8 have an accountant who is supposed to be looking at it.
9 But if you have six years or seven years and a little over
10 1 million, that is 100,000 a year, that would be less than
11 what I took out in my fees over that period of time.
12 THE COURT: Do you typically pay yourself fees
13 from your IOLTA account?
14 MR. MATHESON: Well, if they are authorized and
15 if they represent client account funds that are in the
16 trust that are to be paid in fees, yes.
17 THE COURT: Would you agree with me that if you
18 paid yourself from the IOLTA account for any money in
19 excess of fees that you earned, that that would be
20 inappropriate?
21 MR. MATHESON: That's correct.
22 THE COURT: And are you telling this Court that
23 anything that you paid to the IRS would have been
24 legitimate for the Schalow Trust and not for personal
25 debts or debts on behalf of other people?

Page 23

1 MR. MATHESON: I am not sure what IRS payments we
2 are talking about. I do know that at the bank, oftentimes
3 when I get a cashier's check, for example, to the Internal
4 Revenue Service or the Department of Revenue, they require
5 that we make it out to cash, and then they issue a check
6 to the IRS. So that is a possible explanation for some of
7 them.
8 THE COURT: Well, I mean, it sounds like you were
9 commingling an awful lot of accounts here. Schalow,
10 Loehndorf, your own accounts, and transferring money left
11 and right between accounts. Do you think that is
12 appropriate?
13 MR. MATHESON: No, it is not, if that is what it
14 results in; that's correct.
15 THE COURT: Mr. Bohn.
16 MR. BOHN: Mr. Matheson, could you repeat what
17 you said about payments to the IRS and other state taxing
18 authorities? What -- I didn't catch. What is the process
19 for making it out to cash and then making it payable to
20 the agencies, could you repeat that?
21 MR. MATHESON: Sure. Sure.
22 If you go to the branch and you say I want a
23 cashier's check made payable to the Arizona Department of
24 Revenue for \$1,000, quite frequently the teller will say
25 okay, here is the check, put down cash, and they

Page 24

1 substitute it for a cashier's check. And somewhere I
2 think they note that, that the check was substituted for a
3 cashier's check.
4 MR. BOHN: Okay. Thank you.
5 MR. MATHESON: And I believe that is on the back
6 of the check.
7 THE COURT: Ms. Black, at one point we had
8 talked, and I think this was first broached with
9 Commissioner Nothwehr, about appointing a special
10 administrator to pursue a claim against Mr. Matheson.
11 Now special administrators are frequently
12 appointed when the estate has money. I am not looking to
13 throw good money after bad. Do you want me to do that or
14 do you want to withhold judgment until you get more
15 information?
16 MS. BLACK: Your Honor, I would like to withhold
17 judgment for now only because I think if we get the rest
18 of the missing records we may be able to figure out if
19 there is anything to pursue or not. I don't believe
20 Mr. Bohn and I have any difficulty working together to try
21 to get this matter resolve, but because we already have
22 all the records in, and it looks like the funds were just
23 depleted out of the IOLTA, I am not sure there is much
24 further investigation other than figuring out where some
25 of these large lumps went in case we can collect them.

Page 25

1 THE COURT: Mr. Bohn, have you heard enough by
2 now to make a determination whether you are willing to let
3 Mr. Manthey off the hook regarding the payment of your
4 attorney's fees per Commissioner Nothwehr's April 29th
5 order?
6 MR. BOHN: Yes, Your Honor.
7 THE COURT: Okay. So I can grant what was
8 Ms. Black's motion to -- I don't remember how you styled
9 it, but the gist of it was Mr. Manthey wouldn't be
10 responsible for the order that was entered by Commissioner
11 Nothwehr making it a joint and several liability as
12 between Mr. Matheson and Mr. Manthey. Would that be
13 correct?
14 MS. BLACK: That is correct, Your Honor.
15 THE COURT: Okay.
16 And Mr. Bohn, you are willing to release
17 Mr. Manthey from any obligation to pay that?
18 MR. BOHN: For those fees, yes, Your Honor.
19 THE COURT: Okay. Whenever you are prepared to
20 give me a Rule 33 statement, I will look it over. We will
21 wait a sufficient amount of time for Mr. Matheson to
22 respond, but to the extent that I enter an award of fees
23 it will be against Mr. Matheson personally, it will not be
24 against Mr. Manthey.
25 Mr. Matheson, at the last hearing you told

Page 26

1 me that the 1.1 million from the Schalow Trust, other than
2 what was used to pay administrative expenses, was invested
3 entirely in an RBC Cash Management account through Edward
4 Jones, which later merged into another company.
5 Do you remember telling me that?
6 MR. MATHESON: That's correct.
7 THE COURT: Have you been able to identify for
8 Ms. Black or Mr. Bohn what RBC Cash Management account you
9 were referring to?
10 MR. MATHESON: No. I do have records explaining
11 what the account numbers are I believe at some point.
12 THE COURT: Why haven't you given those up yet?
13 MR. MATHESON: Well, I believe that that was
14 during the time period, as I look back at it, when
15 Mr. Schalow was serving as the trustee. Apparently it
16 went through like three successive investment advisors,
17 and those were the three. That was off the top of my
18 head.
19 THE COURT: But you claimed that you gave, you
20 deposited or transferred that money during the period of
21 time when you were trustee. That is what you told this
22 Court when I asked you where did that 1.1 million go, you
23 said it was deposited into an RBC Cash Management account
24 through Edward Jones, and then Edward Jones merged.
25 That's what you told me.

Page 27

1 MR. MATHESON: Well, and that was true when I was
2 the attorney for Mr. Schalow. It was not the right point
3 in time, however.
4 THE COURT: So now are you backing off of the 1.1
5 million went into an RBC account?
6 MR. MATHESON: Only to the extent of what date it
7 was.
8 THE COURT: Okay.
9 We are talking from 2005 to 2013.
10 MR. MATHESON: And in retrospect I think that was
11 during the lifetime of Mr. Schalow, who died I think in
12 November.
13 THE COURT: Okay.
14 So now we don't even have an explanation for
15 where the money went. That's what you came into court
16 last time telling us. Now all we know is that the 1.1
17 million, poof, disappeared, and you have no idea where it
18 went. Is that your story?
19 MR. MATHESON: Well, that is not entirely
20 correct. Unfortunately, I relied upon third parties to
21 keep track of that sort of thing but --
22 THE COURT: Wait a minute. Weren't you the
23 trustee?
24 MR. MATHESON: I was the trustee, I was the --
25 THE COURT: Didn't you have a fiduciary

Page 28

1 responsibility?
2 MR. MATHESON: I was the -- I was the captain of
3 the ship and I --
4 THE COURT: Okay.
5 Who did you rely on to keep records as to
6 where that money went?
7 MR. MATHESON: Different members of my office
8 staff to a certain extent.
9 THE COURT: Do you want to identify them for me?
10 MR. MATHESON: Well, I had Donna McNeilly
11 (phonetic) was one. I had Cheryl --
12 THE COURT: Cheryl what? What's her last name.
13 MR. MATHESON: Castlebury was another.
14 THE COURT: What was her last name?
15 MR. MATHESON: Castlebury.
16 THE COURT: Okay.
17 So you entrusted them to deposit and handle
18 \$1.1 million even though you were trustee, and even though
19 you were counsel, and you don't know where they put it and
20 you have never asked and you have never been able to
21 explain it.
22 MR. MATHESON: Over a period of quite a few
23 years, yes.
24 THE COURT: And so today, again, you have no
25 explanation.

Page 29

1 MR. MATHESON: That's why I hired an accountant
2 to go in and give me some sort of spreadsheet.
3 THE COURT: Yeah, but you have been telling us
4 that for eight years, that you were getting the accounting
5 done, and you, Mr. Bohn, or Mayo, all along the way that
6 you were on the verge of doing an accounting, all we need
7 is some other things to happen and no accounting was ever
8 done other than a one-page informal description that there
9 was money and how much. So you are no closer to doing an
10 accounting now that you were five years ago, are you?
11 MR. MATHESON: Well, in the sense that now I have
12 everything organized with the checks, the statements and
13 -- which I didn't have before.
14 THE COURT: So are you telling me that if you did
15 an accounting you would be able to identify where all of
16 the money went?
17 MR. MATHESON: Well, I am not sure I can do that.
18 Hopefully my accountant can do that.
19 THE COURT: When is that going to be done?
20 MR. MATHESON: Hopefully between now and the 29th
21 of August.
22 THE COURT: Now, if I order you to do that, you
23 realize it is probably about the zillionth time an
24 accounting has been ordered based on information that you
25 have given us that it can be done by a certain time.

Page 30

1 MR. MATHESON: Well, this is I believe only the
2 second time that I have been before Your Honor, so.
3 THE COURT: Well, you were before Commissioner
4 Nothwehr a heck of a lot. Who is your accountant?
5 MR. MATHESON: Well, it was Len Jones but he
6 indicated that he is not going to be able to do it, so I
7 am going to have to rely on a list of other names.
8 THE COURT: So you mean to tell me that between
9 now and August 29th, which you say is the date you think
10 you can get it done, you are going to go to a totally new
11 accountant who has never even seen you, never even looked
12 at your records, and they are going to be able to provide
13 a complete accounting, telling us where the money went?
14 MR. MATHESON: Well, I don't believe he totally
15 knew it, but perhaps somebody I worked with in the past, I
16 don't know yet because I have not made that arrangement.
17 THE COURT: Mr. Bohn, do you think there is any
18 benefit to be derived if I order Mr. Matheson for the
19 umpteenth time to have an accounting done by a certain
20 date, which is the date by which he says it can get done,
21 or do you just assume I not pursue that exercise in
22 futility?
23 MR. BOHN: Your Honor, I will defer to the Court
24 on that. It has been ordered. It has been expected. It
25 had been requested multiple times. I think it would only

Page 31

1 add to the basis for the Court's action that it may take
2 on the 29th. I won't hold my breath.
3 THE COURT: Mr. Matheson, you are already going
4 to have a contempt hearing on the 29th, you are going to
5 come to court having prepared an explanation for where the
6 money went, or you are going to go to jail. I don't care
7 if that explanation comes from you or a statement from
8 your accountant.
9 I am very serious about this.
10 You know where it went.
11 Now, I am not telling you what to do but I
12 would urge you to talk to counsel because if you continue
13 to tell me you didn't take it, and I have no reason to
14 disbelieve you, I am supposed to be independent, unbiased
15 and a fair arbiter, so I am going to take you at your
16 word. If you didn't take it, then you should know where
17 it went.
18 MS. BLACK: Your Honor?
19 THE COURT: Yes, ma'am.
20 MS. BLACK: We would like to make a request that
21 the court order as well, as you are aware we had some
22 issues because we could not get all of the records from
23 Chase Bank. I would like the Court to direct that
24 Mr. Matheson actually provide our office the original
25 checks. I have a full list that he can take with him and

Page 32

1 that I can give to the Court for your exhibit. He can
2 certainly make a copy of the front and back for himself,
3 but as you know, we have some large lumps to follow, and I
4 am very concerned, given the fact that he has already
5 falsified a letter allegedly from my client, I don't trust
6 that the back sides are going to match the fronts if I get
7 copies.
8 THE COURT: Okay.
9 MS. BLACK: And we would like that, you know,
10 within seven business days. He has them when he made
11 copies for the office of his records.
12 THE COURT: Do you want me to issue that order in
13 this Minute Entry, or do you want to present me with a
14 formal order? I will sign it whenever it comes and if you
15 want to wait or have a runner wait, sometimes banks would
16 prefer a formal order.
17 MS. BLACK: Oh, he has them. He has the checks
18 because the copies he made, they were the older checks
19 from the bank where they would endorse them across the
20 front and they send the checks back to you.
21 The time period we need are the checks he
22 actually has in his possession.
23 THE COURT: Okay. So he does have them?
24 MS. BLACK: He does have them, and I have a full
25 list of the exact -

Page 33

1 THE COURT: Give me the exact dates.
2 MS. BLACK: The exact dates would be from
3 December 12th of 2005 to May 31st of 2006.
4 THE COURT: And you want the front and the back?
5 MS. BLACK: I would like the checks themselves.
6 THE COURT: You want the checks themselves?
7 MS. BLACK: Correct.
8 And then we will have a full list of
9 specific checks so that there is no question as to what I
10 am asking for.
11 THE COURT: Mr. Matheson, are you willing to give
12 them that?
13 MR. MATHESON: Sure, it is December 12th, 2005 to
14 May what?
15 MS. BLACK: May 31st, 2006.
16 And let me go ahead and hand you the list of
17 the exact -
18 MR. MATHESON: May 31st, 2006.
19 MS. BLACK: - check numbers and amounts.
20 THE COURT: Is there anything else that you want
21 him to give you that he hasn't already given you besides
22 the explanation for how the money was spent?
23 MS. BLACK: No, Your Honor.
24 Your Honor, would the Court like a copy of
25 this just for the Court's record?

Page 34

1 THE COURT: No, that's fine.
2 Mr. Matheson, you said you have contacted
3 counsel who is going to be entering a notice of appearance
4 for you. Is that in this case? Is that a criminal
5 lawyer? Is that a probate lawyer? Is that a civil
6 lawyer? Can you tell me what we are expecting.
7 MR. MATHESON: In all likelihood it will be
8 Robert Webber, who has also been a judge pro tem, and I
9 guess handles both those types of matters.
10 THE COURT: Okay.
11 Mr. Matheson, I don't know where this case
12 is going. I don't like the way it looks. I don't like
13 the insinuations. You have been a member of the bar for
14 over 40 years. You have, by all accounts, a clean record.
15 I don't think this is going to end well.
16 Where do we go from here, guys? What do you
17 want me to do?
18 MR. BOHN: I think from my perspective, Your
19 Honor, we are on track. We have raised these issues. The
20 Court will order additional information to be provided. I
21 know that it has been done before but it is very specific.
22 The only thing that I would ask that be expanded on is
23 that it specifically include information such as client
24 journals and the like, as required by Rule 43. We have
25 not received those. That is the expectation.

Page 35

1 I think it was the Court's expectation and
2 we would like that explicitly stated.
3 THE COURT: It is my expectation, Mr. Matheson,
4 that you will be able to explain in general where the
5 money went. You probably have thousands of checks that
6 have been written between 2005 and 2013. If a check is
7 written for \$13.25 to Walgreen's, I am not expecting that
8 you are going to tell the Court what you bought. If there
9 is a \$65 check written to Safeway, I am not expecting you
10 to tell me what it was for.
11 But \$1.1 million belonging to the Schalow
12 Trust that was earmarked to go to Mayo, you should be able
13 to explain in general where the money went. And between
14 now and then it better be more than, well, I relied on
15 people in my staff to deposit it, and I guess they dropped
16 the ball and I can't help you. You better be able to tell
17 us where it went.
18 MR. MATHESON: And then from the order of the
19 Court, as I understand it, it is each and every check in
20 that time period, what it was for, or just a cutoff?
21 THE COURT: I'll make it easy for you.
22 MR. MATHESON: A thousand and above or -
23 THE COURT: Mr. Bohn, so that Mr. Matheson
24 doesn't come back to Court and say it was too daunting of
25 a task and he couldn't do it, is there a number at which

Page 36

1 you don't care for an explanation? In other words, every
2 check over a certain amount he should try to explain, or
3 you're not worried about the little stuff.
4 Now, if it is cash, if it is to him
5 personally, or if it is to the IRS and you want to
6 identify it by category, maybe that will make it a little
7 bit easier to streamline for him.
8 Anything that you can help me with there?
9 MR. BOHN: On the one hand I would say to set a
10 materiality level of say anything below \$10,000 would
11 probably work for us. My concern about that is, as you go
12 through the checks and the checks that are made out to
13 Rodney M. Matheson's firm or himself, those are 1250,
14 \$4200. They would be under that threshold, and in the
15 aggregate it is what adds up to what Ms. Black referred to
16 as 1.3 million.
17 THE COURT: All right.
18 Let's talk about - he needs to explain to
19 the best of his ability, every check that is made out to
20 Rodney Matheson, to his law firm, to the IRS. Who else?
21 MR. BOHN: You know, I guess I would approach it
22 a little differently, Your Honor. There is 1.1 million.
23 Where did it go? He has claimed repeatedly to this Court,
24 and to us, that it was put into other funds. It just came
25 in and went right back out to investment accounts and

Page 37

1 otherwise what were supposedly trust accounts.
2 That doesn't square with what we are seeing
3 at this point. I want to see 1.1 million, where it went.
4 If I see it - that's where the threshold of \$20,000 and
5 below, I don't know that I care, but I want to see the big
6 picture, where did 1.1 million go so that we have some
7 idea.
8 THE COURT: I absolutely share your concern.
9 From what I am hearing today, there is only
10 one thing that we know. We know that it is not going to
11 show that it went to RBC or you would already have
12 evidence of that. So now we have to reconstruct where did
13 it go. And I am suggesting that he make an explanation
14 for every check over 10,000, with the exception of any
15 checks written to himself, to his firm, to a family
16 member, to the IRS, and what else might I include in that?
17 MS. BLACK: Your Honor, there are some things we
18 found, like I was telling you, there was 100,000 to Bank
19 of America over time, but at 1033.13 here, 5,000 here,
20 1033.13. So we still have things that are going to fall
21 beneath the threshold.
22 THE COURT: Have you been able to identify what
23 Bank of America account that is?
24 MS. BLACK: There was a note on one check with an
25 account number. I don't know, obviously, but that is the

| | |
|--|---|
| <p style="text-align: right;">Page 38</p> <p>1 same account number that they were posting to over time. 2 We have not yet issued any subpoenas to the Bank of 3 America. 4 THE COURT: I want an explanation for all checks 5 made out to Bank of America and to Chase. 6 Anything else? 7 MS. BLACK: But Your Honor, it may be easier to 8 have Mr. Matheson do an accounting that says these were 9 all of the checks that were from the Schalow Trust, this 10 is who the payee was and this is what it was for. 11 THE COURT: I would like that. 12 MS. BLACK: Because I am not as concerned with 13 what he has written for other cases and -- do you know 14 what I am saying? 15 THE COURT: I do know what you are saying, and in 16 a perfect world that is exactly what he would do. My 17 concern is that courts have ordered him over the course of 18 the last few years to do things and he hasn't. 19 So that's your first obligation, to tell 20 them where the money went. 21 If he can't do that, because it has 22 "disappeared," then tell him where the checks went that 23 were written. I mean that is all we can do. 24 MR. MATHESON: Your Honor, may I clarify? 25 So as I understand it, anything to my firm,</p> | <p style="text-align: right;">Page 40</p> <p>1 first obligation is to tell us where that \$1.1 million 2 went. 3 MR. MATHESON: All right. 4 MS. BLACK: And Your Honor, I would ask the Court 5 to add one more category, which is cash, which he did not 6 list. 7 THE COURT: I'm sorry, cash. I mean there was a 8 lot of cash. 9 MR. MATHESON: I'll do that, and I think that 10 each one of those, you'll -- if you look on the reverse 11 side it says it is substituted for a cashier check number 12 such and such. Because I don't make -- I have never, to 13 the best of my knowledge, gone in and cashed a check for 14 cash and took the cash. I -- I don't believe that I have 15 ever done that in 41 years. I think what happens is that 16 at least at a couple of branches, you go in and you say 17 okay, I need a check for whoever it is, Arizona Department 18 of Revenue, and they'll say, okay, make it to cash, and on 19 the back they put a stamp on there that says substituted 20 for cashier's check number such and such. So I think 21 that's -- that is not cash. 22 THE COURT: Well, if that is your explanation, so 23 be it. I can't take a position on that but I would like 24 to know where the money went. 25 MR. MATHESON: Sure.</p> |
| <p style="text-align: right;">Page 39</p> <p>1 the Internal Revenue Service, the Bank of America, to 2 Chase, and anything over \$10,000, is that -- 3 THE COURT: Yes, but that's secondary. 4 Primary is you are going to explain where 5 the \$1.1 million from the Schalow Trust went. That's your 6 obligation. That is a fallback if you continue to say I 7 don't know. If you don't know then we want to know the 8 checks that you did write, what were they for. I mean, "I 9 don't know" is not going to hold up very well in a court 10 of law. 11 But for now I cannot physically compel you 12 to do something that you are not willing to do. That is 13 my concern. 14 MR. MATHESON: But I guess for purposes of being 15 -- of understanding that if there is a check to the 16 Maricopa County Superior Court Clerk of the Court for \$81, 17 I don't need to fool with that? 18 THE COURT: No, I don't care about that. 19 MR. MATHESON: Okay. 20 THE COURT: And then at the next hearing I am 21 going to ask Mr. Bohn and Ms. Black if they feel, to the 22 best of your ability, that you have complied with my 23 order. And they are going to tell me what they think, and 24 I'll use my own independent judgment and I'll determine if 25 you should be held in contempt. But make no mistake, your</p> | <p style="text-align: right;">Page 41</p> <p>1 THE COURT: Let me ask the State Bar 2 representative. 3 I am glad you are here. I am glad counsel 4 got you involved. I would have gotten you involved but I 5 am a neutral independent arbiter. It is not my job to 6 make rash judgments yet. But we already have Mr. Matheson 7 acknowledging that 1.1 million from one trust disappeared 8 that he was trustee for, and that he inadvertently used 9 money from another trust to pay off obligations owed to a 10 different trust. 11 Those present some very serious ethical 12 charges. 13 MS. BARR: Yes, Your Honor. 14 THE COURT: Other than the contempt hearing that 15 we have scheduled, anything else you need me to set for 16 now? 17 MS. BLACK: Your Honor, I would just like for you 18 to set a very clear date on the record as to when those 19 checks need to be at our office. 20 THE COURT: I would -- I think, Mr. Matheson, 21 that if they are going to evaluate your description and 22 look at the information that you are supposed to produce 23 and be able to come to court and make an informed 24 determination as to whether you complied with the order, 25 we need to have those to them ten days prior to the</p> |

Page 42

1 hearing. So they need to have everything by the 19th.
2 MR. MATHESON: With respect to the Bar, it was
3 the complaint of Commissioner Nothwehr that they are
4 currently investigating, which is essentially the same
5 thing that he attached to all of their correspondence,
6 their pleadings and so forth. So that is what is
7 currently before the Bar right now.
8 THE COURT: Was it Commissioner Nothwehr that
9 initially made that recommendation? Are you here because
10 Mr. Black or Mr. Bohn contacted you?
11 MS. BARR: I believe Ms. Black was the
12 complainant for the charge that was brought to the State
13 Bar.
14 THE COURT: That would be correct because it is
15 not my job, as I said, to make determinations before the
16 evidence is in.
17 Their job as advocates is to make those
18 kinds of judgments, so I have directed them to contact the
19 necessary authorities, and you can tell them whatever you
20 believe the evidence is. I don't know what the evidence
21 is, I only know what you have told me so far. And so I
22 believe that this is a State Bar matter, and it should be
23 a police matter and let the police determine whether there
24 is probable cause to go to the County Attorney and we'll
25 let the chips fall where they may.

Page 43

1 Anything else?
2 MR. BOHN: Not from me, Your Honor.
3 Thank you.
4 MS. BLACK: No, Your Honor.
5 Thank you very much.
6 THE COURT: Okay.
7 We will see you on the 29th unless you file
8 something and tell me that we need to be here before.
9 One other thing before we go off the record.
10 Mr. Bohn, you asked me one other time to
11 freeze his IOLTA account and I was unwilling to do that
12 because I thought that that would jeopardize other
13 people's accounts who had nothing to do with this. I am
14 still of that belief, but if you have any other emergency
15 request that you want to make that you think would be
16 necessary to potentially protect the public, I would be
17 willing to consider it. Because I don't know what else is
18 out there. I don't know if these are isolated incidents
19 or if there are other things that we need to know about.
20 But if you find out, Ms. Black, you tell me
21 right away.
22 MS. BLACK: Your Honor, I would suggest to the
23 Court that perhaps the Court should order that the
24 difference between what was paid to Mayo -- because there
25 is still 100,000 for Fern Loehndorf, that maybe he place

Page 44

1 those funds with the Court so that there is no risk,
2 because he is removed, so that there is no risk that those
3 funds can be depleted for any reason.
4 THE COURT: Well, I asked him -- I asked you how
5 that money was left in his IOLTA account, and I can't
6 remember. What did you tell me?
7 MS. BLACK: We didn't have statements up to the
8 end of last month because the subpoena went out the month
9 before.
10 THE COURT: The money, Mr. Matheson, that you
11 took from the Loehndorf Trust and put in your IOLTA
12 account, and did not use to pay Mayo, how much is that?
13 MR. MATHESON: I don't know. I would have to go
14 back and check.
15 THE COURT: Is that money still in your IOLTA
16 account?
17 MR. MATHESON: Some of it went to pay expenses
18 for Loehndorfs. I am not sure how much is there. I'm
19 really not.
20 THE COURT: Ms. Black, your guess is as good as
21 mine as to whether it is still there. But I am ordering
22 you, since you have been removed as trustee, and since you
23 have been removed as personal representative from that
24 trust, you may not touch any other accounts that belong to
25 the Loehndorf Trust. As far as those accounts go, they

Page 45

1 are frozen in your IOLTA account in the same way that I
2 issued an order previously that any funds belonging to the
3 Schalow Trust were frozen in your account.
4 Do you understand that?
5 MR. MATHESON: I understand.
6 THE COURT: I don't know what else to do.
7 Okay?
8 MS. BLACK: Thank you, Your Honor.
9 THE COURT: We will see you on the 29th.
10 MS. BLACK: It is basically a six-month period of
11 your checks that --
12 MR. MATHESON: Oh, okay. I could probably get
13 those to you on Monday.
14 THE COURT: Do you want to send someone over just
15 to --
16 MS. BLACK: Yes.
17 THE COURT: All right.
18 She is going to contact you directly, or
19 your office, and either a runner or her is going to go
20 over personally to pick them up. You need to make them
21 available by then.
22 MR. MATHESON: And she gets the originals or
23 front and back copies?
24 THE COURT: Yes. So you might want to make a
25 copy to have for your own records.

Page 46

1 MR. MATHESON: Sure.
2 THE COURT: All right.
3 Thank you.
4 MS. BLACK: Thank you, Your Honor.
5 (The hearing concluded at 9:54 a.m.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 47

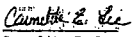
1 CERTIFICATE
2
3
4
5
6 I, Carmelita E. Lee, do hereby certify that
7 the foregoing pages constitute a full, true and accurate
8 transcript of the proceedings had in the foregoing matter,
9 transcribed from an electronic recording to the best of my
10 skill and ability.
11 Witness my hand this 26th day of August,
12 2013.
13
14
15 
16 Carmelita E. Lee
17 Certified Electronic Transcriber
18 Certificate No. CTR**D-499
19
20
21
22
23
24
25

EXHIBIT 2

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB 2013-000119
PB 2013-090188

08/29/2013

HON. ANDREW G. KLEIN

CLERK OF THE COURT
C. Vila
Deputy

IN THE MATTER OF

MARY JANE SCHALOW FAMILY
REVOCABLE LIVING TRUST

CLARE F BLACK
MARK C BOHN
RODNEY M MATHESON
SHAUNA R MILLER

IN THE MATTER OF ESTATE OF

FERN S. LOEHNDORF

COMM. COFFEY
STATE BAR OF ARIZONA
JAMES LOEHNDORF
3013 E BUENA VISTA DR
CHANDLER AZ 85249
RICHARD D LOEHNDORF
N 89 2 17515 ST THOMAS DR
MENOMONEE FALLS WI 53051
NANCY BACH
N 614 15TH LANE
WAUTOMA WI 54982
DENNIS LOEHNDORF
571 HIGHLAND COURT
COLGATE WI 53017

MINUTE ENTRY

Courtroom OCH 103

9:01 a.m. This is the time set for Order to Show Cause re: Contempt. Petitioner Mayo Clinic Arizona is represented by counsel, Mark Bohn. Trustee Roger Manthey appears

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB 2013-000119
PB 2013-090188

08/29/2013

telephonically and is represented by counsel, Clare Black who is present. Rodney M. Matheson, former counsel for Trustee, is present. Shauna Miller and Gloria Barr, representatives of the Arizona State Bar, are present. Jim and Jan Loehndorf, beneficiaries of the Fern S. Loehndorf estate, are present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Mr. Matheson's Motion to Continue is discussed.

IT IS ORDERED denying the Motion to Continue.

Discussion is held regarding information provided by Mr. Matheson related to distributions made from his law firm's IOLTA accounts relating to the Schalow and Loehndorf Trusts.

IT IS ORDERED directing Ms. Black to notify the appropriate law enforcement agencies regarding this matter.

Mr. Matheson is questioned regarding the distributions made and what happened to funds from the Schalow and Loehndorf Trusts.

Based on Mr. Matheson's statements that he "inadvertently" or "unintentionally" used the funds for purposes unrelated to the administration of the Trusts that the money came from, and because he avowed that he will be able to make full restitution within the next 30 days, the Court does not find him in contempt at this time.

Mr. Matheson is ordered to make full restitution to Mayo Clinic, as he promised he would, in the approximate amount of \$1.2 million plus Mr. Bohn's attorney's fees within 30 days.

IT IS ORDERED directing Ms. Black to also file a Rule 33 statement of all fees and costs she has incurred through today. Mr. Bohn may supplement his fee statement with fees and costs incurred through today.

IT IS FURTHER ORDERED that, if Mr. Matheson actually makes restitution to Mayo Clinic as promised within the next 30 days, he must at that time make a written representation to the Court that the source of the funds used to make restitution has not been procured by "ill gotten gains."

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB 2013-000119
PB 2013-090188

08/29/2013

With regard to the Loehndorf matter (PB2013-090188),

IT IS ORDERED striking any nomination that Donna R. Stoll be appointed as Successor Personal Representative as inappropriate.

9:51 a.m. Matter concludes.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.