

Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, AZ 85007-3327
602-542-5200

FILED
DEC 28 2007
ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning)	Case No. 07-039
)	
R. BRUCE OVERSON)	ORDER
St. Johns Municipal Court and)	
Apache County Justice Court)	
State of Arizona)	
Respondent)	
)	

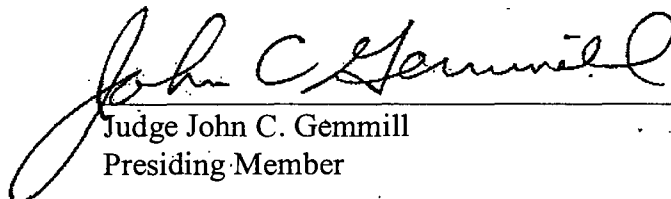
On December 4, 2007, counsel for Respondent and disciplinary counsel filed a Stipulated Resolution in the above-entitled proceeding in which Respondent admitted judicial misconduct and agreed to resign from office. The hearing panel assigned to the case met telephonically on December 6, 2007, to consider the proposed resolution and voted unanimously to approve the agreement providing that the Respondent would submit a letter of resignation and agree never to serve again as a judicial officer in the State of Arizona. Assuming these conditions would be acceptable to Respondent and disciplinary counsel, the hearing panel authorized the undersigned to accept an amended stipulation and enter a final order without further review by the panel.

On December 20, 2007, the Respondent and disciplinary counsel filed an Amended Stipulated Resolution with the commission containing the required provisions, a copy of which is attached hereto and incorporated by this reference. Now, therefore,

IT IS ORDERED that the Amended Stipulated Resolution is accepted as the final resolution of this case and that the formal judicial disciplinary proceeding is hereby concluded.

DATED this 28th day of December 2007.

COMMISSION ON JUDICIAL CONDUCT


Judge John C. Gemmill
Presiding Member

Linda Haynes
Disciplinary Counsel (Bar #12178)
Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
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DEC 20 2007

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

**STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning Judge)

Case No. 07-039

R. BRUCE OVERSON)

AMENDED

St. Johns Municipal Court and)

STIPULATED RESOLUTION

Apache County Justice Court)

State of Arizona)

Respondent)

COME NOW Judge R. Bruce Overson, Respondent, through his attorneys, Mark I. Harrison and Keith Swisher, and Linda Haynes, Disciplinary Counsel for the Commission on Judicial Conduct (Commission), and hereby submit the following proposed resolution of this case pursuant to Rule 30 of the Commission Rules.

JURISDICTION

1. The Commission has jurisdiction over these matters pursuant to Article 6.1 of the Arizona Constitution.
2. Respondent has served as a justice of the peace in Apache County and as city magistrate of the City of St. Johns since January 2, 2003, and was serving in these capacities at all times relevant to the allegations contained herein.
3. As a justice of the peace and city magistrate, Respondent is and has been subject to the Code of Judicial Conduct (Code) as set forth in Supreme Court Rule 81.

BACKGROUND

4. On September 14, 2007, Disciplinary Counsel filed a formal Statement of Charges against Respondent after a duly appointed investigative panel found reasonable cause to commence formal proceedings. The Statement of Charges is hereby incorporated into this stipulated agreement in its entirety.

MUTUAL CONSIDERATION

5. Respondent admits committing the judicial misconduct delineated in Counts I and II of the Statement of Charges.

6. Disciplinary Counsel hereby withdraws Count III and IV and paragraphs 20, 21, 24, 26, and 27.

7. The parties agree that Respondent's actions were primarily the result of a desire to act in the best interest of Respondent's constituents in a rural, close-knit community in an outlying part of the state, and that Respondent has made good faith efforts to treat all litigants fairly and justly.

8. The parties also agree that Respondent has spent his entire career in public service to the people of Apache County as a law enforcement officer and as a judge. Respondent has received several commendations and awards and has worked diligently on behalf of the citizenry.

AGREED UPON SANCTION

9. Respondent, who is seventy-three years old, admits committing the above judicial misconduct, and agrees to continue on administrative leave and then to retire from his positions as justice of the peace in Apache County and as city magistrate in St. Johns effective January 2, 2008. [Exhibit 1, attached hereto].

10. Respondent further agrees not to serve again as a judicial officer in the state of Arizona.

OTHER TERMS AND CONDITIONS

11. This agreement, if accepted by the hearing panel, fully resolves all issues raised in the Statement of Charges and may be used as evidence in later proceedings in accordance with the Commission's Rules. If the hearing panel does not accept this agreement as a full resolution, then the admissions made by Respondent are withdrawn, and the matter will be set for hearing without use of this agreement.

12. Pursuant to Commission Rule 28(a), both parties waive their right to appeal the charges at issue in this matter, including the appeal procedures set out in Commission Rule 29.

13. Both parties agree not to make any statements to the press that are contrary to the terms of this agreement.

14. Both parties will pay their own costs and attorneys' fees associated with this case.

15. Respondent clearly understands the terms and conditions of this agreement and fully agrees with its terms.

16. This agreement constitutes the complete understanding between the parties.

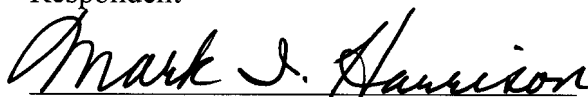
SUBMITTED this ____ day of December, 2007.



R. Bruce Overson
Respondent

12-19-07

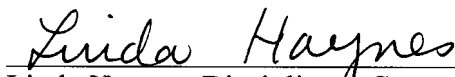
Date Signed



Mark I. Harrison
Attorney for Respondent

12-20-07

Date Signed



Linda Haynes, Disciplinary Counsel
Commission on Judicial Conduct

12-20-07

Date Signed

R. Bruce Overson
P. O. Box 28
St. Johns, AZ 85936

December 15, 2007

The Honorable David A. Brown, Board Chairman
The Honorable Tom M. White, Jr., Vice Chairman
The Honorable Jim Claw, Supervisor
Apache County Board of Supervisors

Gentlemen:

This letter is notice to you of my intent to resign my position as St. Johns Precinct Justice of the Peace and City Magistrate for the City of St. Johns, effective January 2, 2008.

Respectfully,

A handwritten signature in dark ink, appearing to read 'R. Bruce Overson', written in a cursive style.

R. Bruce Overson
Justice of the Peace
St. Johns Justice Court

The Phoenix Plaza
21st Floor
2929 North Central Avenue
Phoenix, Arizona 85012-2793
P.O. Box 36379
Phoenix, Arizona 85067-6379
Telephone 602 640 9000
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1 Mark I. Harrison, 001226
2 Keith Swisher, 023493
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OCT 23 2007

**ARIZONA COMMISSION ON
JUDICIAL CONDUCT**

Attorneys for Respondent R. Bruce Overson

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge)	Case No. 07-039
)	
R. BRUCE OVERSON)	
St. Johns Municipal Court and)	RESPONDENT'S RESPONSE TO
Apache County Justice court)	CHARGES
Apache County)	
State of Arizona)	
)	
Respondent.)	

Pursuant to Rule 25(a) of the Rules of the Commission on Judicial Conduct, Judge R. Bruce Overson, through undersigned counsel, hereby responds to the Statement of Charges filed on September 14, 2007. As listed below, virtually all of the charges either are unfounded or were corrected or otherwise positively addressed a long time ago. The remaining charges are fully correctable through adequate training and staff assistance and therefore need not be the subject of formal proceedings against the Respondent, an honest judge acting in good faith.

1. Answering Paragraph 1 of the Charges, Respondent admits that the Commission generally has jurisdiction to pursue discipline proceedings against judges. There is no jurisdiction, however, over legal errors unless they involve bad faith or corrupt motive. COMM'N R. 7; *see also* A.B.A. STANDARDS RELATING TO JUDICIAL DISCIPLINE AND DISABILITY RETIREMENT 3.4 (1978) (same).

1 2. Answering Paragraph 2 of the Charges, Respondent admits that the
2 Charges were filed.

3 3. Answering Paragraph 3 of the Charges, Respondent admits that he was
4 serving as the Justice of the Peace and City Magistrate for the City of St. Johns at all
5 times relevant to these proceedings.

6 4. Answering Paragraph 4 of the Charges, Respondent admits that he is
7 subject to the Code of Judicial Conduct.

8 5. Answering Paragraph 5 of the Charges, Respondent states that Rule
9 22(e) speaks for itself. Respondent notes that according to the Rule, complaints
10 “previously dismissed may be reopened *if* additional information regarding the
11 complaint comes to light *and* is disclosed to the judge.” (Emphasis added.)

12 6. Answering Paragraph 6 of the Charges, Respondent admits that he
13 received an advisory letter for telling an outspoken litigant to “hush up” or “shut up,”
14 but denies “los[ing] control of his courtroom.” Respondent also admits that he was
15 advised to follow “approved scripts.” Respondent notes that advisory letters are
16 issued without a formal hearing and do not constitute discipline.

17 7. Answering Paragraph 7 of the Charges, Respondent admits that he
18 received a confidential reprimand in 2003 without a formal hearing on the matter. As
19 he did then, Respondent denies that under the circumstances, his conduct violated the
20 ethical rules. Respondent agreed not to repeat the procedure in question and he has
21 not done so *for the last four years*.

22 8. Answering Paragraph 8 of the Charges, Respondent admits that he
23 received a confidential reprimand in 2004 without a formal hearing on the matter.
24 Respondent acknowledges, as he did three years ago, that he should not have engaged
25 in the ex parte conversation, but denies that the conversation involved substantive
26 matters or that any party was prejudiced or advantaged by his conversation.
27
28

1 9. Answering Paragraph 9 of the Charges, Respondent admits that he was
2 publicly censured, but denies the description of the underlying events contained in
3 that paragraph.
4

5 10. Answering Paragraph 10 of the Charges, Respondent denies the
6 description of the underlying events contained in that paragraph.

7 11. Answering Paragraph 11 of the Charges, Respondent denies the
8 description of the underlying events contained in that paragraph.

9 12. Answering Paragraph 12 of the Charges, Respondent admits that he
10 entered into a stipulated agreement for censure and that Presiding Judge Grimsley was
11 assigned as his mentor.

12 13. Answering Paragraph 13 of the Charges, Respondent admits that he
13 received an advisory letter in 2006 for allegedly engaging in improper ex parte
14 communications. As he did then, Respondent denies the allegations.
15

16 14. Answering Paragraph 14 of the Charges, Respondent admits that he
17 received a public reprimand. Respondent denies that his personnel actions against the
18 clerk were “retaliatory in nature” in part because—as the Charges acknowledge—she
19 “improperly left the courthouse without notifying Respondent.”

20 15. Answering Paragraph 15 of the Charges, Respondent admits that
21 Presiding Judge Donna Grimsley was assigned as Respondent’s mentor. He denies,
22 however, that they met “several times.” Respondent further denies that he “was
23 provided with current sentencing charts and benchbooks and was instructed both
24 verbally and in writing to follow benchbook scripts and comply with protocols when
25 dealing with the public.” Respondent admits that he received victim’s rights training.

26 16. Answering Paragraph 16 of the Charges, Respondent denies that he
27 received the listed instructions. He further denies that he received “continuing
28 education” after the mentor period ended.

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COUNT I: INCOMPETENCE

17. Answering Paragraph 17 of the Charges, Respondent admits that the defendant plead guilty and was sentenced to pay a fine. Respondent admits that the prosecutor supplied the factual basis.

18. Answering Paragraph 18 of the Charges, Respondent admits the factual circumstances in that paragraph, but firmly denies the implication that those circumstances were caused by his conduct or that his conduct constituted misconduct.

19. Answering Paragraph 19 of the Charges, Respondent has no knowledge of the vague allegations, and as such, he denies them.

20. Answering Paragraph 20 of the Charges, Respondent has no recollection of any such phone call and therefore denies the allegations.

21. Answering Paragraph 21 of the Charges, Respondent denies these untrue allegations in their entirety.

22. Answering Paragraph 22 of the Charges, Respondent denies the factual allegations contained in that paragraph. Respondent further denies that the allegations, even if true, would violate the referenced portions of Canon 2A or the Arizona Constitution.

COUNT II: FAILURE TO FOLLOW LAW

23. Answering Paragraph 23 of the Charges, Respondent denies that he checked "not guilty" on the form. He also notes that, although the prosecutor was not present, he was aware and approved of the agreement.

24. Answering Paragraph 24 of the Charges, Respondent denies changing the citation itself or otherwise acting improperly with respect to the matter.

25. Answering Paragraph 25 of the Charges, Respondent denies that he fails to impose mandatory costs. Respondent admits that, in the past, he occasionally did

1 not read appeal rights or advise criminal defendants of potential immigration
2 consequences.

3 26. Answering Paragraph 26 of the Charges, Respondent has no recollection
4 of this accusation (which does not list a case name or number) and therefore denies
5 same.
6

7 27. Answering Paragraph 27 of the Charges, Respondent admits the
8 substance of the allegations, but denies that they constitute misconduct. He also notes
9 that although the prosecutor occasionally was not present, the prosecutor was aware
10 and approved of the agreements.

11 28. Answering Paragraph 28 of the Charges, Respondent denies that he does
12 not impose mandatory fees or otherwise handles fees improperly. Respondent also
13 denies that, to date, he "routinely" does not read appeal rights. Respondent admits the
14 remaining allegations.
15

16 29. Answering Paragraph 29 of the Charges, Respondent generally denies
17 that he committed disciplinable misconduct in the manner suggested.

18 **COUNT III: EX PARTE CONTACTS**

19 30. Answering Paragraph 30 of the Charges, Respondent does not recall a
20 conversation with the defendant and therefore denies same. Respondent further
21 alleges that, even if the allegation is true, it does not constitute misconduct under the
22 circumstances.

23 31. Answering Paragraph 31 of the Charges, Respondent denies the
24 accusations regarding *State v. Dahl*.

25 32. Answering Paragraph 32 of the Charges, Respondent admits that he
26 starts and stops the digital recordings in his chambers, but he denies that doing so
27 constitutes misconduct.
28

1 33. Answering Paragraph 33 of the Charges, Respondent admits that
2 litigants call him, but denies that any substantive case discussions take place, or if
3 they do, that the opposing party is not on the call.
4

5 34. Answering Paragraph 34 of the Charges, Respondent generally denies
6 that he committed disciplinable misconduct in the manner suggested.

7 **COUNT IV: FAILURE TO DISCHARGE ADMINISTRATIVE RESPONSIBILITIES**

8 35. Answering Paragraph 35 of the Charges, Respondent denies that he was
9 “specifically advised to set his hearings throughout the day” Respondent further
10 denies that officers and other witnesses “have to wait for hours.” Respondent denies
11 that his scheduling constitutes misconduct.

12 36. Answering Paragraph 36 of the Charges, Respondent denies the
13 allegations in full.

14 37. Answering Paragraph 37 of the Charges, Respondent denies that he
15 takes “extended” lunch breaks and the implication that he “plays cards” instead of
16 attending to pending work.

17 38. Answering Paragraph 38 of the Charges, Respondent generally denies
18 that he committed disciplinable misconduct in the manner suggested.

19 39. Any allegation in the Charges that Defendant has not expressly admitted
20 in this Response is denied.
21

22 **RESPECTFULLY SUBMITTED** this 23rd day of October, 2007.

23 **OSBORN MALEDON P.A.**

24 

25 Mark I. Harrison

26 Keith Swisher

27 2929 North Central, Suite 2100

28 Phoenix, AZ 85012

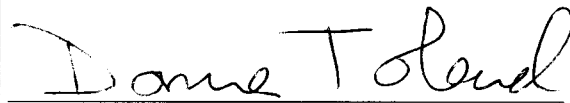
Attorneys for Respondent

1
2 **ORIGINAL** of the foregoing filed
3 this 23rd day of October, 2007, with:

4 Commission on Judicial Conduct
5 1501 West Washington, Suite 229
6 Phoenix, AZ 85007

7 and **COPY** hand-delivered to:

8 Linda Haynes, Disciplinary Counsel
9 Commission on Judicial Conduct
10 1501 West Washington, Suite 229
11 Phoenix, AZ 85007

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SEP 14 2007

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge

R. BRUCE OVERSON

St. Johns Municipal Court and

Apache County Justice Court

State of Arizona

Respondent

Case No. 07-039

STATEMENT OF CHARGES

An investigative panel composed of members of the Commission on Judicial Conduct (Commission) has determined that there is reasonable cause to commence formal proceedings against the Respondent, Judge R. Bruce Overson, for misconduct in office. This statement of charges sets forth the jurisdiction of the Commission and specifies the nature of the alleged misconduct.

JURISDICTION

1. The Commission has jurisdiction of this matter pursuant to Article 6.1, § 4 of the Arizona Constitution.
2. This Statement of Charges is filed pursuant to Rule 24(a) of the Rules of the Commission on Judicial Conduct (Commission Rules).
3. Respondent has served as a justice of the peace in Apache County and as city magistrate of the city of St. Johns since June 2, 2003, and was serving in these capacities at all times relevant to the allegations contained herein.

4. As a justice of the peace and city magistrate, Respondent is and has been subject to the Code of Judicial Conduct (Code) as set forth in Supreme Court Rule 81.

BACKGROUND AND PRIOR DISCIPLINE

5. Closed files pertaining to discipline of Respondent may be referred to and used by the Commission or by Respondent for the purpose of determining the severity of the sanction, a pattern of misconduct, or exoneration of the judge pursuant to Commission Rule 22(e).

Advisory Letter

6. In May 2003, shortly after Respondent took office, he held a small claims hearing, after which one of the litigants filed a complaint. A review of the tape recording of the proceeding showed that Respondent lost control of his courtroom and told a party to "Hush up" and then "Shut up." Respondent was admonished on December 17, 2003, and was advised to follow "approved scripts" in the future.

Confidential Reprimand

7. On June 18, 2003, a litigant filed a complaint against Respondent upon learning that the legal judgment in his case was written by a deputy county attorney and used verbatim by Respondent as his own work. Respondent did not accept that he had done anything wrong, even after contact from the commission. On October 19, the commission issued a reprimand for Respondent's failure to decide his own matters.

Confidential Reprimand

8. On August 26, 2004, the commission received a complaint from the Apache County Attorney regarding a phone call Respondent made to a defense attorney wherein Respondent said that he "had his mind mostly made up with regard to how he was going to rule on the motions." Respondent later acknowledged that he had made an error in engaging in *ex parte* communications. On December 14, the commission issued a reprimand to Respondent regarding his breach of Canon 3B(7), which prohibits *ex parte* contact.

Public Censure

9. On April 4, 2005, the chief clerk of Respondent's court filed a complaint against Respondent based on his treatment of the court staff and his judicial actions in several cases. The commission discovered that Respondent was repeatedly ignoring the mandatory fine assessments in DUI cases, was not imposing mandatory jail sentences, was committing multiple clerical errors on his paperwork (setting criminal bonds in civil traffic cases, issuing warrants and suspending fines on the same minute entries, neglecting to bind over felons, exonerating bonds without basis, and holding a defendant when no complaint was filed). The commission also found that in one instance a violation of an order of protection was mischarged as a misdemeanor. When the county attorney sought to dismiss and refile, appearing with the victim to request the change, Respondent granted the continuance, but later met with the defendant *ex parte* and allowed the defendant to enter a plea to the misdemeanor. Respondent also dismissed a case in chambers and off the record and made a notation that the prosecutor had agreed to the "with prejudice" designation, although the prosecutor had not agreed. In the same case, Respondent allowed a non-lawyer friend to appear on the remaining criminal charge in place of his son.

10. Respondent also allowed the son of the county personnel manager to plead "guilty" to four civil traffic charges and a criminal aggressive driving (with a prior) charge, even though no prosecutor was present. On the minute entry, Respondent wrote "guilty" after each charge, then dismissed the last three (including the criminal charge) and suspended the fines on the remaining civil charges. After the personnel manager left his chambers, Respondent stated to his court staff that he "made points" with her.

11. Further, a man called wanting legal advice from Respondent about filing a lawsuit in a civil matter. He told the staff he went to school with Respondent and would go to his home if necessary. Respondent took the call and advised the man to pay off the vehicle and demand title and, if that did not work, to file a small claims action. Respondent later granted a default judgment for the plaintiff.

12. Based on the facts presented in paragraphs 8 through 11 above, formal charges were filed against Respondent, who entered into a stipulated agreement for censure. The censure, which the supreme court issued on September 8, 2005, included a requirement that a mentor judge be assigned for one year. The Apache County Superior Court Presiding Judge agreed to mentor Respondent.

Advisory Letter

13. On October 26, 2005, Respondent's chief clerk filed a complaint after Respondent engaged in an *ex parte* communication, in chambers, with the plaintiff in a forcible detainer case. Respondent denied that any substantive conversation occurred. The commission issued an advisory letter on July 11, 2006, reminding Respondent that *ex parte* contact was prohibited.

Public Reprimand

14. On October 26, 2005, Respondent's chief clerk filed another complaint with the commission alleging that Respondent engaged in retaliation against her for her earlier complaints. On October 18, 2004, the clerk became ill and improperly left the courthouse without notifying Respondent. Respondent reported this incident to the county personnel office and blamed the clerk for causing Respondent to engage in *ex parte* conversations and for providing a "confidential" document to a litigant, which was the basis for the complaint delineated in paragraph number 7 above. The commission determined that Respondent's actions were retaliatory in nature, and Respondent subsequently stipulated to the issuance of a public reprimand on March 14, 2006.

Subsequent Conduct as History

15. After the Supreme Court censured Respondent, and with Respondent's cooperation, the presiding judge in Apache County began to mentor Respondent. The presiding judge met with Respondent and with his staff, both together and separately, several times. Respondent was provided with current sentencing charts and benchbooks and was instructed both verbally and in writing to follow benchbook scripts and comply with protocols when dealing with the public. Respondent was required to record all proceedings and to require the state to be present at all criminal hearings except arraignments. Beginning in September 2006, Respondent was given training and education regarding victim's rights.

16. In November 2006, after Respondent filed a personnel complaint against his chief clerk, the presiding judge again reminded Respondent that all proceedings had to be recorded, including arraignments and orders of protection, that criminal matters had to be heard in the courtroom, and that

Respondent could not engage in *ex parte* communications. After the mentoring period ended, the presiding judge continued to provide Respondent with continuing education and assistance.

COUNT I INCOMPETENCE

17. In a change of plea proceeding in *State v. Disbrow*, Respondent did not advise the defendant what the sentence was and did not advise him of his rights. During the proceeding, the prosecutor had to step in and volunteer the factual basis that the judge never requested.

18. In *State v. Danburg*, Respondent accepted a DUI change of plea but did not note the range of sentence on the minute entry. The defendant did not sign the sentencing minute entry or the 17.2 advisory form. The probationary term was not delineated in any of the paperwork.

19. During the week of June 1, 2007, a defendant came in to make payments on a fine. Respondent had not written the terms of the plea agreement on the minute entry so the constable, who is not a court employee, had to tell court staff what the terms of the agreement were.

20. On February 6, 2007, Respondent phoned another judge and indicated he wanted to deny an attorney the automatic transfer of a case to justice court from small claims.

21. Further, testimony from court staff and witnesses shows that Respondent continues to confuse civil and criminal matters and issues warrants for people who do not appear, even when they only have civil charges, and Respondent does not review cases prior to court hearings and does not refer to his benchbook while presiding over the courtroom despite repeated directions to do so.

22. By continually failing to give litigants their rights, failing to distinguish between criminal and civil matters, failing to review his benchbook before sentencing, and failing to complete minute entries despite numerous and extended reminders and training sessions, Respondent has demonstrated a lack of competence to sit as a judge. By his actions and by failing to become competent or maintain competency, Respondent violated Canons 2A ("A judge shall . . . act at all times in a manner that promotes public confidence in the integrity . . . of the . . . judiciary") and 3B(2) ("A judge shall be faithful to the law and maintain professional competence in it."). This conduct also constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Article 6.1, § 4 of the Arizona Constitution.

COUNT II FAILURE TO FOLLOW THE LAW

23. In a criminal minor in possession of alcohol case, *State v. Mineer*, the 20-year-old defendant failed to appear. Before a warrant could issue, her mother called the court and Respondent reset the case. On May 29, Respondent took a guilty plea, also checking "not guilty," attached a post-it note to the pleading saying "need letter from dr. ref. counseling then this will be dismissed" instead of writing anything on the minute entry, and did this without any attorney from the state being present and without any evidence of a written plea agreement.

24. In *State v. Raban*, Respondent instructed a clerk to change the designation of a citation without authority.

25. In virtually all DUI cases, wherein the statute requires that a judge impose incarceration costs against a defendant found guilty, Respondent does not assess the costs. Additionally, Respondent does not provide appeal rights and does not consistently advise defendants of the immigration consequences of entering a guilty plea.

26. Respondent has waived mandatory fines on at least one DUI case in 2007, despite being censured and reprimanded for this behavior in the past.

27. Respondent offers special favors to juvenile offenders by dismissing traffic citations if the juvenile "promises" to deposit a sum in his or her bank account. Respondent does no follow-up to ensure that the deposits are made or the orders are complied with. No prosecutor or officer is present for these dismissals and the dismissals have not been authorized by the state in writing. In one of these dismissed juvenile cases, the minor was accused of driving 92 miles per hour in a 65 mile-per-hour zone.

28. Further, testimony from staff and witnesses shows Respondent does not always impose the mandatory time payment fee, and sometimes either gives defendants a few days to pay in full before adding in the fee or simply sets up payment plans where no fee is included; Respondent routinely fails to advise defendants of their appeal rights; prior to the spring of 2007, and despite numerous urgings to follow the law and read the rules and statutes, Respondent accepted oral plea agreements in direct contravention of Rule 17.4(b) of the Arizona Rules of Criminal Procedure.

29. By failing to understand or comply with Arizona state law, Respondent violated Canon 2A (“A judge shall respect and comply with the law” . . .) and Canon 3B(2) (“A judge shall be faithful to the law and maintain professional competence in it”). This conduct also constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Article 6.1, § 4 of the Arizona Constitution.

COUNT III EX PARTE CONTACTS

30. In *State v. Noell*, Respondent advised a defendant to plead not guilty in an *ex parte* conversation in chambers held on March 5, 2007.

31. Between January 12 and February 22, 2007, Respondent denied a request for a set-aside in *State v. Dahl* without holding a hearing after the prosecutor’s *ex parte* representation that the application was untimely.

32. Respondent starts and stops the digital recordings in his chambers when he wants to speak to or advise people “off the record.”

33. Litigants who are acquainted with Respondent call the court and ask for Respondent to discuss their cases and when intercepted by court staff say they will call Respondent at home or that they will meet with Respondent outside court.

34. By continuing to engage in prohibited *ex parte* contacts, Respondent violated Canon 3B(7), which states, "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding . . .," and Canon 2, which requires that a judge avoid impropriety and the appearance of impropriety in all of his activities. By meeting with litigants behind closed doors or off the record in chambers and disposing of cases or giving legal advice, Respondent has presented a strong and continuing appearance of impropriety despite repeated reminders and discipline. Further, Respondent's inability to understand or accept that *ex parte* communications are not permitted, violates Canon 3B(2) ("A judge shall . . . maintain professional competence . . ."). This conduct also constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Article 6.1, § 4 of the Arizona Constitution.

COUNT IV
FAILURE TO DISCHARGE ADMINISTRATIVE RESPONSIBILITIES

35. Although specifically advised to set his hearings throughout the day to avoid wasting judicial resources, Respondent routinely continues almost every case and sets all changes of plea,

preliminary hearings, and trials at 9 a.m. one day a week, requiring officers and other witnesses to have to wait for hours.

36. Respondent continued to ask his staff to fill out his paperwork after being advised repeatedly during mentoring sessions to do his own work.

37. Respondent frequently takes extended lunch breaks and reads or plays cards during working hours

38. By shifting his administrative duties to his staff and by failing to appropriately complete his minute entries and orders, and by setting all his hearings at the same time, causing undue waits and wasting county and city resources, Respondent violated Canon 3C(1), which mandates that a judge maintain competence in judicial administration. By choosing to take long lunches, read at his desk, and play cards on the computer instead of preparing for court and reviewing the law, Respondent violated Canon 3B(8), which states, "A judge shall dispose of all judicial matters promptly, efficiently and fairly." The commentary to this canon provides that, "prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission." This conduct also constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Article 6.1, § 4 of the Arizona Constitution.

CONCLUSION

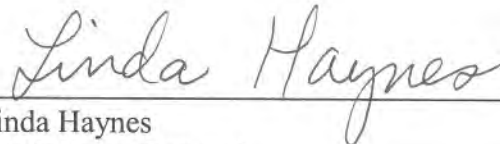
Rule 6 of the Commission Rules provides that grounds for discipline include "conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the code." Each of the charges alleged in this pleading constitute conduct prejudicial

to the administration of justice that brings the judicial office into disrepute. Additionally, each count violates Canon 1A, which requires that a judge maintain, enforce and personally observe high standards of conduct and uphold the integrity of the judiciary, and Canon 2A ("A judge shall . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"). Article 6.1 §4 of the Arizona Constitution provides that the Supreme Court may censure, suspend, or remove a judge for conduct that brings his judicial office into disrepute.

WHEREFORE, the Commission, upon conclusion of a hearing and a finding of good cause, may recommend to the Supreme Court that Respondent be publicly censured, suspended or removed from judicial office, and that the Court grant other relief as may be deemed appropriate.

Respectfully submitted this 14th day of September, 2007.

COMMISSION ON JUDICIAL CONDUCT



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