SUPREME COURT OF ARIZONA

In the Matter of:	)	Arizona Supreme Court
	)	No. JC-11-0001
HONORABLE THEODORE ABRAMS	)	
Tucson Municipal Court	)	Commission on Judicial
Pima County, State of	)	Conduct
Arizona	)	No. 10-286
	)	
	)	**FILED 05/25/2011**
Respondent.	)	
	)	

O R D E R

On April 20, 2011, this Court granted review of the Commission on Judicial Conduct's recommendation approving the stipulated resolution between Respondent and the Commission. Having reviewed the record of the formal proceedings, the Court approves the stipulated resolution and accepts the Commission's recommendation. Further, pursuant to Rule 46(d), Rules of the Supreme Court of Arizona, the Court permitted the parties and the State Bar to file simultaneous briefs on the issue of lawyer discipline. Upon review of the briefs and record,

IT IS ORDERED that Respondent THEODORE ABRAMS is censured for violating the Code of Judicial Conduct and that Respondent is enjoined from ever again functioning as a judicial officer in the State of Arizona.

IT IS FURTHER ORDERED that Respondent THEODORE ABRAMS is suspended from the practice of law in the State of Arizona for two years, effective one week from the date of this order. An opinion of the Court will follow in due course.

IT IS FURTHER ORDERED that Respondent THEODORE ABRAMS shall comply with all applicable provisions of Rule 72, Rules of the Supreme Court of Arizona, and he shall promptly inform this Court of his compliance with this Order as provided in Rule 72(e).

DATED this _____ day of May, 2011.

_____
REBECCA WHITE BERCH
Chief Justice

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

STATE OF ARIZONA

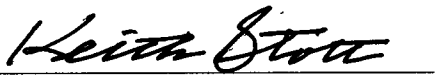
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge	)	
	)	Case No. 10-286
Theodore Abrams	)	
Tucson Municipal Court	)	**TRANSMITTAL OF THE RECORD**
Pima County	)	**TO THE SUPREME COURT**
State of Arizona	)	
Respondent	)	
	)	

1. Notice of Filing with the Supreme Court
2. Notice of Institution of Formal Proceedings
3. Statement of Charges
4. Motion for Protective Order
5. Order Granting Protective Order
6. Stipulated Resolution
7. Record of Appointment of Hearing Panel
8. Acceptance of Stipulated Resolution and Order
9. Minute Entry and Order
10. Recommendations

DATED this 25th day of February 2011.

COMMISSION ON JUDICIAL CONDUCT



E. Keith Stott, Jr.
Executive Director

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

FILED
FEB 25 2011
ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge	)	Commission No. 10-186
	)	
THEODORE ABRAMS	)	
Tucson Municipal Court	)	
Pima County	)	**NOTICE OF FILING WITH**
State of Arizona	)	**THE SUPREME COURT**
Respondent	)	
	)	

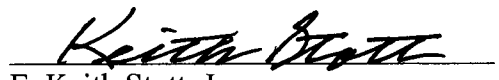
PLEASE TAKE NOTICE that the Commission's Recommendations in the above-entitled case, together with all other pertinent pleadings contained in the record, were filed on this date with the Clerk of the Arizona Supreme Court, 1501 W. Washington, Suite 402, Phoenix, Arizona 85007. Copies of the pleadings, along with this notice, were promptly served on Respondent.

The Commission accepted a stipulated resolution in this case in the best interest of the public and pursuant to guidance provided in previous cases in which the Commission was encouraged to pursue alternative resolutions. *In Re Braun*, 180 Ariz. 240, 242, 883 P.2d 996, 998 (1994); *In Re Garcia*, 180 Ariz. 294, 296, 884 P.2d 180, 182 (1994).

The Clerk of the Supreme Court is advised that the Respondent has waived the right in Rule 29(c) of the Rules of the Commission on Judicial Conduct to petition the Court to modify or reject the Commission's recommendations and the right to request oral argument. This matter, therefore, may be deemed submitted pursuant to Rule 29(e).

DATED this 25th day of February 2011.

COMMISSION ON JUDICIAL CONDUCT



E. Keith Stott, Jr.
Executive Director

Copies of this notice were delivered and mailed
this 25th day of February 2011 to:

Mark Harrison and Mark Hummels
Counsel for the Respondent
Osborn Maledon
2929 North Central Ave., Suite 2100
Phoenix, AZ 85012

Jennifer M. Perkins
Disciplinary Counsel
Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, Arizona 85007

By: Barbara Wanlass
Clerk of the Commission

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

FILED
DEC 29 2010
ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge	)	
	)	Case No. 10-286
THEODORE ABRAMS	)	
Tucson City Court	)	
Pima County	)	**NOTICE OF INSTITUTION OF**
State of Arizona	)	**FORMAL PROCEEDINGS**
	)	
Respondent.	)	

TO JUDGE THEODORE ABRAMS:

You are hereby notified that the Commission on Judicial Conduct has instituted formal proceedings against you in accordance with Rule 24 of the Rules of the Commission on Judicial Conduct ("Rule") to inquire into the charges specified in the attached Statement of Charges. You are also notified that a hearing will be held before the Commission to determine whether or not these charges constitute grounds for your censure, suspension, removal from office as a judge, or other appropriate discipline as provided in Article 6.1 § 4 of the Arizona Constitution.

You are further notified that:

1. Jennifer Perkins, Attorney at Law, will act as disciplinary counsel for the Commission in this matter, to gather and present evidence before the Commission on the charges.

2. You have the right, pursuant to Rule 25(a), to file a written response to the charges made against you within 15 days after personal service of this notice upon you or within 20 days of the date this notice is mailed. An original signed copy of the response must be filed in the Commission's office by 5:00 p.m. on the required date.

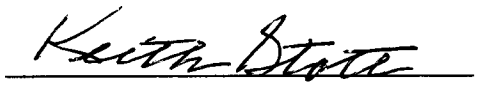
3. Upon receipt of your response, or upon expiration of the time in which a response may be filed, the Commission will open and maintain a public file containing the Notice of Institution of Formal Proceedings, the Statement of Charges, and all subsequent pleadings filed with the Commission. This file and the formal hearing in this case shall be open to the public in accordance with Rule 9(a).

4. You have the right to be represented by counsel, to examine and cross-examine witnesses and to require the issuance of subpoenas for the attendance of witnesses or for the production of any evidentiary matters necessary for your defense.

5. During the pendency of these proceedings, you or the Commission may refer to or use prior cases, if any, pertaining to previous complaints or discipline for the purpose of determining the severity of the sanction, a pattern of misconduct, or exoneration.

Dated this 29th day of December 2010.

COMMISSION ON JUDICIAL CONDUCT



E. Keith Stott, Jr.
Executive Director

Copy of this pleading sent by U.S. mail
or hand-delivery on December 29, 2010, to:

Mark I. Harrison
Mark P. Hummels
Attorneys for Respondent
Osborn Maledon
2929 North Central Avenue, Suite 2100
Phoenix, AZ 85012

Jennifer Perkins
Disciplinary Counsel
Commission on Judicial Conduct

By:

Jennifer M. Perkins
Disciplinary Counsel (Bar #023087)
Commission on Judicial Conduct
1501 W. Washington St., Suite 229
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Telephone: (602) 452-3200

FILED
DEC 28 2010
ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning	)	
	)	
Judge Theodore Abrams	)	Case No. 10-286
Tucson City Court	)	
Pima County	)	**STATEMENT OF CHARGES**
State of Arizona	)	
Respondent.	)	

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 Judge Theodore Abrams (Respondent) for misconduct in office. This statement of charges sets forth the Commission's jurisdiction 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 city court magistrate in Pima County since 2002, and was serving in his capacity as a judge at all times relevant to these allegations.

4. As a judge, Respondent is and has been subject to all provisions of the Code of Judicial Conduct (Code) as set forth in Supreme Court Rule 81.

FACTUAL BACKGROUND

5. Respondent began an intimate, consensual relationship with an attorney ("Attorney A")[1] in approximately June 2008. Attorney A was then, and remains now, involved in private practice criminal defense work that included appearances in Respondent's court on behalf of her clients. Respondent's consensual relationship with Attorney A involved sexual contact for a period of months, and remained an intimate relationship for at least the period of June 2008 through April 2009. During the time of their relationship and thereafter, Attorney A appeared before Respondent on multiple occasions.

6. In July 2008, Attorney A introduced Respondent to Attorney B and attempted to facilitate a "double date." Respondent thereby obtained Attorney B's personal cell phone number. Attorney B is an assistant public defender and was assigned to Respondent's courtroom beginning in August 2009.

7. From October 2009 through October 2010, Respondent sexually harassed Attorney B, in part by sending repeated and unwanted voice mails and text messages. Many of the messages contained sexual innuendos or explicit sexual content, and through these messages Respondent repeatedly pressured Attorney B to engage in a sexual relationship with him.

[1] Pursuant to the motion for a protective order filed herewith, disciplinary counsel has withheld the names of attorneys whose conduct is not within the Commission's jurisdiction from public documents. The identities of the attorneys will be conveyed privately to Respondent's counsel.

Attorney B did not encourage Respondent's conduct and repeatedly advised him that she was not interested in a sexual relationship with him. She also repeatedly reminded Responded that a sexual relationship would be improper because of his position as a judge, her routine appearances in his court, and the fact that he is married.

8. Between November 2009 and October 2010, Respondent left Attorney B at least 28 different voice mails, and sent her at least 85 text messages with personal and often sexual content. At least three voice mail messages (left on December 7, 2009, and June 8 and 24, 2010) contained ex parte communications about cases pending before Respondent. Between December 2009 and May 2010, Attorney B sent Respondent at least nine text messages explicitly rejecting his advances.

9. On December 3, 2009, at 4:29 p.m., Respondent left Attorney B a voice mail he characterized as "an obscene message" in which he described a sexual act he wanted to perform on Attorney B. On December 4, Respondent requested from the bench in open court that Attorney B appear in his chambers later, and asked whether she received his message. Attorney B told the judge she may have deleted it, although she had actually listened to it numerous times to determine if Respondent actually made the obscene statements that she initially heard on the message.

10. As directed, Attorney B appeared in chambers and Respondent offered to take her to his friend's downtown condo, and then repeated what he said on the voice mail. The attorney told him he was crazy and disgusting. As she was leaving the judge fondled her buttocks. There were no witnesses to this encounter. Shortly after she left chambers, at 11:32

a.m. on December 4, Respondent called and left another voice mail with a similar vulgar message to ensure that she received the original message.

11. In approximately September 2010, Attorney B confided in Attorney A regarding Respondent's unwelcome and aggressive sexual harassment. Attorney B believes that Attorney A shared the contents of that conversation with Respondent. Shortly thereafter, on October 14, 2010, Attorney B appeared before Respondent in . At the close of the prosecution's case, Attorney B moved to dismiss the matter for lack of jurisdiction because the state failed to prove that the incident occurred within the city's jurisdiction. Respondent berated Attorney B on the record, accusing her of committing a fraud on the court and wasting court resources.

12. Respondent's reaction to Attorney B's motion to dismiss was uncharacteristically harsh and became the subject of significant speculation throughout the courthouse. Further, it caused the acting Public Defender to question whether something more was going on between Respondent and Attorney B because the Respondent's comments suggested the possibility of a personal motivation.

13. On October 18, 2010, during his arraignment calendar, Respondent engaged in a conversation with an attorney in the courtroom while court was not in session, but with the recording equipment running, in which he discussed the pending motion to dismiss in . Respondent specifically discussed his likely ruling and also repeated his belief that Attorney B engaged in a "fraud" by failing to alert the court that the state would not be able to meet its burden in proving jurisdiction before the trial began. Respondent engaged in similar conversations with other prosecutors during the week of October 18.

14. On October 20, at approximately 2 p.m. during an unrelated pre-trial conference, Respondent requested that Attorney B avow to jurisdiction. Respondent then indicated that he would require her to do so in all future cases, despite the fact that it is the prosecution's burden to prove jurisdiction.

15. Respondent separately engaged in additional improper conduct with another attorney. In February 2009, Attorney A invited Attorney C, an assistant prosecutor, to a concert with Respondent. Attorney A indicated that Attorney C should keep the invitation "on the down low" because attending the concert with Respondent was "not really appropriate." The day after the concert, Respondent contacted Attorney C at work to request her personal email address. Respondent thereafter sent inappropriate emails to Attorney C pursuing a sexual relationship with her, which she declined. Attorney C has not practiced before Respondent because she has specifically requested that she never be assigned to his courtroom.

ALLEGATIONS OF MISCONDUCT

14. As described above, Respondent engaged in a course of conduct from 2008 to 2009 involving both his personal and professional behavior that constitutes ethical misconduct. His misconduct violates Rules 1.2, 1.3, 2.2, 2.3, 2.4, 2.8, 2.9, 2.10, 2.11, and 3.1. Respondent's misconduct also violates Supreme Court Administrative Order 92-33, which sets forth the court's sexual harassment policy, as well as the City of Tucson's policy against discrimination and harassment. Finally, Respondent's actions also constitute a violation of the Arizona Constitution, which forbids "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Article 6.1, § 4.

REQUESTED RELIEF

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 and either suspended or removed from judicial office; that costs be assessed against Respondent pursuant to Commission Rule 18(e); that Respondent be precluded from serving as a judicial officer in the State of Arizona at any time in the future; and that the court grant such other relief as may be deemed appropriate, including discipline against Respondent in his capacity as a licensed attorney, pursuant to the Court's authority under Supreme Court Rule 46(c).

Dated this 28th day of December 2010.

COMMISSION ON JUDICIAL CONDUCT

Jennifer M. Perkins
Disciplinary Counsel

Copies of this pleading delivered
via electronic and regular mail
on December 28, 2010, to:

Mark I. Harrison
Mark P. Hummels
Osborn Maledon
2929 North Central Ave., Suite 2100
Phoenix, AZ 85012
mharrison@omlaw.com
mhummels@omlaw.com

Counsel for Respondent

Jennifer M. Perkins
Disciplinary Counsel (Bar #023087)
Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

FILED
DEC 28 2010
ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning	)	
	)	
Judge Theodore Abrams	)	Case No. 10-286
Tucson City Court	)	
Pima County	)	**MOTION FOR PROTECTIVE ORDER**
State of Arizona	)	
Respondent.	)	

Disciplinary counsel hereby requests that the Commission on Judicial Conduct (Commission) issue a protective order to govern the contents of pleadings in the above-captioned formal case. An investigative panel authorized the filing of formal charges against Respondent Judge Theodore Abrams based on allegations of ethical misconduct that involved female attorneys. The Commission has no jurisdiction over the attorneys and some of the conduct alleged involved sexual harassment of at least two attorneys.

Disciplinary counsel thus respectfully requests that the presiding member of the hearing panel constituted in the above-captioned matter issue a protective order directing that the parties refrain from referencing any of the attorneys involved by name in their pleadings, which will be made public. Disciplinary counsel and counsel for Respondent should be further

directed to communicate privately to the extent there are any questions as to the identities of the attorneys referenced in the Statement of Charges or in Respondent's forthcoming Answer.

Dated this 28th day of December 2010.

COMMISSION ON JUDICIAL CONDUCT

Jennifer M. Perkins
Disciplinary Counsel

Copies of this pleading delivered
via electronic and regular mail
on December 28, 2010, to:

Mark I. Harrison
Mark P. Hummels
Osborn Maledon
2929 North Central Ave., Suite 2100
Phoenix, AZ 85012
mharrison@omlaw.com
mhummels@omlaw.com

Counsel for Respondent

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

FILED
JAN 21 2011
ARIZONA COMMISSION ON JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning	)	
	)	
Judge Theodore Abrams	)	Case No. 10-286
Tucson City Court	)	
Pima County	)	**ORDER GRANTING MOTION**
State of Arizona	)	**FOR PROTECTIVE ORDER**
Respondent.	)	

Disciplinary Counsel filed a Motion for Protective Order on December 28, 2010, to which Respondent's counsel has not filed an objection. Based upon the request and good cause appearing,

IT IS ORDERED granting the Motion for Protective Order.

DATED this 21th day of January 2011

FOR THE HEARING PANEL

Lawrence F. Winthrop
Presiding Hearing Panel Member

Copies mailed, e-mailed, or hand-delivered
on January 21, 2011, to:

Mark I. Harrison
Mark P. Hummels
Attorneys for Respondent

Jennifer M. Perkins
Disciplinary Counsel

By: Barbara Warlass

FILED

JAN 27 2011

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

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Counsel for Respondent

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning	)	
	)	
Judge Theodore Abrams	)	Case No. 10-286
Tucson City Court	)	
Pima County	)	**STIPULATED RESOLUTION**
State of Arizona	)	
Respondent.	)	

COME NOW Judge Theodore Abrams, Respondent, through his attorneys, Mark I. Harrison and Mark P. Hummels, and Jennifer Perkins, 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 of this matter pursuant to Article 6.1, § 4 of the Arizona Constitution.

2. Respondent has served as a city court magistrate in Pima County since 2002, and was serving in his capacity as a judge at all times relevant to these allegations.

3. As a judge, Respondent is and has been subject to all provisions of the Code of Judicial Conduct (Code) as set forth in Supreme Court Rule 81.

PROCEDURAL BACKGROUND

4. On December 28, 2010, Disciplinary Counsel filed a formal Statement of Charges after an investigative panel found reasonable cause to commence formal proceedings. In lieu of responding to the charges, the parties instead agreed to a stipulated resolution of the matter.

STIPULATED FACTS

5. Respondent began an intimate, consensual relationship with an attorney ("Attorney A") in approximately June 2008. Attorney A was then, and remains now, involved in private practice criminal defense work that included appearances in Respondent's court on behalf of her clients. Respondent's consensual relationship with Attorney A involved sexual contact for a period of a few months, and remained a close,

personal relationship from June 2008 through April 2009. During the time of their relationship and thereafter, Attorney A appeared before Respondent on multiple occasions.

6. In July 2008, Attorney A introduced Respondent to Attorney B. Attorney B later gave Respondent her personal cell phone number and email address. Attorney B states that she did not provide her contact information for the purpose of allowing Respondent to engage in personal communication, but rather to facilitate a "double date" with Respondent's friend. Attorney B is an assistant public defender and was assigned to Respondent's courtroom beginning in August 2009.

7. From October 2009 through October 2010, Respondent sent Attorney B voice mails and text messages. Many of the messages contained sexual innuendos or explicit sexual content, and through these messages Attorney B believed that Respondent was pressuring her to engage in a sexual relationship with him. Attorney B declined to engage in a sexual relationship with Respondent. In text messages that she retained, Attorney B told Respondent that a sexual relationship would be improper because of his position as a judge, her routine appearances in his court, and the fact that he is married.

8. Between November 2009 and October 2010, Respondent left Attorney B at least 28 different voice mails, and sent her at least 85 text messages with personal and often sexual content. Attorney B sent Respondent numerous responsive texts during this same period. At least three voice mail messages (left on December 7, 2009, and June 8 and 24, 2010) contained non-substantive references to cases that had come before Respondent.

9. In December 2009 and in May 2010, Attorney B sent Respondent at least nine text messages explicitly rejecting his advances. During this same period of time, however, from December 2009 through May 2010, Attorney B sent Respondent numerous additional text messages which Attorney B did not preserve. Respondent alleges that many of these messages were friendly in tone and even responsive to Respondent's comments, and did not explicitly or implicitly reject Respondent's advances.

10. On December 3, 2009, at 4:29 p.m., Respondent left Attorney B a voice mail that he described as "an obscene message" in which he described a sexual act he wanted to perform on Attorney B. On December 4, Respondent requested that Attorney B appear in his chambers later, and asked whether she received his message. Attorney B told the judge she may have deleted it.

11. After receiving the request from Respondent, Attorney B appeared in his chambers and Respondent offered to take her to his friend's downtown condo for sex. She declined. Shortly after Attorney B left his chambers, at 11:32 a.m. on December 4, Respondent called and left another voice mail with the same content as his December 3 message.

12. On October 25, 2010, a complaint on behalf of Attorney B against Respondent alleging inappropriate, unsolicited, and unwanted conduct of a sexual nature. Respondent was placed on administrative leave pending an investigation conducted by the Pima County Superior Court. The investigation concluded on December 9, 2010, with a memo recommending a

finding that Respondent engaged in sexual harassment based, in part, on the facts described in the preceding paragraphs. On December 13, the presiding judge adopted the investigator's recommendation, and on December 22 the Tucson City Council issued a Notice of Intent to Remove Respondent based on a finding of sexual harassment and discrimination. The complaint, investigator's deliberative memo, presiding judge's memo, and the city's notice, all of which are now matters of public record, are each hereby incorporated by reference.

13. On October 14, 2010, Attorney B appeared before Respondent in . At the close of the prosecution's case, Attorney B moved to dismiss the matter for lack of jurisdiction because the state failed to prove that the incident occurred within the city's jurisdiction. Respondent criticized Attorney B on the record, accusing her of wasting the court's resources and of committing a fraud on the court by allowing the court to empanel a jury and inform the jury that the relevant events took place in Tucson when, in fact, the events did not take place within Tucson and the court therefore did not have jurisdiction. The court had previously held hearings in the case, including one with respect to a defense ex parte request for money for an expert witness.

14. Attorney B felt that Respondent's reaction to her motion to dismiss was uncharacteristically harsh. During the investigation by Pima County Superior Court into Respondent's conduct, the acting Public Defender explained that she also believed his reaction to be out of character and that it prompted her to ask Attorney B whether

something more was going on that would have caused this incident. That inquiry led to the filing of the Complaint by the city attorney's office.

15. On October 18, 2010, during his arraignment calendar, Respondent engaged in a conversation with an attorney in the courtroom while court was not in session, but with the recording equipment running, in which he discussed a potential double jeopardy motion in . Respondent stated that he did not think the issue was ripe before his court, and that his court lacked jurisdiction to find double jeopardy. He also stated his concern with allowing defense attorneys to have the court proceed to empanel a jury in a case in which the court lacked jurisdiction for the strategic purpose of trying to secure a double jeopardy ruling in favor of their clients. Respondent engaged in similar conversations with other prosecutors during the week of October 18.

16. On October 20, at approximately 2 p.m. during an unrelated pre-trial conference, Respondent inquired of Attorney B whether the court had jurisdiction. Respondent then indicated that he would require her to do so in all future cases, despite the fact that it is the prosecution's burden to prove jurisdiction. Respondent later called Attorney B to let her know that he thought she had done an excellent job overall and to apologize for his initial reaction to the jurisdiction issue.

17. The investigator who reviewed Respondent's conduct recommended a finding that Respondent retaliated against Attorney B based on his actions related to the case. The presiding judge adopted that recommendation in her December 13 memorandum.

18. In February 2009, Attorney A invited Attorney C, an assistant prosecutor, to a concert with Respondent. Attorney A told Respondent that Attorney C had a "crush" on him and was interested in a sexual relationship with him. The day after the concert, Respondent contacted Attorney C at work to request her personal email address. Respondent thereafter sent emails to Attorney C of a sexual nature. Attorney C has practiced before Respondent's court a few times, but has not appeared before Respondent for any substantive hearing since February 2009.

AGREEMENT

19. Respondent admits that his conduct as stipulated above constitutes ethical misconduct in violation of Rules 1.2, 1.3, 2.3, 2.4, 2.9, 2.11, and 3.1 of the Code of Judicial Conduct. Disciplinary Counsel believes his conduct also violates Supreme Court Administrative Order 92-33, which sets forth the court's sexual harassment policy and constitutes a violation of the Arizona Constitution, which forbids "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Article 6.1, § 4.

20. Respondent acknowledges that his conduct warrants removal from the bench. Respondent has resigned from the bench and agrees never again to seek or hold judicial office. Respondent's letter of resignation, submitted on January 18, 2011, and effective on February 2, is hereby incorporated by reference.

21. Respondent acknowledges that the State Bar may be afforded an opportunity pursuant to Rule 46(d) to recommend the extent, if any, to which lawyer discipline should be imposed based on the record in this matter. If the State Bar chooses

to submit a recommendation, Respondent agrees not to challenge the State Bar's jurisdiction. Respondent reserves his right to dispute the State Bar's disciplinary recommendation and to oppose imposition of attorney sanctions.

22. The parties agree to waive their rights pursuant to Rules 28 and 29 of the Judicial Disciplinary Commission to appeal or challenge the charges in this matter. This waiver does not preclude the parties from submitting briefs to the Arizona Supreme Court concerning this matter.

MITIGATING AND AGGRAVATING FACTORS

23. Respondent believes the following factors should be considered in mitigation of his misconduct, pursuant to Commission Rule 19:

a) Lack of prior discipline and favorable judicial performance ratings.

b) Deep remorse and embarrassment.

c) Efforts to mitigate and rectify the consequences of Respondent's misconduct.

d) Cooperation with disciplinary authorities.

e) Respondent has already endured severe personal and professional consequences for his conduct.

f) Community service as an adjunct professor of law at the University of Arizona and as a board member of the Rialto Foundation.

g) Personal and emotional problems. Specifically, substantial physical and mental health issues stemming from a near-fatal heart condition resulting in open heart surgery in 2007, followed by a substantial rehabilitation period during

which Respondent developed severe depression, dependence on pain medication, and intermittent and ongoing difficulties with impulse control.

h) Sincere and ongoing efforts to remedy the root causes of Respondent's misconduct. Specifically, Respondent sought psychiatric help before any allegations of improper conduct were made. He began treatment in June 2010 with a Tucson psychiatrist, who diagnosed Respondent with opioid dependence and anxiety disorder. Respondent was treated with Suboxone for opioid dependence and with Ativan and Seroquel for anxiety, mood, and insomnia.

i) Following the allegations of misconduct at issue in this matter, Respondent admitted himself to a residential treatment program in and received intensive substance abuse and psychiatric treatment directed at the underlying causes for his behavior. He has continued to receive treatment on an out-patient basis following completion of the residential program.

24. Disciplinary Counsel believes the following factors should be considered in aggravation of Respondent's misconduct, pursuant to Commission Rule 19:

a) The nature, extent, duration, and frequency of the misconduct, which occurred over period of almost two years and involved at least 28 voice mail messages and at least 85 text messages that, at a minimum, involved improper communications from a judge to an attorney who regularly appears in his court.

b) Some of the misconduct occurred in Respondent's official capacity and during his workday at the courthouse.

c) The nature and extent to which Respondent's misconduct may have injured other persons and respect for the judiciary. The basic facts of this matter are already the subject of public discourse through local media coverage. Respondent's conduct involved primarily attorneys who were relatively inexperienced and could be expected to appear regularly before him.

AGREED UPON SANCTION

25. As noted above, Respondent acknowledges that his misconduct warrants removal from office. Because Respondent has already resigned his judicial position, the only sanction the commission may recommend to resolve this matter is a formal censure. The parties thus agree that imposition of a formal censure is appropriate under the circumstances.

OTHER TERMS AND CONDITIONS

26. 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.

27. Respondent waives his right to file a Response to the Statement of Charges, pursuant to Commission Rule 25(a).

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

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

30. Respondent clearly understands the terms and conditions of this agreement, has reviewed it with his attorneys, and fully agrees with its terms.

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

SUBMITTED this 25th day of January , 2011.

_ Theodore Abrams Respondent

January 25
Date Signed

_ Jennifer Perkins, Disciplinary Counsel
Commission on Judicial Conduct

1/27/11
Date Signed

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CONFIDENTIAL

RECEIVED
OCT 25 2010
Hon. Jan E. Kearney
Division 9

CITY OF TUCSON
OFFICE OF THE CITY ATTORNEY

October 25, 2010

VIA HAND DELIVERY

Honorable Jan Kearney
Presiding Judge of the Superior Court
Arizona Superior Court in Pima County
110 W. Congress St., Tucson, AZ 85701

Honorable Antonio Riojas
Presiding City Court Magistrate
103 E. Alameda Street
Tucson, AZ 85701

Re: Sexual Harassment Complaint – City Court Magistrate Abrams

Honorable Judge Kearney and Judge Riojas:

On September 21, 2010 I was contacted by , the City's Acting Public Defender. described a course of events that led me to believe a City employee was the victim of sexual harassment and retaliation. The City employee is an assistant public defender who appears regularly in Judge Abrams' court. The employee has saved numerous voice messages and text messages from Judge Abrams. Based on this information, on October 22, 2010 I met with , the employee's supervisor and the employee to discuss the employee's concerns and listen to the voice mail messages.

Summary of Discussion

Prior to being admitted to the bar the employee had met Judge Abrams through a mutual friend. This mutual friend and Judge Abrams attempted to set the employee up with a man who turned out to be engaged. The employee did not go out with this man. In the course of their efforts to make an arrangement the mutual friend gave Judge Abrams the employee's personal cell phone number.

For the last 14 months the employee has appeared in Judge Abrams' court. At first Judge Abrams mumbled inappropriate things as he walked past her such as "gorgeous", "nice tits" and "nice ass" and made slurping noises. Judge Abrams began inviting the employee to coffee during work hours and for beer after work. She went with him and the prosecutor assigned to the court one

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time for coffee and one time for beer. When she went to Club Congress for beer Judge Abrams groped her under the table. She did not go with him again. Judge Abrams repeatedly called the employee and left voice and text messages for her. One time after court he asked her to come to his chambers to pick up some paperwork. When she was there he asked whether she had received a specific voice message. Though the employee had received the message she said that she had not in order to avoid the embarrassment the message would cause both of them. Judge Abrams repeated the message and "arranged himself" several times; as the employee left the office Judge Abrams grabbed her butt. When the employee checked her messages later he had called to repeat the previous graphic message. During this time period Judge Abrams reminded the employee of her probationary employment status and his connections in the community. In July 2010, a co-worker told the employee that Judge Abrams had been leering at her from outside of a court room. The employee told Judge Abrams that she was not interested and to stop pursuing her. He "somewhat stopped" at that point.

On October 14, 2010 the employee had her first jury trial which happened to be in Judge Abrams' court. At the end of the state's case the employee made a motion to dismiss because the state failed to prove jurisdiction and in fact the incident occurred outside the City limits. Judge Abrams became upset and accused the employee of violating her duty of candor to the court and perpetrating a fraud upon the court, and used the term "bullshit". He was inappropriately upset and would not look at the employee. He denied the motion and declared a mistrial. On the following Monday during arraignments Judge Abrams told court room staff and the prosecutor that the employee had used shady tactics. That afternoon he called the employee, but she did not return the call. On October 19, 2010 the employee appeared in Judge Abrams' court and waited 45 minutes. She asked another assistant public defender to cover for her so she could return to the office. Judge Abrams sent the other assistant public defender to get her. When the employee returned to court Judge Abrams referred to her refusal to have a "heart to heart" with him. Judge Abrams told the employee that she should avow to jurisdiction and as he said this nodded his head at the prosecutor in a manner that made it seem like he had discussed the matter with the prosecutor before court. Judge Abrams turned off the tape during this proceeding.

When heard that Judge Abrams appeared to be shifting the burden of proof from the state to the defense she decided to discuss the matter with the presiding magistrate. At the time,

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did not know about any of the interactions the employee had with Judge Abrams. When she met with the presiding magistrate he had already heard about the jury trial and expressed his observation that Judge Abrams was over reacting to the situation. This caused to suspect that there something more going on and she discussed the matter with the employee. After hearing the employee's description of what had been happening for 14 months, called me to get advice on how to handle this employment situation.

Voice Messages

On October 22, 2010 the employee and I listened to more than 20 voice mail messages left on the employee's cell phone by Judge Abrams. There are also many text messages that need to be retrieved from the phone. The voice messages include requests to see the employee and sex-related statements, as well as acknowledgements that the employee was declining Judge Abrams' advances. The voice messages are recorded on the enclosed CD.

Conclusion

The nature of the complaint, the credibility and extent of the evidence, and the City's obligation to provide a workplace free of unlawful discrimination led me to file this complaint. The employee has agreed to participate in the investigation and I will provide her name and contact information to the investigator upon request.

Thank you for your attention to this matter.

Respectfully,

Martha M. Durkin

MMD/tl

Encl.

CONFIDENTIAL

Arizona Superior Court
Pima County
110 West Congress, 9th Floor
Tucson, Arizona 85701

Superior Court Human Resources
Jeff Grant
Director

Telephone (520) 740-3856
FAX (520) 740-4253
TDY (520) 740-8887

DELIBERATIVE MEMORANDUM

TO: Honorable Judge Kearney Presiding Judge Pima County Superior Court

FROM: Lisa Ponder-Gilby, Employee Relations Coordinator

DATE: December 9, 2010

SUBJECT: Administrative Investigation
Sexual Harassment, Retaliation
Focus: Tucson City Court Magistrate Ted Abrams

On October 25, 2010 a written complaint was filed by The complaint was filed on behalf of an unnamed employee and alleged that Tucson City Court Magistrate Theodore (Ted) Abrams engaged in inappropriate, unsolicited and unwanted conduct of a sexual nature. She further alleges that when she told a mutual friend about Judge Abrams' advances, he began to retaliate against her by treating her differently in court.

In order to establish an unlawful harassment-Retaliation violation under City of Tucson Directive #2.05-8(II) and the Code of Conduct for Judicial Employees Canon 2.3, the evidence must show that:

- She was subjected to unwanted and unsolicited conduct of a sexual nature.
- The conduct was sufficiently severe and/or pervasive as to create a hostile, intimidating or offensive working environment; or

1. Submission to such conduct is used as the basis for employment decisions affecting the individual or
2. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment

initially establishes a prima facie case of sexual harassment, by stating that Judge Abrams was inviting her to engage in sexual activities and making both implicit and explicit comments particularly via cell phone voice and text messages. These comments include requests to meet him at his friend's downtown home, and explicit comments about her body such as on December 7, 2009 when during a voice mail message he says the following, "Oh man, did you pick those pants to drive me insane? Oh, you're booty looked so fine. …".

The investigation has supported a claim of hostile work environment sexual harassment by showing that the behavior engaged in was unwanted, unsolicited and was sufficiently severe and pervasive to create a hostile and intimidating work environment. Furthermore, given the relationship a judge to an attorney practicing in his/her courtroom, the evidence further shows that Judge Abrams' behavior, while it may not have been an explicit term of the victim's employment, her acquiescence to the sexual conduct could easily be construed to be an implicit term of her continued employment. Although Judge Abrams did not supervise as a judge, he is in a position to affect the terms and conditions of her employment and provide input for her evaluations.

Judge Abrams was not interviewed for this investigation; however, through his attorney, and via a written personal statement he admits pursuing and sending voice and text messages of a sexual nature to the employee. Also through his attorney, Judge Abrams claims that the employee in question did not necessarily object to the sexual comments and that when the employee did advise Judge Abrams to stop, he obliged. The evidence does not support this claim. There was no evidence produced to suggest that the employee welcomed the sexual advances. In fact, there are at least nine (9) text messages in which the employee advised Judge Abrams to stop asking her out and that his comments were inappropriate. Although the messages may have occurred primarily on two days, there were multiple messages advising Judge Abrams to stop asking her out. The text messages provided suggest that although Judge Abrams may have stopped making these comments for a time, he would begin again.

In addition, at least two other female employees have testified they have been subjected to similar treatment by Judge Abrams. In one case, an employee provided copies of e-mail messages which contain sexual comments and innuendoes made by Judge Abrams. This employee's e-mails also contain messages to Judge Abrams advising him that she was willing to meet him in public, as friends only, but anything more was inappropriate. Following this employee's e-mail in which she agrees to see him only in public if he "behaves himself," Judge Abrams, responds several times at one point stating that he would, "attempt to behave." He then responds that, "you not really want me to behave so I probably won't."

Based upon the foregoing evidence, it is respectfully requested that the claim of sexual harassment be upheld.

In order to establish a prima facie case of retaliation, the complainant must show:

1. She engaged in a protected practice, by refusing the advances of Judge Abrams

2. Judge Abrams was aware of her refusals

3. She suffered a harm in that he treated her differently in court by refusing to allow her to state her case for a dismissal with prejudice and instead deciding it is a mistrial.

4. The harm occurred because she engaged in protected conduct, by refusing Judge Abrams' advances and confiding in a mutual friend.

initially established a prima facie case of retaliation by providing evidence that as she continued to reject his advances, he began to treat her differently in the courtroom.

Although Judge Abrams does not directly supervise he does have input into her evaluation and may have influence over the public defender's office decision to continue her employment.

opined that ultimately Judge Abrams became angry with her during a hearing because her friend, who she confided in about his advances, may have told Judge Abrams about complaints concerning Judge Abrams' sexual advances. According to was involved in a consensual relationship with Judge Abrams and was angry with him. Shortly after told about the sexual advances, another attorney who works with the friend advised the employee that he heard Judge Abrams was trying to "get with" the employee. maintains that it was shortly thereafter when he became angry with her when she attempted to file a motion to dismiss with prejudice and he told her she was not properly making the request. Instead of allowing the motion to dismiss, Judge Abrams declared a mistrial.

Through his attorney, and via his written personal statement, Judge Abrams denied that he retaliated against . As evidence, he stated that sometime in July or August of 2010, supervisor asked him to provide input into her evaluation. According to Judge Abrams, he did recommend that pass her probation period, stating that she "did an excellent job, had good client control and was a pleasure to have in court. Judge Abrams denied that he treated differently in the courtroom when he insisted that the case be declared a mistrial.

Other testimony from supports the retaliation claim in that the incident in the courtroom when Judge Abrams declared the case a mistrial was the whole reason that led to the instant investigation due to the unusual behavior of the judge.

Determining whether or not Judge Abrams engaged in inappropriate judicial conduct with respect to the claim that he engaged in ex-parte communications and did not follow protocol when declaring a mistrial is beyond the scope of this investigation and a determination on this issue will be left with appropriate judicial authorities.

Based on the foregoing, it is respectfully requested that the claim of retaliation be upheld.

RECOMMENDATIONS:

1) Training of all judicial staff, to include judges, on proper and improper conduct and sexual harassment in the work place. This training should include information on liability to the court as well as personal liability. This training should also include very clear direction for employees on what to do and who to talk with should they be subjected to any type of unwanted, unsolicited and offensive behavior. The training should stress that it is important in all cases to address it sooner rather than later. Employees should feel safe complaining about any types of inappropriate and/or offensive behavior whether perpetrated by a co-worker or a judge. In addition, employees must be made aware of the ethical violations of engaging in such conduct with a judge.

2) Training for all staff including judges, attorneys, law clerks and any other City of Tucson court staff on the policy regarding sexual harassment, the City's complaint procedure and investigation procedure. An emphasis on the fact that contacting someone out of work and on personal cell phone or e-mail may still be inappropriate and could result in disciplinary conduct, even though it is not done at the work site. Complaints should be thoroughly investigated whether they are made in writing or verbally and regardless of whether the behavior is reported by the alleged victim or a third party.

3) Judge Abrams should be subjected to discipline as appropriate per the City of Tucson Directives and the Judicial Code of Conduct for engaging in inappropriate sexual comments and innuendoes, and retaliating against in violation of City of Tucson Directive 2.05-8(II) and the Code of Conduct for Judicial Employees Canon 2.3.

Arizona Superior Court
Pima County
110 West Congress
Tucson, Arizona 85701

Hon. Jan E. Kearney
Presiding Judge

Division 9

Telephone (520) 740-8782
Fax (520) 740-8020

MEMORANDUM

TO:

DATE: December 13, 2010

RE: Sexual Harassment Complaint: City Court Magistrate Theodore Abrams

On October 24, 2010, a written complaint was filed by the Chief Deputy City Attorney alleging that Tucson City Court Magistrate Theodore Abrams had engaged in a course of inappropriate, unsolicited and unwanted conduct of a sexual nature against an Assistant City Public Defender who appears regularly in his court; and that when she told a mutual friend about Judge Abrams's advances, he retaliated against her by treating her differently in court. The matter was referred to the undersigned, pursuant to an intergovernmental agreement with the City of Tucson, and the general administrative authority of the Presiding Judge over the courts in Pima County. The matter was investigated by a member of the Human Resources division of the Superior Court. The investigation included review of telephone and court records and interviews of the victim and other witnesses, as well as materials provided by Judge Abrams and his attorney. The final report and Deliberative Memorandum of the investigator was received by the undersigned on December 9, 2010.

The undersigned concurs with and hereby adopts the findings and recommendations contained in the investigator's Deliberative Memorandum, which are incorporated herein by reference. The claims of sexual harassment and retaliation are upheld. In addition:

1. The report refers to Judge Abrams's conduct involving persons in addition to the victim referred to in the complaint. While these factors are pertinent to the complained-of conduct, and thus properly part of the investigation, the decision of the undersigned is solely based on and amply supported by the evidence concerning the circumstances included in the complaint.

2. The undersigned has given the most careful consideration to the mitigating information supplied by Judge Abrams, including:

A. He recognizes the inappropriate nature of his behavior toward the victim in the court setting.

B. He believes his behavior stems from the effects of a life-threatening medical problem and surgery occurring approximately three years ago, including both psychological effects and opiate addiction.

C. He sought help before he was faced with official action.

3. In addition, the evidence supplied by witnesses suggests that, with the exceptions noted in the complaint, Judge Abrams's addiction and conduct toward the victim did not significantly affect the overall quality of his performance as a judge.

4. In deciding the appropriate course of action in this matter, the undersigned must consider not only whether and to what extent Judge Abrams's conduct requires sanctions in accordance with the policies of the City of Tucson, but also what needs to be done to support the safety and welfare of city employees and the City Court as a whole.

5. For the following reasons, it is the opinion of the undersigned that the complained-of conduct may warrant termination of Judge Abrams from his judicial position:

A. As a new lawyer, the victim in this case was particularly vulnerable to advances by a judge before whom she frequently appeared. Judge Abrams contends that the victim's behavior toward him showed interest in his advances. Even if the evidence supported this claim, which it does not, neither the medical issues raised by Judge Abrams nor the claimed conduct by the victim could excuse his lengthy and aggressive sexual pursuit, including flagrantly obscene phone messages and improper behavior within the courthouse.

B. The complained-of conduct included sexually-oriented comments occurring in the courtroom and elsewhere in the courthouse, as well as in phone and text messages. In addition, the phone and text messages also referred to the victim's courtroom performance and to proceedings in the judge's court. The power of the judge in the courtroom thus colored the improper comments made outside the courthouse. Judge Abrams's conduct during the jury trial on October 14, 2010, could reasonably have been perceived by the victim as retaliation in view of the tone of Judge Abrams's remarks, and his berating her for what was primarily a failure of the prosecution to recognize a jurisdictional defect in the case.

C. While Judge Abrams acknowledges pursuing the victim inappropriately, he continues to maintain that he does not feel he was harassing her. The record of his own phone calls and text messages shows that Judge Abrams continued his pursuit in the face of the victim's efforts to discourage his attentions. In addition, it is hard to imagine that the content of some of the messages would have been welcome under any circumstances whatever. This pattern of conduct, which continued after Judge Abrams began treatment in June, 2010, and his apparent lack of judgment and awareness of the effect of his actions, creates concern about his ability to restrain his conduct in the future.

6. Additional action is needed to ensure that City employees avoid improper conduct and make timely complaints if and when such conduct occurs. The Presiding Judge has no authority over City employees not associated with City Court and thus may not direct the City Public Defender's Office to take any specific action. However, it is strongly urged that the Public Defender's Office promptly evaluate its sexual harassment training, emphasizing the responsibility of each City employee to make timely complaints when sexually harassing conduct takes place, and the procedures for doing so.

7. The Presiding City Court Magistrate will take immediate steps to consult with the Presiding Judge and the City Attorney's Office for the purpose of evaluating the sexual harassment training currently required of City Court personnel, including judicial personnel, and to implement such additional training as may be required.

8. These proceedings concerning the sexual harassment complaint against Judge Abrams are separate and distinct from any action that may be undertaken by the Arizona Supreme Court and the Commission on Judicial Conduct, or the State Bar of Arizona.

9. With respect to Judge Abrams, the determination whether his judicial employment should be terminated on grounds raised in the complaint is not within the authority of the Presiding Judge, but rests, for purposes of this proceeding, with the City Council. This matter is therefore referred to the City Council through its attorneys for such further action as may be appropriate under the circumstances. If the City Council determines that Judge Abrams's employment should not be terminated, the matter may be referred back to the Presiding Judge.

JAN E. KEARNEY
Presiding Judge
Arizona Superior Court for Pima County

cc: Michael Storie, Esq.

CITY OF TUCSON
OFFICE OF THE CITY ATTORNEY

December 22, 2010

Hon. Theodore C. Abrams
4809 N. Paseo Del Tupo
Tucson, AZ 85750

Subject: Notice of Intent to Remove Pursuant to Tucson Charter Chapter V Section 4.1

Dear Magistrate Abrams:

This notice is issued pursuant to the action of Mayor and Council taken on December 21, 2010 when they voted to direct the City Attorney to prepare and issue a notice of intent to remove you from office for cause.

Cause for Removal

On December 13, 2010, the Presiding Judge of the Superior issued the attached report upholding claims of sexual harassment and retaliation filed against you in your capacity as a City Magistrate. The contents of the Presiding Judge's memorandum dated December 13, 2010 and the accompanying memorandum from dated December 9, 2010 are incorporated herein.

In accordance with Tucson Code Section 8-4 you are required to follow and adhere to the City's rules of conduct and code of ethics contained in administrative directives to the extent adherence does not affect judicial independence or is not inconsistent with the Code of Judicial Conduct.

Administrative Directive 2.02-5, Rules of Conduct, Sections II A. 11 and 19 require all City employees to:

11. Conduct themselves in a manner, on and off duty, that

    a. does not compromise their ability, or that of other employees, to perform assigned work and/or duties in an efficient, non-discriminatory, and professional manner;

    b. does not discredit the City or department in a manner that affects its ability to perform its mission;

c. does not cause the City or department to question the employee's reliability, judgment or trust-worthiness in carrying out assigned responsibilities.

19. Adhere to those provisions of the City Charter, City Ordinances, City Administrative Directives, Department rules and regulations, and Civil Service Commission Rules that relate to their employment with the City.

Administrative Directive 2.05-8, Discrimination/Harassment Policy and Mediation Complaint Procedures, provides that "consistent with existing city, state, and federal laws, it is the policy of the City of Tucson to provide a work environment free from discrimination and to promote Equal Employment Opportunity (EEO) and equitable treatment of all employees." Retaliation against an employee who has opposed an unlawful discriminatory practice is prohibited.

The City prohibits conduct that constitutes sexual harassment including verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment. Sexual Harassment is defined as follows:

I. **Sexual Harassment** - Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;

3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment includes, but is not limited to:

1. sexually suggestive, obscene, or lewd comments and jokes

2. sexual innuendoes and gestures

3. sexually suggestive pictures or written materials (e.g. posters, cartoons)

4. gender related labels such as "honey" or "sweetie"

5. leering, ogling, or drawing attention to a person's body

6. unwelcome touching

7. sexual intimidation or exploitation

8. sexual assault

The Judicial Code of Conduct is consistent with the City administrative directives. Rule 2.3 of the Judicial Code of Conduct reads as follows:

RULE 2.3. Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

The attached Arizona Supreme Court Administrative Order 92-33 (Oct. 19, 1992), sets forth the judiciary's sexual harassment policy including prohibition against retaliation.

Conclusion

The investigation completed by the Superior Court clearly establishes that you have violated the City's administrative directives pertaining to discrimination and sexual harassment. Your actions constitute serious misconduct and interfered with the ability of your co-workers to perform their job duties in an efficient and effective manner.

Based on the foregoing, the Mayor and Council intend to remove you from your City Magistrate position effective January 19, 2011. You have the right to present reasons why removal should not occur by requesting a hearing before the Mayor and Council. Your written request for a hearing must be submitted to the City Clerk's Office on or before 5:00 p.m. January 3, 2011. Upon receipt of your request the City Clerk will set the hearing on this matter for January 19, 2011 at the Mayor and Council's regularly scheduled meeting.

Sincerely,

Mike Rankin
City Attorney

MR/MD/tl

Enclosures

c: Michael Storie, Esq., by e-mail at mstorie@michaelstorie.com
City Clerk

January 18, 2011

VIA FAX: 791-5348
AND MESSENGER SERVICE
Mayor Bob Walkup
and Council
255 West Alameda Street
Tucson, AZ 85701

Re: Theodore Abrams

Dear Mayor Walkup and Council:

With this letter I am resigning my position as a Tucson City Court Magistrate to be effective February 2, 2011. I am also withdrawing my request for a Due Process Hearing.

Sincerely,

Theodore Abrams

cc: Michael Rankin, Esq. (via fax: 623-9803)

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

FILED
FEB 11 2011
ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge	)	
	)	Case No. 10-286
THEODORE ABRAMS	)	
Tucson Municipal Court	)	
Pima County	)	**RECORD OF APPOINTMENT**
State of Arizona	)	**OF HEARING PANEL**
	)	
Respondent	)	
	)	

Acting pursuant to Rules 3(f) and 27(a) of the Rules of the Commission, Judge Louis Frank Dominguez, Chair of the Commission, appointed Judge Lawrence F. Winthrop to serve as the presiding member of the hearing panel in the above-entitled proceeding and designated the following as members of the panel: Lloyd Claycomb, Louis Dominguez, Peter Eckerstrom, George Foster, Sherry Geisler, Angela Sifuentes, and Tyrrell Taber.

DATED this 11th day of February 2011.

COMMISSION ON JUDICIAL CONDUCT

E. Keith Stott, Jr.
Executive Director

Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, AZ 85007-3327
602-452-3200

FILED
FEB 24 2011
ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge	)	Case No. 10-289
	)	
THEODORE ABRAMS	)	
Tucson Municipal Court	)	**ACCEPTANCE OF STIPULATED**
Pima County	)	**RESOLUTION AND ORDER**
State of Arizona	)	
Respondent	)	

The duly appointed hearing panel of the Commission on Judicial Conduct in the above-entitled action hereby accepts the Stipulated Resolution signed by the Respondent and Disciplinary Counsel for the following reasons: the issues set forth in the Statement of Charges have been adequately resolved; the parties agree that the Respondent's conduct in the underlying case warrants a formal sanction; and the prompt and expeditious resolution of this case is in the best interests of the public and the judiciary. Therefore, pursuant to Rule 30(b),

IT IS HEREBY ORDERED that the executive director of the Commission shall promptly prepare and transmit the Commission's Recommendation, along with the official record of these proceedings, to the Supreme Court as required by Rule 29.

DATED this 24thday of February 2011.

COMMISSION ON JUDICIAL CONDUCT

Lawrence F. Winthrop

Hon. Lawrence F. Winthrop
Presiding Member of the Hearing Panel

Copies of this pleading were mailed, e-mailed
and hand-delivered on February 25th, 2011 to:

Mark Harrison and Mark Hummels
Attorneys for the Respondent
Osborn Maledon
2929 North Central Ave., Suite 2100
Phoenix, AZ 85012

Jennifer M. Perkins
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

By: Barbara Warlass
Clerk of the Commission

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

FILED
FEB 25 2011
ARIZONA COMMISSION ON JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning	)	Case No. 10-286
	)	
THEODORE ABRAMS	)	
Tucson Municipal Court	)	
Pima County	)	**MINUTE ENTRY AND ORDER**
State of Arizona	)	
Respondent.	)	
	)	

The hearing panel duly appointed by the chairperson of the Commission on Judicial Conduct to consider evidence and file recommendations in the above-entitled action convened at 3:30 p.m. on February 11, 2011, with the following panel members in attendance: Lawrence F. Winthrop, presiding member, Louis Frank Dominguez, Peter J. Eckerstrom, George H. Foster, Jr., Sherry L. Geisler, and J. Tyrrell Taber. Lloyd K. Claycomb and Angela H. Sifuentes were excused and did not participate in the hearing. E. Keith Stott, Jr., executive director of the Commission on Judicial Conduct, and Barbara M. Wanlass, clerk of the commission, were also present. Counsel for the parties were not present. A court reporter was not present.

The meeting was called to consider the Stipulated Resolution ("stipulation") jointly filed by Jennifer Perkins, Disciplinary Counsel, and Mark Harrison and Mark Hummels, counsel for the Respondent, on January 27, 2011. Copies of the stipulation and related attachments were distributed via e-mail to the panel members in advance of the proceeding. The members of the hearing panel discussed the admissions and conditions contained in the stipulation and unanimously agreed to accept the stipulation and to attach a copy to its recommendations.

After further consideration, the hearing panel unanimously approved recommendations that the Respondent be censured for his conduct, that Respondent be enjoined from future service as a judge or judicial officer, and that Disciplinary Counsel be instructed to file a brief with the Arizona Supreme Court concerning the appropriate sanction in this case and possible disciplinary action against the Respondent by the State Bar of Arizona.

Finally, the hearing panel authorized the presiding member to sign minute entries, orders and recommendations pertaining to the case and to review Disciplinary Counsel's brief.

NOW, THEREFORE, IT IS ORDERED that the executive director of the commission shall prepare proposed recommendations for the hearing panel and that disciplinary counsel shall prepare a brief to file with the supreme court, both documents to be reviewed by the undersigned.

DATED this 24th day of February 2011,

FOR THE HEARING PANEL

Hon. Lawrence Winthrop
Presiding Member

Copy sent via U.S. mail and e-mail
transmission on February 25th, 2011 to:

Mark Harrison and Mark Hummels
Counsel for the Respondent

Jennifer Perkins
Disciplinary Counsel

by: Barbara Wanlass
Clerk of the Commission

Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, AZ 85007
Telephone: (602) 452-3200
Facsimile: (602) 452-3201

FILED
FEB 25 2011
ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge	)	
	)	Supreme Court No. JC-11-001
THEODORE ABRAMS	)	
Tucson Municipal Court	)	Commission Case No. 10-286
Pima County	)	
State of Arizona	)	**RECOMMENDATIONS**
	)	
Respondent	)	

On December 28, 2010, the Commission on Judicial Conduct ("Commission") filed a Statement of Charges against Tucson Municipal Court Judge Theodore Abrams ("Respondent") following a finding of reasonable cause by a three-member investigative panel assigned to oversee the investigation in this case. Simultaneously, the Commission chairperson appointed an eight-member hearing panel to hear and take evidence in the case and designated the undersigned as the presiding member of the panel.

On January 27, 2011, counsel for Respondent and Disciplinary Counsel submitted a Stipulated Resolution ("Stipulation") to the hearing panel in which Respondent admits his conduct, acknowledges that his conduct warrants removal from the bench, notes his resignation from the bench, and agrees never again to seek or hold judicial office. The stipulation and its related attachments are incorporated herein by reference.

Respondent also acknowledges that the State Bar of Arizona ("State Bar") may be afforded an opportunity pursuant to Rule 46(d) to recommend the extent, if any, to which lawyer discipline should be imposed based on the record in this matter. If the State Bar chooses to submit a recommendation, Respondent agrees not to challenge the State Bar's jurisdiction, but reserves his right to dispute the State Bar's disciplinary recommendation and to oppose imposition of attorney sanctions. Both parties agree to waive their rights to appeal or challenge the charges in this matter, which waiver does not preclude the parties from submitting briefs to the court concerning the underlying issues in this case.

On February 17, 2011, the hearing panel met to discuss the terms of the Stipulation and unanimously voted to accept it and to authorize Disciplinary Counsel to submit a brief to the court explaining the panel's concern as to whether the filing of this recommendation will or will not preclude the State Bar from taking further action against the Respondent either during or at the conclusion of these proceedings.

As part of the Stipulation, the Respondent waived his right to appeal and all other procedural rights set forth in Rule 29 of the Commission's Rules. All of the conditions in the Stipulated Resolution having been met, the hearing panel now recommends to the court that the Respondent be censured for misconduct in office and permanently enjoined from serving as a judge or judicial officer in the State of Arizona.

Because there is some uncertainty as to what constitutes a final determination in a judicial discipline case that could affect the State Bar's jurisdiction to seek sanctions against a former judge, the hearing panel further recommends that the court's final determination of this matter be held in abeyance, if necessary, to allow the State Bar an opportunity to file its recommendation for

appropriate discipline of the Respondent under the Arizona Rules of Professional Conduct. *See, In Re Dean,* 212 Ariz. 221, 129 P.3d 943. The hearing panel believes that the Respondent's conduct, which admittedly would merit removal had he not resigned from office, reflects upon his capacity to practice law and that the court should resolve all issues pertaining to judicial and attorney discipline in a single, comprehensive decision.

RESPECTFULLY SUBMITTED this 25th day of February 2011.

FOR THE HEARING PANEL

Lawrence F. Winthrop

Hon. Lawrence F. Winthrop
Presiding Member

Copies of this pleading were delivered and mailed this 25th day of February 2011 to:

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