

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 10-290

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Complainant: No. 1404400172A

Judge: No. 1404400172B

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**ORDER**

The complainant alleged that a superior court judge made erroneous rulings and told him to “shut up” when he attempted to ask what was going on. The commission reviewed the matter and found that the alleged remark was more than three years old and there is no recording or transcript to confirm the claim. The majority of the allegations otherwise involve court rulings, which are outside the jurisdiction of the commission. Therefore, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: December 28, 2010.

FOR THE COMMISSION

/s/ Keith Stott

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Executive Director

Copies of this order were mailed to the complainant and the judge on December 28, 2010.

*This order may not be used as a basis for disqualification of a judge.*

2010-290

1. Rule 2.2.(3). On Oct. 05, 2007 Release Conditions, To raise the
2. defendant's bail from \$100,000.<sup>00</sup> to \$250,000.<sup>00</sup>, which is a denial
3. of Bail, a disregard of the Constitutional Amendment VIII (1791)
4. Excessive Bail shall not be required. Here The court did not give
5. defendant, presumption of innocence's, and benefit of doubt, As
6. defendant lived in community for over 12-years, was buying his
7. home, had a job with ties to community, what did theft have to
8. do with defendant's release, as he was not charged with theft.
9. As condition of confinement, punishment of detainee amounts to
10. deprivation of his Due Process of Law. Bell V. Wolfish, 441 U.S.
11. 520, 99 S.Ct. 1861 (1979).
12. Rule's 2.2., 2.3. On July 02, 2008; Testimony of Dawn W. in
13. the judge allowing this testimony to be heard by the jury, has
14. substantially prejudice jury against defendant, he would not have
15. received a fair trial, this was misconduct by the judge, as the
16. Rule's for admitting it would have prevented it, without evidence
17. of the act's. This amounted to, "Conviction by Innuendo,"
18. prohibited by the court in: State V. Holsinger, 124 Ariz. 18, 20-22,
19. 601 P.2d 1054, 1056-58 (1979). The implication in the judge's
20. decision was clear and prejudicial, and could not be erased
21. from the minds of the jury. State V. Ballantyne, 128 Ariz. 68,
22. 70-71, 623 P.2d 857, 589-60 (App. 1981).
23. When the court was considering the admission of these
24. act's at motion for reconsideration, [the] judge did not make
25. an explicit finding that the probative value of the two act's
26. was not substantially outweighed by the potential for unfair
27. prejudice, Rule 404(c)(1)(D) [Requires] the judge to make this
28. specific finding on the record. State V. Salazar, 181 Ariz. 87,
29. 92, 887 P.2d 617, 622 (App. 1994).

Judge's Name: Hon.

1. Rule 2.2.(3). Under A.R.S. §13-3988, The court should have  
 2. ruled on the admissibility of the confrontation call, as when  
 3. the government obtain evidence in violation of the Constitution,  
 4. the courts [must] exclude it, to assure the people that the  
 5. government cannot profit from it's own lawlessness, a violation  
 6. of the Fourth Amendment, apparently the "Rule of Automatic  
 7. Reversal", still applies to "coerced or involuntary" confessions.  
 8. Chapman V. California, 386 U.S. 18, 23 in, 8 (1967), see  
 9. Meltzer, Involuntary Confessions: The Allocation of Responsibility  
 10. Between Judge and Jury, 21 U. CHI. L. REV. 317, 348 (1954).

11. If the existing code's and rule's does not permit district  
 12. attorney's, to have a hand in such dirty business, it does not  
 13. permit the judge to allow such inequities to succeed.

14. Rule 2.2. On July 01, 2008, there was a motion in Limine,  
 15. the defendant was not present, Under Rule 15.3 Ariz. R. Crim.  
 16. Proc.. State V. Shearer, 158 Ariz, 89, 761 P.2d 163 (1988), The  
 17. defendant has the right to be present under the Due Process  
 18. Clause of the Fourteenth Amendment. <sup>see</sup> Thomas V. Goldsmith, 979  
 19. F.2d 746, 748 (9<sup>th</sup> Cir. 1992), <sup>citing</sup> Kentucky V. Stincer, 482 U.S.  
 20. 730, 107 S.Ct, 2658, 96 L.Ed.2d. 631 (1987). Nor did he waive  
 21. his right to be present at any of his proceeding's, either in  
 22. writing, or as [required] by Ariz. Rule's, or through his intention  
 23. knowing, and voluntary absence. Brewer V. Raines, 670 F.2d 117,  
 24. 118-19 (9<sup>th</sup> Cir. 1982), Nor did he forfeit his right through  
 25. misconduct. Illinois V. Allen, 397 U.S. 337, 343, 90 S.Ct. 1057,  
 26. 1060-61, 25 L.Ed.2d 353 (1970). There are numerous court  
 27. proceeding's the defendant was Not present for: Nov. 05, 2007,  
 28. Jan. 29, 2008; Mar. 10, 2008; May 23, 2008 The court waived his  
 29. presents. At this motion in Limine, the judge had granted

1. the defendant his defense, but in doing so this late would  
2. Not give Counsel, or defendant the proper time needed to get all  
3. the evidence, witness, or statements needed for his defense.

4. To enforce this: A.R.S. § 13-1421, (3). The touchstone of Due  
5. Process, is fairness of trials, not culpability of the judge's.

6. For this reason a judge should be careful not to throw  
7. the weight of his or her judicial position into a case, either for  
8. or against a defendant. When do we say that the judge has  
9. abused it's discretion in it's decision's, one, two, or more time's,  
10. if you look at this case at hand you will see that the judge  
11. has abused it's discretion against the defendant on at least 5-time's  
12. 3-of which took from the defendant the right to a fair trial,  
13. and Due Process of law, the prosecution was given an advantage  
14. by the judges abuse in his discretion.

15. Now the judge has made a ruling in this case, in his  
16. chambers, without a court reporter, what is he doing here?  
17. Rule 2.6. On Oct. 05, 2007 Release Conditions, when I tried to  
18. ask the judge about what was going on here, he told me to  
19. "Shut-up", that he never wanted to hear from me, a disregard  
20. of the Constitutional Right to Freedom of Speech.

21. Rule 2.11. The judge should have given the defendant the  
22. chose to have another judge hear this case as he is a new-  
23. Pro-Tempore Judge, due to the severity of the sentence he  
24. was facing.

25. With all that has happend to me, with the conduct of this  
26. court system, I don't think that I will get a fair Rule 32.  
27. from this judge, I do not think that the Commission will do  
28. a thing to the judge, he should not be allowed to make  
29. an opinion in his Rule 32..