## State of Arizona COMMISSION ON JUDICIAL CONDUCT

	Disposition of Complaint 10-354	
Complainant:		No. 1408810001A
Judge:		No. 1408810001B

## ORDER

The complainant alleged that a pro tem justice of the peace ignored his motions, disregarded the rules of civil procedures, issued incorrect rulings, improperly granted summary judgment and failed to give him sufficient notice to prepare for oral argument on that motion. After reviewing the allegations and the judge's response, the commission found no evidence of ethical misconduct on the part of the pro tem judge. Whether the judge ruled properly is a legal question outside the jurisdiction of the commission. The regular judge assigned to the case is responsible for providing notice, not the pro tem judge. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: June 2, 2011

FOR THE COMMISSION

/s/ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on June 2, 2011.

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

DEC 2 7 2010

December 21, 2010

State of Arizona Commission on Judicial Conduct 1501 W. Washington Street, Suite 229 Phoenix, Arizona 85007

RE: Judicial Complaint against the Honorable Justice of the Peace Moon Valley Justice Court Case No. CC2010

## Dear Commission:

This letter both forwards the judicial complaint form, and forms the supplement to that complaint. I realize the presumption is that judges do no wrong, and that in the end this complaint is probably little more than an exercise in futility. However, in light of the belief that Arizona's progressive founding fathers drafted for the people a constitution almost literally 100 years ago that created a judicial system that was supposed to be a *justice* system, I begin my journey down this path, if only for the sake of keeping faith with those that drafted a constitution that was supposed to be in the best interests *of the people* of the great state of Arizona.<sup>1</sup>

Justice of the Peace is not elected to the Moon Valley Justice Court was drawn to preside at the Precinct, and it is unknown from where Justice of the Peace proceeding that occurred on December 15, 2010. However, when Arizona's founding fathers people who for the most part were truly progressive individuals - created the Arizona judicial system, it left it to the sound discretion of the people to select the State's judges. Over time, for reasons unclear, for the most part, the people have been removed from the process of selecting the judges who preside over cases. Justices of the peace are a notable exception, at least in Maricopa County. However, it is because the people have been removed from the selection process that the work of the Commission is so important. The actions of judges are no longer policed by the people, through regular, two year elections. And in the instant case, because Justice of the Peace is not the designated justice of the peace for the Moon Valley Justice Court, the Commission serves a similar function in this matter, because the people of the Moon Valley Justice Precinct will not be given an opportunity to pass of his actions when it comes time to vote for the retention or substitution of a judicial officer.

I realize this almost sounds a bit tea-partyish. If it were possible, I would be happy remaining one of what Richard Nixon termed the "silent majority". But given the fact that recent history - both in Arizona and the nation - require that those of us who were formerly "silent" and "the majority" need to find their voice to correct the drift away from a civil society and one where the people's interests are not sacrificed to corporate interests, and which finds evidence in the current political landscape of this state. This is certainly one of the founding principles upon which Arizona's forefathers based the state's Constitution - create a government that acted as a buttress for the people's interests. My crash course in state constitutional government and history owes much to the late Professor Goff and John Leshy.

This matter comes before the court in the above captioned proceeding because in September 2007, Directy, Inc. sent a storm trooper 2 to my home to wreck havoc3 in the name of installing its service. Despite owning my home for almost twenty years, I had never had anyone come to my home and deliberately try to trash it, such as happened with Direct. Thereafter, despite speaking with Directv's customer service people, who promised me that Directv would timely resolve the matter, Directy proceeded to drag its feet. From the very start of my trying to resolve the matter, its conduct evidenced both bad faith, and a very real expression of a desire to magnify the harm it had already done to my home. When warned that I had neither the financial resources to fix the approximately \$1,500 damage done to my home, and the fact severe storms in December 2009 and January 2010 threatened to aggravate the existing damage to the home's vinyl siding, Directy continued to drag its feet. Ultimately, in desperation, with the parties' express understanding that I was pressing for a January 31, 2010 resolution of the matter with check in hand, I signed a release to settle the case, but with the further understanding that if check was not timely received I would be forced to finance the replacement of the vinyl siding in order to get the repairs done and foreclose the possibility of further damage to my home, already significantly damaged by Directv's actions.

Directv thumbed its nose at me. While it ultimately sent a check several weeks after the deadline, by that time, I had already engaged the services of a company to both complete the vinyl siding repairs and finance those repairs, and had incurred additional damages, since I was not about to continue to have my home exposed to further damage while all around my home violent storms hit and tornado watches were in effect. Directv's position was that it could delay

<sup>&</sup>lt;sup>2</sup> I realize that is hyperbolic, and I limit it to this example. But I am getting tired of presenting this matter in a reasoned voice, only to have my presentation discounted and thus disregarded on that basis. In part, I am reminded of what an attorney said many years ago. The attorney represented insurance companies in defense work, and worked with an adjuster who did not move away from an initial analysis of the case. This frustrated settlement with the other party. Once the attorney realized that the adjuster's position was based on the belief that the position was the product of a reasoned and dispassionate evaluation of the matter, and that the adjuster considered the position fair and reasoned in the absence of additional information, the attorney was able to present these facts to opposing counsel, and settlement efforts were more productive thereafter. Since that time, I have always taken to heart the idea that it is best to find the reasoned, rational and fair position and advance that as the point for any discussion. However, these days it almost invariably works to my disadvantage. One would think I would learn, but in this regard, I am "stupid".

Without going into great detail, by the time the technician left, I would have debris left throughout my home and yard, creating a health hazard for my dogs; I would have an unnecessary hole that had been drilled into the air intake vault for my home's central air system, negatively impacting the operation of my air handler; I would have the ducting for the air system in the attic damaged, allowing unfiltered air both into the air handler and into the home, causing both dust and health concerns; and the technician would rip a portion of the vinyl siding from the side of the home while installing the wiring. The technician did this with such force and lack of care that when finished, the piece of siding would more resemble a pretzel. It was because of this that later violent storm activity would weigh so heavily on my desperate desire to get the matter resolved, before the damage done was aggravated.

doing the right thing, and I had to suffer the consequences. Justice simply does not require that I accept that position, and therefore the late arriving check was rejected. After another attempt to get Directv to do the right thing in light of the delay that had caused me to act to save my home, suit followed and was filed on April 29, 2010.<sup>4</sup> My verified complaint set forth my concerns in detail, with necessary documents attached to the complaint so there could be no question that my claim for punitive damages had justification.

Because of an abusive discovery practice by Directv, I was forced to submit motions to compel various discovery responses, since I was otherwise unsuccessful in persuading Directv to respond meaningfully to my discovery requests. Since I was alleging punitive damages, and had filed a verified complaint to support those allegations, my efforts to obtain the relevant Directv documents concerning its handling of my claim was proper, as well as designed to show that Directv's claim that this matter "was settled" was invalid, all with evidence from Directv's own hands. Not surprisingly, Directv's attorney fought tooth and nail, and even lied to the Court to avoid having the Court rule favorably for me.<sup>5</sup>

In fact, in response to one motion to compel, counsel for Directv literally lied to the court. Despite hand-delivering a letter to Directv's attorney, Frank Fox, on August 9, 2010 that identified a discovery response that had *still* not been provided, on August 12th, counsel boldly stated to the Court that Directv had fully and completely responded to my discovery requests. I brought this deliberate misstatement of fact to the Court's addition in my reply filed on August 19, 2010. The discovery motions sat, without a ruling, despite the fact the Court set an October 20, 2010 trial date. But this was only one of a number of efforts Directv made to avoid addressing the validity of my claims.

<sup>&</sup>lt;sup>4</sup> Because of confusion by the justice court, and the belief that I could not file my complaint unless I stated a "sum certain" in the complaint, the initial effort to file the complaint was returned to me. Thereafter, the complaint was submitted with a "sum certain" included in the claim for relief and the court clerk filed the complaint on May 10, 2010. Despite following the Court's instructions, I was then forced to litigate a motion to dismiss, in part because the complaint stated a sum certain.

<sup>&</sup>lt;sup>5</sup> Ultimately, Directv was successful, because the Court quite simply failed to rule on any of the discovery or other motions, before trial. I am unable to discern why a Court can simply ignore relevant, well reasoned and presented motions and then try to make it seem the fault is mine for having pending motions, but this does nothing to foster a respect for the judiciary.

<sup>&</sup>lt;sup>6</sup> This is a troubling aspect of attorneys' conduct in recent years. It used to be the case there was a real and explicit emphasis on <u>doing justice</u>. But this situation echoes an episode where an attorney will crow about the settlement he obtained where he was able to keep the damning evidence out of the other party's hands that resulted in the settlement, or where an attorney will state, presumably with a straight face, that so long as he can justify the activity as being done on behalf of a client, almost any conduct is permissible. While this does not directly translate to judicial conduct, its existence is presumably the result of a tolerance by the judiciary. More importantly, it does not nothing to instill in an ordinary citizen any confidence in a "justice" system, since almost by definition, activity that is designed to thwart justice cannot be done in furtherance of that goal.

Despite the fact that on August 10, 2010, the Court set trial for October 20, 2010, and by order issued on September 15, 2010 following an unsuccessful mediation, it reiterated that trial date, Directv filed a motion for summary judgment on September 20, 2010. The motion did not comport with the timely submission requirement of Rule 56, nor did it satisfy the other requirements for a motion for summary judgment. I submitted a motion to strike the motion for summary judgment in light of the untimeliness of the motion, noting that Rule 56 required a motion to be filed 90 days before trial and the fact that in light of the untimeliness of the filing, I did not have an obligation to respond to the motion until <u>after trial was held</u>. Directv responded to the motion to strike, stating that it could not file the motion any sooner because discovery was pending.<sup>7</sup> My reply focused on the fact that Defendant's response did not justify denying the motion to strike, since Directv had failed to comply with the filing requirements of Rule 56 and that a response could not be filed before trial. My reply also affirmatively stated that I reserved the right to respond to the motion for summary judgment, should the court deny the motion to strike. Despite the fact the motion to strike was briefed before trial, the Court did not rule on the motion to strike.

Literally on the eve of trial<sup>8</sup>, the Court vacated the trial and continued the matter on the grounds there were "pending motions" before the court. The Court reset trial for December 15, 2010, and issued its minute entry that it would consider and rule on the pending motions, and if it felt oral argument was necessary, it would expressly schedule that argument. While this opened the window to the possibility that a response could be filed before the rescheduled trial date, Plaintiff relied upon the Court's assurance that the motions were going to be timely ruled upon, and the fact that even with the rescheduled trial date, Directv's motion was still untimely filed, as well as the fact that the Court had been informed of the fact that I was reserving my right to respond until the Court ruled upon the motion to strike.

But most importantly, I relied upon the Court to do its job, timely and properly, as a tax supported operation with an obligation to perform its job in a timely and conscientious manner. At a minimum, I had a reasonable expectation that if the Court was going to delay consideration, it would give me notice of that fact - particularly if it was later going to try to hold me responsible for its failure to act in a timely manner. In the end, this is precisely what the Court did - hold me responsible for its failure to timely and responsibly process and rule upon the pending motions, including the motion to strike, despite the fact that I tried to get the Court to rule before December 15th trial date by filing a request to the Court to give the parties a status on

Although Directv tried to make it seem that only it needed to complete discovery and claimed that it had done so by the date of filing, it should have been obvious to the Court that in light of my pending motions to compel, that discovery for both parties had not been completed. Since this point seemed obvious, in reply to the motion to strike, I did not note that relevant discovery requests were still pending to Directv, and that therefore one of the requirements of *Orme School v. Reeves* had not been met for the submission of a motion for summary - completion of discovery. Additionally, one of the factors guiding my conduct is the belief that certainly a judge has to know the requirements for a motion for summary judgment, so I should not be in a place of having to tell the judge what the judge should already know.

<sup>&</sup>lt;sup>8</sup> As I arrived home on October 19, 2010, I had a message waiting for me that had been left at approximately 4:30 p.m., notifying me that trial would be continued.

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the pending motions. The Court's action is simply unfair - since fairness dictates that I should <u>at least</u> receive notice if I am no longer going to be able to rely upon the Court doing as it has stated. Again, holding me responsible for the Court's failure to act simply invites scorn and fails to foster <u>any</u> respect for the Court.

December 15, 2010 arrived, and at the appointed time, I arrived at court for the trial in the matter. Despite my earlier effort to notify the Court of the still pending motions that had been filed, the Court had still not ruled on any of the pending motions, nor had the Court issued any order stating that it would hold oral argument on any pending motion. Therefore, while I was prepared to try my case, and had my witness available to testify, I was unprepared to argue any motion, since I relied upon the Court to say what it meant, and mean what it said. Again, I was focused on presenting my case at trial, and had taken the time, trouble, effort and expense to prepare for trial thinking the Court's inaction required this of me.

At trial on December 15th, the Honorable sat in place of the designated justice of the peace, Rebecca Macbeth. It is not known from what precinct Justice of the Peace was brought to handle the trial, but certainly he is not someone for whom I, or anyone else within the Moon Valley Justice Precinct, voted to preside over cases for our precinct.9 noted there were pending motions, including pending discovery Justice of the Peace motions. However, Justice of the Peace immediately focused on the motion for summary judgment, and decided to have oral argument on that motion. Justice of the Peace stated without any basis that I "chose not to respond to the motion for summary judgment". I stated to the Court that I was not prepared to brief the motion, but I would try to offer a meaningful response, but the Court refused to allow me to address the motion. Thereafter, without being given any opportunity to meaningful present what admittedly would have been only a meager response, in light of the lack of notice and therefore inability to prepare - I tried to point out there were genuine issues of material fact that would preclude granting the motion, and why the motion to strike was proper - the Court summarily ruled granting the motion for summary judgment, and declining to give effect to the motion to strike that noted the requirement a motion be submitted 90 days before trial. Justice of the Peace refused to strictly apply the 90 day submission requirement, but decided that I was to be strictly held to the time for a response to the motion.<sup>10</sup> Subsequent to the ruling, I was able to again review Rule 56 -

<sup>&</sup>lt;sup>9</sup> I realize that the process for selecting judges has changed significantly from the process created by the progressives who crafted Arizona's original constitution in 1910, and the process that was restored by the voters of Arizona after its admission to the Union. The state's founding fathers believed that frequent, two year spaced, non-partisan elections of judges, as with other state officials doing the people's business, was one way to ensure the people's business was properly conducted. Transformation to elections on a four year basis, and removal of the people from the judicial selection process, has changed the judiciary in Maricopa County. However, even though justices of the peace remain subject to direct, non-partisan election by the people they serve, it defeats the purpose when non-elected justices sit in judgment of cases.

Interestingly, in documents filed with the Court, Directv acknowledged that the motion for summary judgment would not even be timely submitted for the December 15, 2010 trial date. More importantly, this was not the first occasion when Directv's counsel failed to comply with the rules and forced me to bring the matter to the Court's attention. Ultimately, the Court refused to rule

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something I had not been given an opportunity to do at or before the Court's ruling, in light of the lack of notice - and it is clear that a response requirement is for a *timely* submitted motion for summary judgment. The Court's actions do nothing to foster a respect for the judiciary, as it reinforces a concern about arbitrary and capricious action.

Prior to December 15th, the Court failed to timely rule on the motion to strike, or any other pending motion. Had the Court done so, then the issue of whether a response to the motion for summary judgment would have been resolved, before trial. It is wholly improper to hold me responsible for the Court's failure to timely rule on the pending motion, particularly where the October 20th trial was continued to allow the Court time to rule. It is improper to tell the parties that if oral argument will be held, the parties will be given timely notice of that fact, and then not only fail to tell the parties oral argument will be held - instead of having trial in the matter - but then expect me to be in a position to be able to argue the various pending motions when my exception and preparation efforts are to get ready for trial. Since I am not a lawyer, and nothing in the rules gives me any hint that the Court might do something like this, it is wholly inappropriate for the Court to act in this manner.

I realize that I am not entitled to a favorable ruling, but I am entitled to respect from the Court. I am entitled to timely notice if the Court is going to hold oral argument. I am entitled to equal consideration and it was simply improper for the Court to hold me to a higher standard than it held Directv's attorney. And finally, given the proven evidence that I had presented that showed Directv's attorney had a proven propensity to be untruthful, it was unfair of the Court to suggest that I had merely submitted motions without substance or reason, particularly when they were objective reasoned and well developed motions.

I realize the immediate response to what I have presented here is that these are issues that need to be raised on appeal. The path of an appeal will certainly be pursued in light of what I believe to be clear and obvious error in both the way the Court handled the matters before it, and the Court's ruling in light of a number of important facts. But this matter is raised here for at least two reasons.

The first is that conduct exhibited by Justice of the Peace is not conduct that gives the public and certainly people who are not used to being in a courtroom - people such as myself - any faith in the impartiality or professionalism of the "justice" system. It was clear from the moment that Justice of the Peace entered the courtroom that his mind was made up and he was not going to allow me my day in court, and there certainly seemed to be an immediate intimacy and preference shown to Directv's trial counsel, Tom Hall.<sup>11</sup> It should not

on the motions, or address counsel's misconduct, but wanted to hold me strictly accountable - <u>despite the fact that not only am I not an attorney</u>. Moreover, in light of the fact that I am not an attorney, the Supreme Court has stated that I am to be given leeway in applying the rules to my actions, specifically because I am not an attorney. Therefore, for the Court to hold me to a <u>higher</u> standard than it was going to apply to the attorney's actions is simply improper.

Admittedly, I can only speculate. But there seemed to be too much familiarity between Justice of the Peace and Mr. Hall. The fact that Mr. Hall knew Justice of the Peace certainly suggests some existing relationship and the fact that Justice of the Peace engaged

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be incumbent upon people like me to appeal a matter, in order to get a fair hearing on the merits. It should not be the responsibility of individuals to police the conduct of a judicial employee. These people get paid with my tax dollars to do their job in a timely and professional way. There was no reason for the matter of pending motions to still be unresolved at the time of a December 15th trial, particularly where trial had been originally continued for the express purpose of allowing the Court to rule on those motions. The Arizona Supreme Court should already be doing this oversight work, particularly since the people have been removed from the meaningful decisions about what judges should sit as judges in Maricopa County. That is one reason for bringing this matter to your attention.

The other reason is that whenever a judicial employee acts in what is an abrupt manner, in contravention of what the Court has stated it will do, in disregard of the information already in the court file, and with an effort to punish someone who not only is to be allowed some leeway in the matter - given the Supreme Court's own instructions in these matters - but then failed to hold the attorney to any rule of strict accountability, again simply invites scorn on the judiciary. Certainly an attorney should be held to strict accountability - this is the basis of his livelihood, and the attorney should know these requirements intimately. But fairness alone dictates that if the Court is going to hold me to some standard of strict compliance with the rules, then the same standard should be applied to the other side. Allowing an attorney to repeatedly ignore the rules, requirements and time frames required for the orderly process of handling a legal matter is unfortunate. Allowing an attorney to do that and then demand that I strictly meet those same requirements to justify a ruling that would not be supportable if the Court reviewed the record already before it, or allow the information and evidence that I tried to present, is unconscionable.

The fact that pending motions were left for months without a ruling, the fact that the Court had expressly stated that if oral argument was required, it would notify the parties, the fact that the Court rescheduled trial to facilitate a ruling on the pending motions, the fact that I had discovery motions that if they had been ruled on would have allowed me to further develop my case, the fact that I was ambushed at trial with a requirement that I argue something for which I had not been allowed to prepare, the fact that ultimately, the Court held me to a higher standard than the attorney who is given great leeway to abuse the rules and the process, these are things that give one great pause to consider why I pay my taxes, why I continue to believe in the American system, and why I continue to put my faith in a "justice" system. Where is the justice and why are people employed with Arizona taxpayers' dollars to make meaningful and "just" decisions acting in such an arbitrary and capricious manner? This should not happen.

One final thought before I conclude. My experience in this proceeding mirrors that which The New Times experienced several years ago in its litigation with the Sheriff Arpaio and the Maricopa County Sheriff's Office over a public records request. Judge Michael Jones presided, and ruled against The New Times, seemingly making it clear that if it was going to succeed against the Sheriff's Office, it was going to have to take the long, hard road. Upon

in a noticeably different demeanor between the parties is certainly disquieting. I realize this probably forms no basis for any action by the Commission, but I note this fact since I would suggest that monitoring of courtrooms by some oversight body might be most helpful in situations such as this.

appeal, the Court of Appeals repeatedly noted the fundamental error that Judge Jones had committed, as it took apart his ruling item by item and explained for the benefit of Judge Jones why his rulings were not in compliance with the law. The New Times should never have had to travel the long hard road for justice in accordance with the law. Judge Jones' conduct certainly fails to bring respect to the judiciary, and indeed brings scorn from those who learn of his actions. If feel the same way in this matter, since it is clear to me that Justice of the Peace wants me to pay for having the audacity to sue Directv for trashing my home and then not wanting to wait forever for it to make payment to me, even as Mother Nature threatens to aggravate that damage. The people have lost all voice in the selection of those that sit as judges in Maricopa County, and with regard to Justice of the Peace activities. It is therefore incumbent upon governmental bodies such as the Commission to be the balancing weight in this system. I hope you will take the responsibility seriously.

As I began, I end. Despite the brief moment of optimism in the previous paragraph, I realize this will ultimately be nothing more than an opportunity to "vent'; nothing meaningful will come of this, because if you really take this matter seriously, you will need to act to clean up a situation that has already gotten out-of-hand. In speaking with people exactly like me, there is a growing sense among average citizens who have had the misfortune of interaction with the judicial system - as a litigant, witness, or other person involved in some manner in a legal proceeding - that the system is broken and that calling it a "justice system" is a misnomer. If you want do something meaningful, taking action in response to this complaint would certainly make me comfortable, but there is a bigger problem with the way the system exists and presents itself that simply does not give people comfort that what they have been sold in their schools and public discourse actually exists.

The documents I have been forced to prepare and file with the Court because of Directv's attorneys' conduct constitutes a small mountain of paper. I am happy to make all of it available to you, or any part of the submissions that may be useful in your review of this matter. However, because I am not certain what documents you may deem relevant or useful to your review, I will leave it for you to tell me what documents may be useful.

I appreciate the opportunity to present my concerns for your consideration.

Sincerely,

<sup>&</sup>lt;sup>12</sup> For the record, I had no involvement in the case, and only came to find out about the case almost wholly by accident. But it helps frame my concern about the state of the judiciary in this State in general and Maricopa County in particular. Without any meaningful oversight, judges simply think they can do anything they want, regardless of the consequences, because usually there are none.