

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-159

Complainant: Anonymous

Judge: Clancy Jayne

ORDER

After reviewing the allegations and the response filed by Judge Jayne, the Commission finds that the justice of the peace in this case violated the Code of Judicial Conduct, warranting an informal sanction.

An anonymous complainant alleged that Judge Jayne engaged in improper ex parte communications with a defendant, and improperly handled the matter. In particular, the complainant believed that the judge treated the defendant differently because of a personal or political relationship. The Commission determined that Judge Jayne engaged in several, improper ex parte communications that clearly violated the limitations in Rule 2.9 of the Arizona Code of Judicial Conduct. Notably, the judge believed that his communications pertained only to scheduling matters, but nonetheless failed to disclose them as is required in Rule 2.9(A)(1)(b). The Commission was particularly concerned with the personal nature of the communications, including the fact that at least one communication occurred through the use of the judge's private email address.

Accordingly, the judge is hereby reprimanded for his conduct pursuant to Rule 17(a), and the record in this case, consisting of the complaint, the judge's response and this order, shall be made public as required by Rule 9(a). Through this order, the Commission urges Judge Jayne to closely review the requirements and prohibitions found in Rule 2.9.

Dated: November 16, 2011,

FOR THE COMMISSION



Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on November 16, 2011.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2011-159

COMPLAINT AGAINST A JUDGE

Anonymous Court Employee

Your name: _____ Judge's name: Judge Clancy Jayne Date: JUN 15 2011

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

On July 9, 2010, Judge Jayne granted an ex parte delay request for his friend, State Senator Scott Bundgaard, on the day of his civil traffic hearing. The DPS officer had to come back a second time on August 27, 2010. However, Senator Bundgaard failed to appear on that day as well and was fined \$185.00. However, on September 7, 2010, Judge Jayne waived the required \$20 time payment fee and the required \$30 default fee. Please see the enclosed iCIS print out.

(Attach additional sheets as needed)

AUG 11 2011

July 15, 2011

Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

Re: Response to Case Nos. 11-155 and 11-159

Dear Commissioners:

Thank you for the opportunity to respond to the allegations presented in the commission's *Notice of Investigations* dated June 28, 2011. After careful consideration of the commission's concerns regarding my conduct as a judge in each of the noted cases, I wish to present my formal response (with exhibits) to the commissioners.

Case 11-155

(Part A)

The commission has inquired about my bi-monthly "Breakfast with the Judge" information on my website and its concern that I "*may be engaged in ongoing, improper political activities*" directly related to this event.

To further understand the concept of the breakfast, the commission has also asked for:

1. A description of the event.
2. A list of guests featured on the invitations.
3. Clarification regarding whether I permitted or invited any political candidates to engage in: solicitation of campaign contributions, gathering nominating petition signatures, solicitation of campaign volunteers, or active campaigning through remarks presented to breakfast attendees.

Answer:

Prior to being elected as the Justice of the Peace for the Desert Ridge Precinct in 2008, I was excited about relaunching my monthly breakfast event that I conducted in the Deer Valley area for many years. However, following my swearing-in in January 2009, I placed all of my time and emphasis on becoming a knowledgeable justice with the assistance of a very efficient court staff. This was not the right time to relaunch my breakfast series.

After two years on the bench, in January 2011, I contacted Marty Vance, Justice Court Administrator, to inquire about the legality of hosting a breakfast series. Mr. Vance forwarded my questions and concerns to Maricopa County Deputy Attorney, Brandon Newton. Following a conversation with Mr. Vance, on February 8, 2011, Mr. Newton deferred a legal opinion to the Commission on Judicial Conduct. (See Exhibit 11-155 A)

On February 17, 2011 Mr. Vance contacted Mr. Keith Stott, the Executive Director of the Commission on Judicial Conduct. Mr. Stott reviewed the ethical concerns that one might have with the breakfast, applying the Judicial Canons to answer those concerns. On February 23, 2011, Mr. Stott emailed Mr. Vance with his answer to my inquiry. He wrote the following (See Exhibit 11-155 A):

*From: Stott, Keith [mailto:KStott@courts.az.gov]
Sent: Wednesday, February 23, 2011 9:21 AM
To: James Vance - MCJCX
Subject: RE: Breakfast with the Judge*

Marty: There is nothing in the Code of Judicial Conduct that would prohibit this type of activity as long as the judge adheres to the code in general. For example, Rule 3.1 permits a judge to engage in extrajudicial activities as long as they do not interfere with the performance of the judge's judicial duties, lead to frequent disqualification of the judge, affect the judge's independence, integrity or impartiality or demean the judicial office, and so on. The judge should also be careful, as you pointed out, not to talk about specific court cases. -Keith Stott

I appreciated Mr. Stott's positive answer and valued his expert legal opinion. I was excited, once again, to host a breakfast event open to the public. I immediately began the task of planning a professional event that would make the commission proud.

I believe that in just two breakfast events, I have accomplished just that – based on the bi-partisan participation of public, elected and judicial attendees. Our July 1st breakfast ended with a moving rendition and sing-a-long of *God Bless America* led by Encanto Precinct Justice of the Peace, C. Steven McMurry. It was a fitting way to ring in the July 4th weekend.

Answers to specific commission questions:

(1) The breakfast is a bi-monthly event that encourages fellowship within the surrounding community and provides the opportunity for all interested parties to attend and enjoy breakfast together. The breakfast is completely open to the public and walk-ins are welcome.

(2) The inaugural May 6, 2011 breakfast featured Arizona Congressman Jeff Flake. The July 1, 2011 breakfast featured the Arizona Senate President, Russell Pearce.

(3) Under absolutely no circumstance was any campaign activity promoted, encouraged or solicited. I would never compromise any event I am affiliated with by allowing any campaigning activities. I began working to secure Congressman Flake's appearance at my inaugural breakfast before he announced his candidacy for the US Senate. Arizona Senate President Russell Pearce was not a candidate for any office as of the July 1, 2011 breakfast.

(Part B)

The commission raises several concerns regarding my website. First, the commission notes that I "*specifically list and thus advertise*" my wedding services "*which appears to be a direct violation of Rule 3.16(C)*". Second, the commission notes that a list of local resources "*appears to be partisan*" because the Arizona Republican Party is listed while the Arizona Democratic Party and others are not listed. Third, the commission suggests that I may be biased (or have the appearance of bias) in matters pertaining to civic organizations that I belong to, some of which the commission "*is unfamiliar with*".

Answers to specific commission questions:

(1) The Maricopa County Superior Court website (under Justice Courts, last entry in general information) says this about marriage ceremonies:

The Justice of the peace may also perform marriage ceremonies. Under the authority of the State of Arizona, the Justice of the peace is authorized to perform a marriage anywhere in the state. Some justice courts also issue marriage licenses.

<http://www.superiorcourt.maricopa.gov/justiceCourts/GeneralInformation/Index.asp> (See Exhibit 11-155 B)

Many parties interested in being married by a justice of the peace retrieve my name and/or court precinct information from the MCSC website then conduct a Google search to learn whether or not my court conducts weddings. Since the MCSC website is nearly silent on information regarding weddings, a normal Google search may cause several to end up at my website (or another justice's website) by default. This is not intentional. I have been able to direct many interested parties to the Justice Court website that lists the jurisdictions of other justices that may be more proximal to the party.

My website does list wedding services; however, it is for informational purposes only. I do not advertise in sidebars or pay any search engine for preferential searches and/or advertising. I do not advertise in local newspapers, bridal shows, etc. I have no interest in advertising for wedding services now or in the future.

(2) The resources listed on my website are general in nature and do not cover all of the possible legal, political and resources available to the public. I certainly did not purposefully exclude any particular political party.

(3) The list of civic organizations I am a member of is really a biography of my 30+ years in the North Phoenix area. This list represents a significant part of my curriculum vitae. I am not an attorney as so many of our justices are and cannot list the legal associations and memberships that most attorneys are familiar with. Some of organizations listed on my website may be unfamiliar to the commission since they are small, regional groups that are not widespread across the Valley. My webmaster has taken great care to confirm that the list is correct. To allay any fears of the commission, I certainly would recuse myself from any case before me that would appear to conflict with my membership in any one of these organizations.

Case 11-159

The commission recently received an anonymous complaint suggesting I have a personal friendship with Senator Scott Bundgaard from my previous service in the state legislature and issued an unusual ruling favoring Bundgaard, in a civil traffic matter that occurred in the Desert Ridge precinct on March 23, 2010. (See Exhibit 11-159 A)

The commission has asked that I:

1. Clarify my relationship with Senator Scott Bundgaard.
2. Clarify the nature of any communications I had with him regarding the case before me in 2010.
3. Explain the basis for my waiver of mandatory fees.

(1) Scott Bundgaard and I do not have a personal friendship and did not serve in the legislature together. I served in the 46th legislature, following my election in November 2002. My service was from 2003-2004. Bundgaard's last service ended with the 45th legislature. We did not reside in the same legislative district during our different years of service in the legislature and still do not today. We do not have any political, familial or personal connection with each other and never have.

(2) On April 28, 2010, Scott Bundgaard was scheduled to appear in the Desert Ridge court regarding a civil traffic matter. He called me early that morning and said he was out of town on business. He asked if the case could be continued. I told him I would need something in writing and he faxed a request to continue the case to the court. His hearing was rescheduled for June 11, 2010. (See Exhibit 11-159 B)

The June 11, 2010 hearing was rescheduled for July 9, 2010 because the DPS officer who cited Bundgaard was required to be in mandatory training on June 11, 2010. (See Exhibit 11-159 C)

The next communication the court received from Bundgaard was on July 9, 2010. Bundgaard faxed and emailed the court asking for a motion to continue the case because he was in Sacramento, California on work related business. I granted the continuance once the request was presented to me by staff. In this request, Bundgaard asked for a hearing date after August 24, 2010. He was granted a hearing date of August 27, 2010. (See Exhibit 11-159 D)

(3) I waived the fees based on the need to continue in order to prevent a *failure to appear* and the court's practice of efficiently adjudicating a case. I did not grant Bundgaard any special favor by waiving the fees. I have waived fees in any number of cases when it is necessary or requested in order to facilitate the closure of a case file.

Again, I thank the commission for the opportunity to answer the questions it has regarding my conduct as a judge. I look forward to working with the commission to resolve these cases. Please contact me if any further information is required.

Sincerely,

Judge Clancy Jayne
Justice of the Peace, Desert Ridge Precinct

Please consider and advise. If you would like to discuss this in detail, please call me at one of the numbers below. In addition, if I might have a few minutes of your time, I have another matter that I would like to speak to you about over the phone, at your convenience.

Regards,

Marty

James M. Vance
Justice Court Administrator
Maricopa County Justice Courts
222 N. Central, Suite 210
Phoenix, Arizona 85004

602-372-3601 Ofc.
602-372-8793 Fax
602-527-5194 Cell
jamesvance@mcjc.maricopa.gov

"To provide professional judicial services for court users so they can obtain timely and economical justice within their community"

From: Clancy Jayne - MCJCX
Sent: Tuesday, February 08, 2011 2:38 PM
To: James Vance - MCJCX
Subject: RE: Breakfast with the Judge

Marty,
Yes I would like to see if there is a plan or format that could allow me to conduct such a event.
Not hearing NO is not a Bad thing.
Clancy

From: James Vance - MCJCX
Sent: Tuesday, February 08, 2011 11:23 AM
To: Clancy Jayne - MCJCX
Cc: 'Brandon Newton'
Subject: FW: Breakfast with the Judge

Judge,

The advice from the Deputy County Attorney follows. Would you like me to continue to pursue this?

Marty

James M. Vance
Justice Court Administrator
Maricopa County Justice Courts
222 N. Central, Suite 210
Phoenix, Arizona 85004

602-372-3601 Ofc.
602-372-8793 Fax
602-527-5194 Cell

EXHIBIT
11-155A

jamesvance@mcjc.maricopa.gov

"To provide professional judicial services for court users so they can obtain timely and economical justice within their community"

From: Newton Brandon [mailto:Newtonb@mcao.maricopa.gov]
Sent: Tuesday, February 08, 2011 8:07 AM
To: James Vance - MCJCX
Subject: RE: Breakfast with the Judge

After looking over the issue my office believes it would be best to seek guidance from the Commission on Judicial Conduct. I believe they can provide more controlling advice on judicial conduct compared to my office. If you have any questions, please let me know.

Brandon

The information contained in this e-mail is confidential (attorney-client privileged) and is intended solely for the use of the recipients listed above.

From: James Vance - MCJCX [mailto:jamesvance@mcjc.maricopa.gov]
Sent: Friday, January 28, 2011 9:32 AM
To: Jayne Clancy
Cc: Newton Brandon
Subject: Breakfast with the Judge

Judge,

In speaking with our attorney, Brandon Newton, about your proposed "Breakfast with the Judge", on first blush he felt that this might violate the canons in the area of impartiality and possibly one or two others. Even the use of outside speakers could be construed as promoting your point of view and thus appear less than impartial. He will look into it next week and render an opinion.

From my perspective I would have a concern that this would put you in a position to have to "retry" cases that you've heard when people attend and ask questions of you. Anyone with an "axe to grind" would have an opportunity to do so and it might also compromise your safety and the safety of others. A regularly scheduled meeting or even just advanced notice would allow for planning time for someone with a grudge to attempt to resolve it in an environment that is without security.

As your administrator and friend, I would be concerned for your safety.

Marty

James M. Vance
Justice Court Administrator
Maricopa County Justice Courts
222 N. Central, Suite 210
Phoenix, Arizona 85004

602-372-3601 Ofc.
602-372-8793 Fax
602-527-5194 Cell
jamesvance@mcjc.maricopa.gov

"To provide professional judicial services for court users so they can obtain timely and economical justice within their community"

\$10,000.00. An eviction action or special detainer action is a landlord/tenant dispute for non-compliance of the rental agreement and for return of possession of the rental property.

[Click here](#) for more information on eviction action or special detainer actions.

Other Civil Proceedings

The justice of the peace also hears cases involving livestock liens, disposition of vicious or mistreated animals and post-storage hearing claims (impounded automobiles).

Petitions for Orders of Protection, Injunctions Prohibiting Harassment and Injunctions Prohibiting Workplace can be filed and processed in any court in the State.

Marriage Ceremonies

The Justice of the peace may also perform marriage ceremonies. Under the authority of the State of Arizona, the Justice of the peace is authorized to perform a marriage anywhere in the state. Some justice courts also issue marriage licenses.



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EXHIBIT
11-155 B



ARIZONA DEPARTMENT OF PUBLIC SAFETY
ARIZONA TRAFFIC TICKET AND COMPLAINT
 Correctly mark as using a black pen

REPORT NUMBER

COMPLAINT **11421887** SOCIAL SECURITY NUMBER (Same as DL #) MILITARY YES NO COLLISION FATALITY SERIOUS INJURY COMMERCIAL HAZ MAT 16 PASSENGER

DRIVER'S LICENSE NUMBER **B10990092** STATE **AZ** CLASS **D** ENDORSEMENTS **(M H N P T X D)** PRIMARY COMPLAINT NO.

DEFENDANT NAME: FIRST **SCOTT** MIDDLE **ALLEN** LAST **BUNDGAARD**

RESIDENTIAL ADDRESS **21424 N 78TH DR** CITY **PEORIA** STATE **AZ** ZIP CODE **85382**

MALE FEMALE EYES **BLU** HAIR **SN** HEIGHT **6'2"** WEIGHT **175** ORIGIN **W** DATE OF BIRTH (MM/DD/YYYY) **1/11/1968** RESTRICTIONS PHONE BUSINESS PHONE

BUSINESS ADDRESS CITY STATE ZIP CODE BUSINESS PHONE

VEHICLE COLOR **GRN** YEAR **02** MAKE **MERZ** MODEL **4D** STYLE **GF** LICENSE PLATE **0393** STATE **AZ** EXPIR. DATE **2/15/11** VEHICLE IDENTIFICATION NUMBER (VIN) **98474**

REGISTERED OWNER (SAME AS DEFENDANT) ADDRESS

THE UNDERSIGNED CERTIFIES THAT:

ON **3/23/2010** TIME OF DAY **1410** SPEED **85** APPROX **65** POSTED **65** R&P **65** SPEED MEASUREMENT DEVICE RADAR LASER OTHER **779.5'** EQUIPMENT NO. **779.5'** DIRECTION OF TRAVEL NORTH WEST SOUTH EAST

AT **SR101** MILEPOST **33.5** LOCATION OFF-HIGHWAY PRECINCT **0725** COUNTY **07** STATE OF ARIZONA

THE DEFENDANT COMMITTED THE FOLLOWING:

A	SECTION 28-701A	<input checked="" type="radio"/> ARS <input type="radio"/> TRIBAL <input type="radio"/> CC	VIOLATION SPEED WAVE FINE	<input type="radio"/> DOMESTIC VIOLENCE CASE
	DOCKET NUMBER CT2010156059	DISPOSITION CODES 58/12	DISPOSITION DATE 8/27/10	SANCTION \$185 + 30 + 20
B	SECTION	<input type="radio"/> ARS <input type="radio"/> TRIBAL <input type="radio"/> CC	VIOLATION	<input type="radio"/> DOMESTIC VIOLENCE CASE
	DOCKET NUMBER	DISPOSITION CODES	DISPOSITION DATE	SANCTION
C	SECTION	<input type="radio"/> ARS <input type="radio"/> TRIBAL <input type="radio"/> CC	VIOLATION	<input type="radio"/> DOMESTIC VIOLENCE CASE
	DOCKET NUMBER	DISPOSITION CODES	DISPOSITION DATE	SANCTION
D	SECTION	<input type="radio"/> ARS <input type="radio"/> TRIBAL <input type="radio"/> CC	VIOLATION	<input type="radio"/> DOMESTIC VIOLENCE CASE
	DOCKET NUMBER	DISPOSITION CODES	DISPOSITION DATE	SANCTION
E	SECTION	<input type="radio"/> ARS <input type="radio"/> TRIBAL <input type="radio"/> CC	VIOLATION	<input type="radio"/> DOMESTIC VIOLENCE CASE
	DOCKET NUMBER	DISPOSITION CODES	DISPOSITION DATE	SANCTION

YOU MUST APPEAR AT COURT **DESERT RIDGE** COURT NO. **0725** COURT PHONE NO. **602-372-7186**

BUSINESS ADDRESS **18380 N 40 ST** CITY **PHX** STATE **AZ** ZIP CODE **85032**

AT THE DATE AND TIME INDICATED MONTH **4** DAY **28** YEAR **2010** TIME **8:30** AM PM

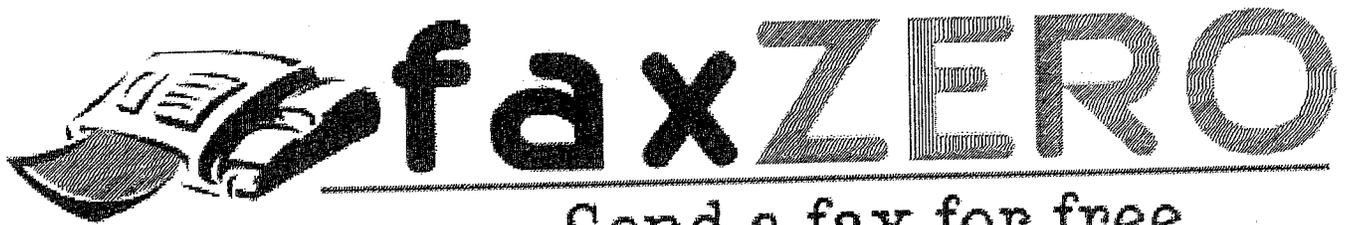
CRIMINAL: Without admitting guilt, I promise to appear as directed herein. VICTIM? VICTIM NOTIFIED? FINGERPRINTED?

CIVIL: Without admitting responsibility, I acknowledge receipt of this complaint. I certify upon reasonable grounds, I believe the person named above committed the acts described and I have served a copy of this complaint upon the defendant.

X FEAR COMPLAINTANT **100603** BADGE NO. **26070100** LOCATION CODE NO.

You may visit www.azdps.gov/courts for additional court or traffic school information.

EXHIBIT
11-159A



Send a fax for free

Recipient Information

To: Eric
Company: Desert Ridge Justice Court
Fax #: 6023727912

Sender Information

From: Scott Bundgaard
Company: 602-989-2144
Email address: scott@bundgaard.com
Sent on: Wednesday, April 28 2010 at 1:42 PM CDT

This fax was sent using the FaxZero.com free fax service. FaxZero.com has a zero tolerance policy for abuse and junk faxes. If this fax is spam or abusive, please e-mail support@faxzero.com or send a fax to 800-980-6858. Specify fax #3248030. We will add your fax number to the block list.

EXHIBIT
11-159B

Desert Ridge Justice Court
Maricopa County

Complaint Number: 11421887

COMPLAINANT

Desert Ridge Justice Court
18380 N. 40th St
Phoenix, AZ 85032

DEFENDANT

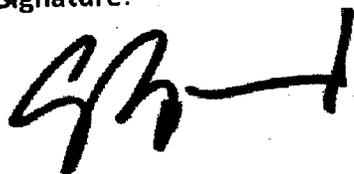
Scott Bundgaard
21424 N. 78th Drive
Peoria, AZ 85382

Motion to Continue

Defendant requests that the Court grant a motion to continue so that Defendant may finalize preparation for this case.

Date: April 28, 2010

Signature:



4/29 8:05 AM - CALLED DEF. HE STATED
HE WAS REQ. CTH. TOLD HIM
I'D MAIL JUNE 11th HANG DATE

EXHIBIT
11-159B

ARIZONA DEPARTMENT OF PUBLIC SAFETY



ROBERT C. HALLIDAY
DIRECTOR

FAX TRANSMITTAL COVER SHEET

METRO PATROL BUREAU

Scottsdale Office - 15600 N. 78th Street
Scottsdale, AZ 85260
(480)609-2180
(480)609-2140 (Fax)

DATE: 5-25-2010

TO: DESERT RIDGE

FAX #: 602-372-7912

FROM: D. FEW 1603

NO. OF PAGES (Including cover sheet): 3

Comments:

IF YOU EXPERIENCE ANY DIFFICULTIES WITH THE TRANSMISSION OF THIS FAX,
PLEASE CONTACT _____ AT EXTENSION _____

EXHIBIT
11-159C



* DESERT RIDGE Justice Court, Maricopa County, State of Arizona

STATE OF ARIZONA		vs. *	CASE NUMBER *
			CT2010156059
SCOTT A BUNDGAARD		Defendant *	FELAN Officer Name *
21424 N 78TH DR		Address *	6603 Officer Badge *
City	PEORIA	STATE	PHONE () -
			26070400 Locator *

NOTICE OF UNAVAILABILITY OF WITNESS TO APPEAR AT HEARING

- Witness will be on vacation.
- Witness will be in mandatory training.
- Witness will not be available due to medical reasons.
- Witness will not be available due to family emergency.
- Other _____

[Signature]
Supervisor Signature

D. Felan 6603
Officer's Signature

ON THE COURT'S OWN MOTION IT IS THEREFORE ORDERED THAT A CONTINUANCE BE GRANTED/DENIED.

Date: 6-4-10

[Signature]
Judge

RESET FOR NEW HEARING AND
NOTIFY BOTH PARTIES

Copies sent on _____ to:

- Defendant
- Defense Attorney
- Other

By: _____

*** Mandatory Fields for Officers**

5/25 2:20pm emailed DEF.
5/26 9:40am NOTIFIED DEF. - WILL FAX OBJECTION.

EXHIBIT
11-159C

Eric Daignault - MCJCX

From: Scott Bundgaard [scott@bundgaard.com]
Sent: Friday, July 09, 2010 12:11 AM
To: Eric Daignault - MCJCX
Subject: Re: Desert Ridge Justice Court
Attachments: PastedGraphic-2.tiff; ATT00001.htm; PastedGraphic-1.tiff; ATT00002.htm; PastedGraphic-3.tiff; ATT00003.htm; Desert Ridge Justice Court Motion to Continue 07-09-10.pdf; ATT00004.htm

Hello Eric,

I'm in Sacramento on work-related travel and am asking the Court to grant this request for a Motion to Continue. May I suggest a date after August 24, 2010? When the date was set for this hearing, I was unable to secure a guarantee from my employer that this date would remain clear of any work-related conflicts. I apologize for the lateness of this request.

Thank you for your consideration.

Scott Bundgaard

EXHIBIT
11-159 D

Maricopa County Justice Court, Maricopa County

Desert Ridge Justice Court

Case Number: CT2010-156059

Complaint No.: 11421887

COMPLAINANT

State of Arizona

DEFENDANT

Scott Bundgaard
21424 N. 78th Drive
Peoria, AZ 85382
602-989-2144

Motion to Continue

Notice of Unavailability of Defendant to Appear at Hearing

Defendant requests that the Court grant a Motion to Continue because Defendant had an existing conflict on this date due to work-related travel.

A Motion to Continue was granted to Officer Felan on June 06, 2010 due to a work-related obligation. Defendant requests that the Court grant this Motion to Continue due to the unavailability of the Defendant to appear at the hearing scheduled for July 09, 2010 at 08:30a.

Defendant states under penalty of perjury that the foregoing is true and correct.

Date: July 08, 2010

Signature:



EXHIBIT
11-159D

AUG 25 2011

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

RE: Case 11-159

A few points to be made:

Attached is a copy of a fax dated Tuesday September 07 2010, Whereby Clancy (Jayne) responds ex-parte to Scott (Bundgarrd) regarding Bundgaard's missed hearing date and his suspension of driver's license. This fax is not now a part of the file, because SOMEONE at the court has removed it. As you can clearly see there were notes made on the fax, including the case number (CT2010-156059). There should be an investigation into that!

Also, Mr. Bundgarrd has never filed a written motion with the court to have his fees waived. In most cases where a defendant has failed to appear and there has been no written motion to the court to waive fees, the Judge has not granted a fee waiver, EXCEPT for this case. Would appear, that in this case there have been some biased rulings made.

Scott,
I will see what I can do but you need to get this cleared up Mexico or not.
Clancy

In a message dated 9/6/2010 9:22:53 P.M. US Mountain Standard Time, scott@bundgaard.com writes:

Clancy,

I got a note from your court that says my license was suspended for not attending a court hearing. I've been in Mexico this past week helping to build an orphanage with my church because it was my understanding that my court date for the traffic ticket is 09/27, not having received written confirmation for that court date. These dates were extended due to the officer not being able to attend the hearing on the date that HE set at the time of issuing the citation. I objected by email to a court official not knowing I had to respond with a written motion. Now, this letter states I was supposed to submit \$235 to your court by Aug. 31, but the letter is postmarked Sept. 3rd!!

Can you help me sort this out quickly and fairly, please?

Thx,
Scott=

FTA on
8/27/10
notice was
mailed 7-9-10

CT 2010-156059

9-7-10 \$50⁰⁰ fee waived per Judge Jayne

September 6, 2011

SEP 06 2011

Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

Re: Supplemental Response to Case 11-159

Dear Commissioners:

Once again, I thank you for the opportunity to respond to the allegations presented in the commission's *Notice of Investigations* dated June 28, 2011 and the commission's additional inquiry regarding the aforementioned case, dated August 25, 2011. As with my previous response to the commission, I have carefully considered the commission's concerns regarding my conduct as a judge and wish to present my formal response, with three additional exhibits, to the commissioners.

Case 11-159

On August 25, 2011, I received a supplemental inquiry and attached document (See Exhibit 11-159 E) via email from Jennifer Perkins addressing the commission's receipt of an additional document which, like the original complaint, was received in anonymous envelope. The recent arrival of this official court document prompted several additional questions from the commission while raising another very significant internal problem.

The commission should be aware that the Desert Ridge Justice Court has initiated a formal investigation into the disappearance of this official court document from its case file. I wish to explain my contact with the official CT2010-156059 case file to the commission and hope to ally any further questions regarding this. I will answer the commission's supplemental inquiry questions and concerns following this narrative.

Narrative regarding commission's anonymous receipt of official court document:

This newly received official court document (Exhibit 11-159 E) raises an issue of criminal conduct by tampering with and removal of a court record, since it was not present in the official CT2010-156059 case file that I pulled in order to thoroughly answer the commission's original *Notice of Investigation* dated June

28, 2011. Each page of the official case file was inventoried and numbered prior to my research and answer to the commission on July 15, 2011. As proof that this document was present in the official case file at the time the case was being adjudicated in my court one year ago, I ask the commission to take special notice of multiple notations that were written on the document by court staff. I had no further contact with this case file, following adjudication, until I received the commission's original Notice of Investigation on June 29, 2011. This document (Exhibit 11-159 E) was removed from the official case file sometime following adjudication on September 7, 2010 and my receipt of the commission's *Notice of Investigation* on June 29, 2011.

During my research of the official case file following my receipt of the commission's *Notice of Investigation*, I was surprised to find it contained a *partially completed* "access to court records request" dated March 9, 2011 (See Exhibit 11-159 F). This request asked for only one case file, CT2010-156059. A *Mr. Mark Dougherty of Dirty's Process Service at 602-469-8899*, signed the public records request. There were no employee signatures or initials on this document nor does it appear, based on the form, that an employee's signature or initials is required. My first thought upon seeing this records request form was that it was prompted by the February 25, 2011 domestic incident between Mr. Scott Bundgaard and his fiancé, as widely reported by both local and national media. The time between the domestic incident and the records request shows a proximal nexus. However, based on the issues now raised in the commission's supplemental inquiry, this March 9, 2011 public access to the court records also afforded both a court employee/s and Mr. Mark Dougherty access to an official case file that I had not set eyes on for over six months. Since the case was adjudicated months earlier, I would have no knowledge of how or why an official court document made its way out of the official record, into the possession of a mystery person and finally into the hands of the commission while an investigation into my conduct was ongoing.

The commission's August 25, 2011 supplemental inquiry does not state what date this document (Exhibit 11-159 E) arrived at the commission's office nor does the commission state whether the document arrived in an anonymous envelope via the US Mail or via inter-office mail. I assume this document arrived via an anonymous envelope to the commission only after I submitted my July 15, 2011 response to the commission's original *Notice of Investigation* since I was not notified of it prior to August 25, 2011. As of Tuesday, September 6, 2011, this document is still not in the official case file. Barring my recent receipt of this document from Ms. Perkins, the commission members and the anonymous sender are the only other persons in possession of this official court record.

Specific commission questions and clarifications:

In the commission's supplemental inquiry dated August 25, 2011, the commission:

1. Questioned why I did not reference the communication (Exhibit 11-159 E) in my original answer to the commission.
2. Stated that the communication appeared to be ex parte in nature.
3. Suggested that this document either did not make it into the court file or it has been removed.
4. Asked that I explain the context of the communication (Exhibit 11-159 E) between myself and Mr. Bundgaard.
5. Asked whether I revealed the communication to the relevant prosecutor.
6. Clarify whether my decision to waive fees was in response to a written motion.
7. Explain my original statement of "*the need to continue in order to prevent a failure to appear.*"
8. Explain whether it is my standard practice to waive fees in any case that will allow a defendant to avoid a *failure to appear.*

Answers to specific commission questions:

(1) I did not address this document (Exhibit 11-159 E) in my original response to the commission's *Notice of Investigation* because it was not in the case file I accessed on June 29, 2011 in order to research my July 15, 2011 answer to the commission. I did not remember, verbatim, this civil traffic document that I had seen more than nine months earlier (during adjudication) and thus did not notice that it was "missing". Had the document been in the official case file, I would have answered the commission differently, as my memory has been refreshed by seeing and reading the document.

Based on multiple handwritten remarks from my court staff on this document, it is obvious that this document was a part of the official court record during my adjudication of CT2010-156059. As stated in my narrative above, I did not access the official court record until June 29, 2011; when, at that time, I discovered that the court record had been accessed by a court employee/s and a Mr. Mark Dougherty on March 9, 2011 (Exhibit 11-159 F). I do not know how long the official case file remained off the shelf for the public records request nor do I know who pulled or replaced the case file for the public records request. As stated in my narrative, the Desert Ridge Justice Court has initiated an investigation into the disposition of this "missing" document.

(2) While the email, dated September 6, 2010, does appear to be ex-parte, this communication is solely for the purpose of scheduling and the efficient adjudication of a simple civil traffic case that had been delayed by both parties for almost five months. Mr. Bundgaard initiated this urgent communication to me and I responded to him rather curtly, that regardless of his circumstances, he needed to get this (case) cleared up. His communication did raise several issues regarding a delay in receiving a letter requiring the payment of fees and a late postmark that I took into consideration. The Arizona Code of Judicial Conduct does allow some rare exceptions for ex-parte communications

as stated below. I believed then and do now, that Mr. Bundgaard's email did not meet a standard high enough to preclude my succinct answer to him.

RULE 2.9. Ex Parte Communication

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision to promptly notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

http://supreme.state.az.us/ethics/NewCode/2009Code_Internet_Maste_5-03-10.pdf

(3) The document in question was, at one time, a part of the official case file based on my court's official notations on the document. As far as I knew, once this civil matter was closed, this case file remained on the records filing shelf. After September 7, 2010, the Desert Ridge Justice Court had no further contact with Mr. Bundgaard. I was unaware that a public records request had been made for this record on March 9, 2011 until researching the commission's original inquiry on June 29, 2010. For further information, please refer to my narrative above.

(4) The context of the communication between me and Mr. Bundgaard was nothing more than my swift attempt to resolve a case that had been delayed multiple times. I sternly responded to Mr. Bundgaard that he needed to clear this up, regardless of any circumstances. Please see my answer to question (2) above.

(5) I did not specifically show a copy of the email to the other party; however, I did reference Mr. Bundgaard's multiple contacts with the court as shown in his requests to continue the case several times. I made my intent to adjudicate this case without further delays, very clear.

(6) My decision was not based on a written motion for a fee waiver. It was based on an apparent clerical error that raised a question of fairness. It was my decision to waive the \$50 in court fees in order to prevent any further challenges regarding the resolution of this case.

(7) I based that answer to the commission on my research of the official case file

that was available to me on June 29, 2011, as I did not remember the details of Mr. Bundgaard's civil traffic case almost 10 months after I had ruled. Since the commission is now in receipt of an additional court document that was a part of the case file during my adjudication of the case but was not included in the case file on June 29th or now, I wish to amend my answer to the commission. After consulting with staff and looking at the case record in light of the "missing" document, it appeared that the court's notice may not have been timely (See Exhibit 11-159 G) just as Mr. Bundgaard alleged in his email to me on September 6, 2010 (See Exhibit 11-159 E). Because of the numerous motions to continue due to the unavailability of both Mr. Bundgaard and the citing officer, I made the decision on September 7, 2010 to waive the fees due to the previous failure to appear and untimely letter mailed by the court. I wanted to get the case resolved immediately. The defendant, Mr. Bundgaard, paid his sanction in full.

In addressing the waiver of \$50 in court fees in my July 15, 2011 response to the commission, I said that my decision to waive these fees was based "on the need to continue in order to prevent a *failure to appear* and the court's practice of efficiently adjudicating the case." My September 7, 2010 decision was, however, based upon a document that was a part of the case file while I was adjudicating the case that was not available to me when I researched the official case file and answered the commission on July 15, 2011. Since viewing the "missing" document, my answer to the commission has been partially amended.

(8) It is not my standard practice to waive fees in order to avoid a defendant's failure to appear. In my original July 15, 2011 answer to the commission, I stated, "*I did not grant Bundgaard any special favor by waiving the fees. I have waived fees in any number of cases when it is necessary or requested in order to facilitate the closure of the case file*". I stand by that original statement to the commission. Considering the content of the "missing" document (Exhibit 11-159 E) and my subsequent research with staff, I waived the fees in case CT2010-156059, in order to efficiently resolve the case and prevent any further delays based upon the court's clerical error of not timely postmarking an important notice to the defendant.

I wish to thank the commission for its effort to thoroughly investigate this matter. I appreciate the opportunity to answer the commission's new questions while clarifying any facts that may help the commission ultimately resolve this case. Please contact me if any further information is required.

Sincerely,

Judge Clancy Jayne
Justice of the Peace, Desert Ridge Precinct

Scott,
I will see what I can do but you need to get this cleared up Mexico or not.
Clancy

In a message dated 9/6/2010 9:22:53 P.M. US Mountain Standard Time, scott@bundgaard.com writes:

Clancy,

I got a note from your court that says my license was suspended for not attending a court hearing. I've been in Mexico this past week helping to build an orphanage with my church because it was my understanding that my court date for the traffic ticket is 09/27, not having received written confirmation for that court date. These dates were extended due to the officer not being able to attend the hearing on the date that HE set at the time of issuing the citation. I objected by email to a court official not knowing I had to respond with a written motion. Now, this letter states I was supposed to submit \$235 to your court by Aug. 31, but the letter is postmarked Sept. 3rd!!

Can you help me sort this out quickly and fairly, please?

Thx,
Scott=

FTA on
8/27/10
notice was
mailed 7-9-10

CT 2010-156059

9-7-10 \$50⁰⁰
few wanted per Judge Jaye

EXHIBIT
11-159E



**APPENDIX B ACCESS TO COURT RECORDS REQUEST
MARICOPA COUNTY JUSTICE COURTS**

In order to better serve all of our customers, only ten case files per customer are allowed at any one time. Please read and complete the entire form:

Your Name: Mark Dougherty

Circle One GENERAL PUBLIC GOVT AGENCY COMMERCIAL

Address: Pitney Process Service AGENCY / FIRM REPRESENTED Phone Number: 602 449 8899

To the custodian of records of: _____
Name of Justice Court

I am making a request to <input type="checkbox"/> Inspect or <input type="checkbox"/> Reproduce the following record(s): (Indicate case number or litigant name)		FEES Retrieve files or automated record search: . . . \$24.00 1-10 files for commercial user (other fees may apply) 2-10 files for non-commercial user Copy fees or docket printout: \$0.50 per page Certification: \$24.00 per document		
CASE NUMBER	LITIGANT NAME	DOCUMENT REQUEST	# OF COPIES OF EACH DOCUMENT	<input checked="" type="checkbox"/> CERTIFY
<u>CT2010-156059</u>				

Pursuant to Supreme Court Rule 123, I certify that the record(s) are requested for (check one):

- Non-Commercial Purpose only** – If your request is for non-commercial purposes, please read the WARNING box and proceed to the signature line.
- Commercial Purpose** defined as “the use of public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from such public record for the purpose solicitation or the sale of such names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public records.” Commercial Purpose does not mean the use of a public record as evidence or as research for evidence in an action in a judicial or quasi-judicial body of this state or a political subdivision of this state.

I certify that the purpose for which I will use the information obtained from this records request is:

! Warning: A person who obtains public records for a commercial purpose without indicating the commercial purpose or who obtains a public record for a non-commercial purpose and uses or knowingly allows the uses of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney’s fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records.

- DISCLAIMER:** I understand and agree that Maricopa County Justice Courts does not guarantee the accuracy of the data and information requested and disclaims any responsibility for the accuracy or inaccuracy of said data. I agree not to hold Maricopa County Justice Courts liable for any inaccurate or incomplete information I receive. I accept full responsibility for the use or transmission of the data received in it actual or altered form

Date: 3-9-11

Requester Signature: Mark Dougherty

IMPORTANT !!! DO NOT REMOVE ANY DOCUMENTS FROM A CASE FILE

EXHIBIT
11-159 F



Maricopa County Justice Courts, State of Arizona

Desert Ridge Justice Court

18380 N. 40th Street Suite #130
Phoenix, AZ 85032-
(602) 372-7100

Payment Schedule & Coupons

Scott Allen Bundgaard
21424 N 78th Dr

Peoria, AZ 85382-0000

Mail To:
Scott Allen Bundgaard
21424 N 78th Dr

Peoria, AZ 85382-0000

Total Fine & Fees: \$ 235.00
Total Payments: \$ 0.00
Balance Due: \$ 235.00

Case #: CT2010156059

LICENSE SUSPENDED

Amount Due

Due Date

\$ 235.00

Tuesday, August 31, 2010

Read and Initial:

- I understand that failure to comply with this payment order may result in the issuance of a WARRANT FOR MY ARREST, and possible imprisonment until the fine is paid and/or SUSPENSION of my DRIVER'S LICENSE.
Driving is a privilege, which can be suspended. To reinstate your SUSPENDED DRIVER'S LICENSE, you must pay your fine, plus a fee to the Department of Motor Vehicles. Driving on a SUSPENDED license is a Class I misdemeanor punishable by imprisonment up to six months and/or fines up to \$ 2500 or more.
A WARRANT FOR YOUR ARREST may be issued by the court. If arrested, you will be taken to jail and held until you post a bond and/or see the judge. Additional applicable fees may be added without notice.
If you fail to comply you may be held in contempt of court.
I agree to report to the court any change of address, phone, or employment within five (5) days of such change.

Dated: 8/31/10

MAILED TO A
Defendant Signature

EXHIBIT
11-159 G