

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-256

Complainant: No. 1295500450A

Judge: No. 1295500450B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The issues raised are solely legal or appellate in nature. If a judge makes an incorrect ruling or misinterprets the evidence, the correct remedy is to appeal to a court with appropriate jurisdiction. Moreover, a judge is not required to disqualify himself or herself merely because a complaint has been filed against the judge.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: November 1, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on November 1, 2006.

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

September 22, 2006

CJC-06-256

OCT 05 2006

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

To Whom It May Concern;

The purpose of this letter is to give notice of questionable judicial conduct. This complaint is made in reference to cause [redacted] and is levied against Judge [redacted] Superior Court. It originates from the trial of the instant case on [redacted] and subsequent hearings. The proceedings were a bench trial for named parties' divorce.

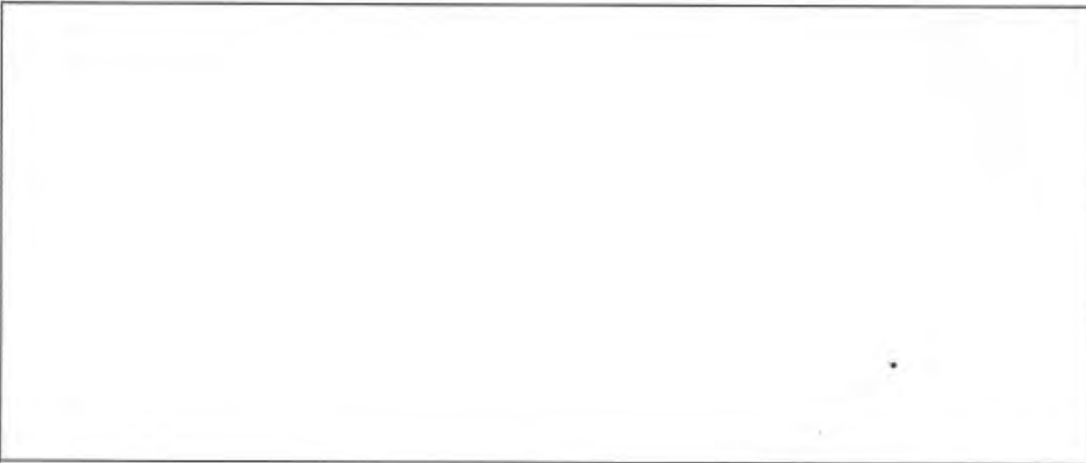
The issues are but a few of the actions committed by Judge [redacted]. Some of these actions may be simple error and not misconduct; however, it is very difficult to believe that an individual holding the status of Judge could make so many critical errors against one party. Even if the entirety of his actions are error and not true or apparent bias, impropriety and lack of impartiality of Cannons (2)(3) of the Supreme Court Code of Judicial Conduct, they fall squarely in the category of Cannon (3)(B)(2) lack of professional competence.

It is for the reasons listed in the accompanying (1)Affidavit and (2)Motion Requesting Change of Judge that I request disciplinary action be taken against [redacted] Superior Court, [redacted] or minimally a review of the circumstances so these deficiencies are not cast upon another.

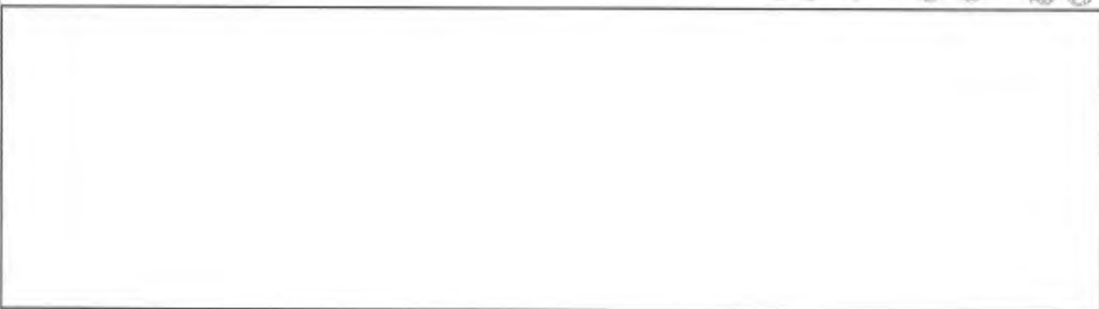
Respectfully,

[redacted]

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CJC-06-256



MOTION REQUESTING CHANGE OF JUDGE

Comes now the Petitioner, [redacted] Pro Se', pursuant to ARS §12-409 and A.R.C.P. 42(f)(2)(A) and moves this Court for a change of Judge for cause. This motion is supported by the record in this matter along with the following Memorandum of Points and Authorities. Petitioner does state:

1) A formal complaint has been submitted to the Commission of Judicial Conduct, notice given to the media, notice given to [redacted] organizations, and copies of the complaint and evidence against [redacted] [redacted] sent to the Arizona Attorney General, State Senator John McCain, Governor Janet Napolitano and [redacted]

2) With the real possibility of a due process violation occurring if [redacted] should hear this motion due to the possibility of action

1 being taken against him by the Commission of Judicial Conduct and negative
2 reflection that will be cast upon him because of the attention the entirety
3 of letters will bring and because of the very nature of his "personal
4 embroilment", pursuant to the ruling of Little V. Kern County Superior Court,
5 294 F.3d 1075, 1082-83 (9th Cir 2002) I respectfully request a Judicial
6 Officer other than Judge [] review this motion.

7 3) This motion is requested to be considered in conjunction with the
8 Affidavit for Consideration of New Judge and its Memorandum of Points and
9 Authorities.

10 4) Judge [] starting at trial, through his words, actions and
11 conduct exhibited a quality of disdain for the Petitioner that is abhorrent
12 to the Civil Justice system and continued this conduct up to and including
13 the [] hearing where any only apparent bias became truly
14 evident as bias. Because of time restraints these issues are in the
15 Affidavit and not in this motion.

16 MEMORANDUM OF POINTS AND AUTHORITIES

17 Due process requires that a Judge possesses neither actual nor apparent
18 bias. In re Murchison, 349 U.S. 133, 136-139 "if actual or apparent judicial
19 prejudice exists either against, or in favor of a party, 28 USC §144 and 455
20 provide mechanisms for a judge's recusal. 28 USC §788 (a)(2000) any
21 justice, judge or magistrate shall disqualify himself in any proceeding if
22 impartiality might be reasonably questioned. The facts establishing the
23 [] judge's personal prejudice against the Petitioner are in the
24 accompanying Affidavit and Memorandum of Points and Authorities. U.S. V.
25 Bauer, 84 F.3d 1549, 1560 (9th Cir 1995) prejudice amounting to animus more

1 active and deep-rooted than attitude of disapproval based on known conduct
2 warranted recusal." The judge whose impartiality has been challenged,
3 without the input of counsel, may initially examine the motion/affidavit to
4 determine whether the allegations warrant disqualification. The judge passes
5 solely on the legal sufficiency of the alleged facts, and although the
6 factual allegations must be accepted as true, conclusory statements and
7 opinions need not be credited. See e.g. U.S. V. Vespe, 868 F.2d 1328, 1340.
8 In Ronwin V. State Bar, 686 F.2d 692, 700 (9th Cir 1981) it was found that
9 alone "facts sufficient if reasonable person with knowledge of all facts
10 would conclude that impartiality "might" be reasonably questioned. It has
11 also been found that "facts sufficient if they are materially stated with
12 particularity and would convince reasonable persons that personal, rather
13 than judicial bias exist. U.S. V. Alabama, 828 F.2d 1592 1540 (11th Cir 1987)
14 recusal has been found to be mandatory if filed on time and legally
15 sufficient affidavit accompanies it. Judge [redacted] opinion was so extreme
16 as to display deep seated favoritism or antagonism that rendered fair
17 judgment impossible, Liteky 510 U.S. at 555, when he disallowed relevant and
18 material evidence stating a deducted tape was insufficient and ignored
19 Petitioner's twice mentioning the original complete tape was present. This
20 also occurred when he elicited by direct question [redacted] to request
21 child support at [redacted] previous wages and at the [redacted]
22 hearing, after Respondent's counsel stated a bar complaint was filed, Judge
23 [redacted] actually lied and said he had ordered [redacted] to do the evaluation
24 in direct and blatant contrast to his prior ruling to "Develop and Advise".
25 He further then deviated from the previous Rule 35 requirements of his own
orders and then changed the order to accommodate the Respondent to an ARS 25-

1 405 evaluation. (See accompanying Affidavit and Memorandum of Points and
2 Authorities with exhibits). It has been found that a judge's impartiality
3 can reasonably be questioned when he fails to disqualify himself in the face
4 of disciplinary action or negative media outlook. Little, supra; U.S. V.
5 Cameron, 953 F.2d 240, 244, a judge's refusal to recuse is immediately
6 reviewable. In re U.S., 158 F.3d 26, 30 denial of recusal motion is
7 reviewable, U.S. V. Martis, 278 F.3d 988, 1005 (9th Cir 2002).

8 It is for the aforementioned issues and accompanying Affidavit with
9 Memorandum of Points and Authorities to include exhibits A - H that have been
10 presented in an "objective" fashion and meet the objective standard required
11 by A.R.C.P. Rule (42)(2)(D) that I request a change of Judge. In addition an
12 evidentiary hearing is requested.

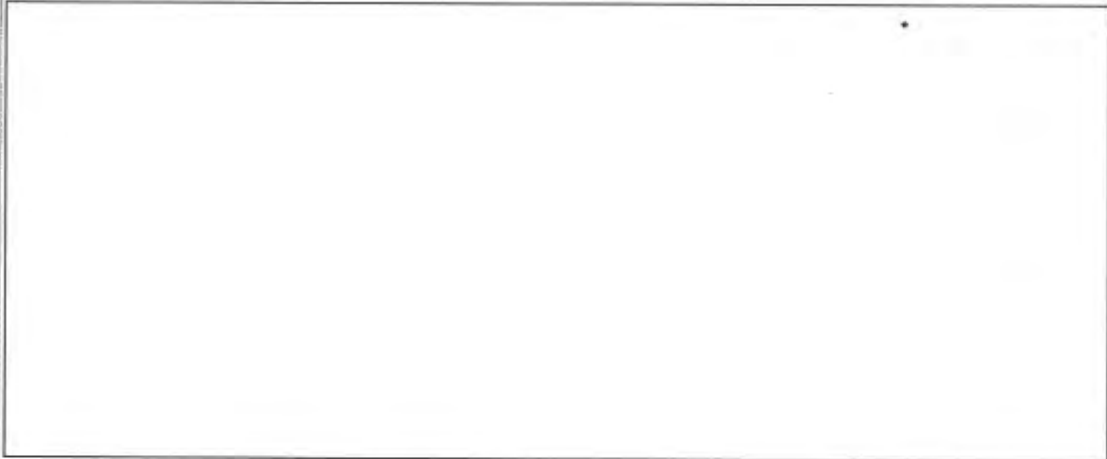
13 Done this 27 day of September, 2006,

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15 By: 

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19 CC: 



CJC-06-256



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AFFIDAVIT IN SUPPORT OF ORAL MOTION FOR CHANGE OF JUDGE FOR CAUSE

Comes now, the Petitioner, [redacted] Pro Se, pursuant to ARS § 12-409 and A.R.C.P. 42 and does hereby submit his Affidavit of Judicial Bias. This affidavit is supported by the record and following Memorandum of Points and Authorities. Petitioner states:

1. Due to the personal embroilment of Judge [redacted] and pursuant to the ruling of Little V. Kern County Superior Court, 294 F.3d 1075, 1082-83 (9th Cir 2002) I immediately and respectfully request some judicial official other than Judge [redacted] review this Affidavit.

2. The following Memorandum of Points and Authorities details the objective standard required and codifies issues I through VII by those standards.

1 3. There is no certificate of counsel because Petitioner is proceeding
2 Pro Se'.

3 I. On [] [] hereafter referred to as
4 Petitioner or [] proceeded Pro Se' at trial in Case [] He
5 had offered into evidence a dedacted tape recording and transcripts of a
6 phone conversation between his mother, [] and his wife, []
7 [] The recording was offered in support of the fact that at the
8 criminal trial of [] for sexual assault on his wife, [] had
9 told people that she intended to have [] arrested so she could get the
10 couples' house. The recording was a statement by the Respondent in which
11 when asked why she said [] must have raped her when she had no memory of
12 a sexual assault commented "I had malice and intent towards [] in
13 order to benefit in divorce proceedings and gain full custody of the
14 children.

15 Judge [] refused to allow the evidence in, RT pg. 72,
16 line 2: "I'm not inclined to hear a tape that's edited and that's clearly the
17 case from what you told me earlier". Judge [] completely ignored the
18 fact that [] twice informed him, RT pg. 43, lines 9 - 11 that the
19 complete tape was available and in doing so denied [] the right to
20 present material and relevant evidence that showed [] proffered
21 fraudulent accusations against [] for the sole purpose of prevailing in
22 the divorce proceedings.

23 II. Regarding Child Support, Judge [] acknowledged [] was no
24 longer a [] nor could he ever practice as a [] again because of
25 his conviction. RT pg. 24 lines 9 - 10. The fact that [] had no other

1 assets, property or source of income was also ignored. RT Pg. 27 lines 5 -
2 7. [] also testified to these facts. [] specifically asked
3 the Court to impute income to him at his current earning capacity which was
4 and is zero (0) dollars. RT pg. 30, lines 1 - 9. Judge [] went beyond
5 the impartial role assigned to him in the Rules of the Supreme Court, Code of
6 Judicial Conduct, Cannon (3)(B)(5) when he directly requested the Respondent
7 to ask him to consider the earning capacity of [] as the earning
8 capacity before incarceration. RT pg. 102, lines 15 - 19. "Can you ask me
9 to consider that earnings capacity as his earning capacity before his
10 incarceration and use that figure...". Judge [] utilized a verbal
11 statement of [] regarding his old earnings capacity prior to
12 incarceration which was [] an hour, RT Pg. 102, lines 10 - 14. []
13 [] had only just started earning [] eight (8) weeks prior to trial,
14 RT Pg. 98, line 25. She informed the Court that her previous wages were
15 [] an hour, RT Pg. 99 lines 2 - 3. [] asked the Court to consider
16 support at the Respondent's verbalized previous pay of the past few years to
17 [] an hour and the Court stated that it wasn't available despite []
18 [] testimony of [] as documented on RT Pg. 99, lines 2 - 3. The
19 Court stated her testimony of [] was not relevant, RT Pg. 99, lines 22
20 - 23 however it considered relevant [] verbal testimony of prior
21 wages.

22 III. Prior to trial on [] [] filed his motion for an
23 A.R.C.P. Rule(35) psychiatric evaluation of the couples' children, in part
24 for visitation issues. [] at trial and in his petition made specific
25 requests that a Psychologist/Physician Psychiatrist be utilized pursuant to

1 the formal requirements of A.R.C.P. (35). Judge [] acknowledged this
2 requirement and specifically declared "PhD level psychologist is needed" for
3 this process. See ruling of [] Pg. 7 item #40. Additionally,
4 Judge [] declared "that it is appropriate that [] be contacted" by
5 the evaluator; Ruling [] Pg. 7 item 38. During the hearing
6 on [] the Respondent's counsel, [] advised the court that
7 he spoke with a [] a Masters level therapist regarding a possible
8 evaluation. [] objected quoting the previous ruling by the Court and
9 the requirements of Rule (35). [] informed the Court he would
10 "inquire" of [] about obtaining a Psychologist in []
11 County and named a specific psychologist to be inquired of. With that
12 information Judge [] ordered [] to "Meet" with [] and to
13 "Develop" a method of compliance with the Courts previous therapeutic
14 service's order. (The order requiring a Psychologist from []
15 Judge [] then stated that the matter be reset for a review hearing. The
16 Judge further clarified this by stating "The Court requests that []
17 advise the Court at that time as to the results of his contact with []
18 [] and "whether" or not the matter "can proceed utilizing a therapist in
19 [] The hearing to determine this was set for []
20 During the week of [] [] learned that Respondent and
21 Counsel had the children evaluated by a non Psychologist evaluator against
22 the Court's orders. [] filed a Bar complaint against [] file
23 [] for violating the Court's therapeutic service order of []
24 [] and Rule 26-1 A.R.C.P.. A motion to preclude the testimony of the non
25 Ph.D. evaluator on [] a Motion for Judgment of Specific Act on

1 [] were also filed with the Court.

2 After the Court's ruling pursuant to the A.R.C.P. (35) Psychiatric
3 Evaluation in which Judge [] made a specific order for a PhD level
4 evaluator there were five subsequent rulings and one additional hearing. At
5 no time after his order for a PhD evaluator did Judge [] deviate from
6 his original ruling. In fact, it was the [] hearing in which the
7 Court further codified the original ruling by ruling [] to "develop" a
8 method and "Advise" if the matter could proceed with a [] evaluator.
9 This was due, in part, to [] objection to the use of a non-PhD
10 evaluator being proffered by the Respondent, hence the order to contact []
11 [] and see if it could proceed with a [] therapist. At no time
12 did an order occur to allow [] to evaluate the children nor was there
13 an insinuation to have her evaluate the children. The codifying order the
14 "Advise" and "Develop" eliminate any presumption of such an order. Also,
15 prior to and after the Rule 35 Motion there is not ever mention of an
16 evaluation pursuant to any other rule or statute. The Court fully accepted
17 and never deviated from the Rule 35 Motion.

18 During the [] hearing Judge [] allowed
19 Respondent's counsel to once again begin the proceedings at which point
20 counsel informed the Court of the Arizona Bar complaint and that he had
21 proceeded with an evaluation of the children by a non PhD/Psychiatrist
22 evaluator. [] stated he thought Judge [] intended for him to
23 have the children evaluated by [] despite the clarifying order of the
24 previous ruling to "advise" and "develop" and then determine "whether the
25 matter could proceed" with a therapist in []. [] objected

1 quoting specifically Judge [] previous rulings at which point the
2 Court actually denied its previous rulings and for the first time stated the
3 evaluation was not to be under Rule (33), but instead under ARS §25-405.
4 [] had learned of the unauthorized evaluation having occurred
5 prior to the hearing by a third party, neither by the Court nor by Respondent
6 and counsel. [] made multiple requests for information regarding the
7 evaluations after learning that it had occurred. [] refused to
8 provide any discovery regarding the evaluation pursuant to A.R.C. P. 26.1.
9 He also had sent a copy of a subpoena for a [] but only a copy
10 of the subpoena. [] again requested discovery pursuant to A.R.C.P. 26.1
11 but [] refused to respond. At the [] hearing this
12 information was objected to pursuant to Rule 26.1 to which Judge []
13 replied that the objection was not relevant. To allow a party to "blind
14 side" another party without proper discovery has been found to be harmful and
15 Rule 26.1 declares there is a duty to disclose and even to update disclosure.
16 Link V. Pima County, 193 Ariz. 336, 972 P.2d 669 (App 1998), Ferguson V.
17 Tanes, 188 Ariz. 425, 937 P.2d 347 (App 1996). [] also stated that the
18 undisclosed information should not be used without prior leave of the Court
19 pursuant to A.R.C.P. 37 (C) (1) (3), B&R Materials, Inc. V. U.S. Fidelity &
20 Guaranty Co. 132 Ariz. 122, 644 P.2d 276 (App 1982). Although other
21 incidents had occurred that were questionably biased or prejudiced, it was
22 after these two issues that [] made motion for a new judge. Judge
23 [] actually told the Petitioner that he could not do this to which
24 [] then was forced to quote ARS §12-409 and A.R.C.P.42 stating bias and
25 cause to which the Court then allowed the motion for new judge.

1 With the Court's ruling of [] Pg.7, item 38, Judge []
2 declared "it is appropriate that [] be contacted by the therapist and
3 answer any questions the therapist may have regarding prison visits". Again,
4 during the [] hearing prior to the Rule 42 Motion, []
5 requested an order permitting him contact with the evaluator pursuant to
6 Judge [] previous ruling stating that would be appropriate. A
7 specific order is required by Arizona Department of Corrections and the Court
8 had done so for every previous hearing. Despite his previous ruling, Judge
9 [] now refused to permit [] to speak to the evaluator and refused
10 to issue the previously "appropriate" action.

11 IV. During the trial a letter from the Respondent's family counselor
12 was entered into evidence. [] objected and the Court stated it
13 would only consider the letter as "verification of therapy" and not as a
14 professional evaluation. RT Pg. 112, lines 7 - 16. In it's ruling of
15 [] Pgs. 5 and 6, items 30 and 31 however, it actually stated this
16 information for purposes other than verifying therapy. Judge []
17 actually utilized [] opinion. This is clearly beyond the stated
18 verification of services Judge [] said he would use.

19 V. As further evidence of bias, prejudice or lack of professional
20 competence, Judge [] took judicial notice of information that is
21 expressly precluded by A.R.E. 201. He took notice of testimony and
22 allegations from the criminal file of [] as facts despite the fact that
23 they were absolutely disproved at trial and even before trial in police
24 reports. [] was acquitted of two of the four felony charges, however
25 Judge [] ignored this information and stated as facts information that

1 was thoroughly disproved. (See Memorandum of Points and Authorities for
2 Judge [] false factual declarations and accompanying exhibits that
3 verify the falsehood of his erroneous facts).

4 VI. In the original post trial order of [] Judge [] ordered
5 [] to notify her husband of an appropriate mailing address and to
6 either place a call to [] or provide a phone number to him within thirty
7 (30) days so he could call his children; Pg. 8, item 46 of ruling.
8 Disregarding the orders, [] did not supply [] with an address
9 or phone number within the thirty (30) day period. The expiration of which
10 was [] Having received none of the ordered information or a call
11 from the Respondent, [] filed a Motion of Specific
12 Performance/Injunction on [] The Respondent stated that it was
13 due to the prison that the paperwork had not been completed.

14 In his motion for Specific Performance [] supplied the Court with
15 evidence in the form of a document from the Arizona Department of
16 Corrections' [] to which []
17 [] clearly established it was the Respondent who would not send in the
18 appropriate paperwork in order to initiate calls (Exhibit A). This document
19 also confirms that the Respondent had spoken to [] but still would
20 not send the appropriate paperwork to initiate the calls. Despite this
21 evidence, Judge [] stated "it is the Court's understanding that the
22 prison facility is working with the phone company to make arrangements for
23 regular monthly calls to be placed". As of [] the Respondent had
24 still not complied with the Court's order regarding phone calls to the
25 children. A full four months had expired since the order. Now, the

1 Respondent had completed the paperwork but instead placed a collect call
2 block on the phone. In addition to this continued frustration of access,
3 [] still had not send a schedule for [] to call the children.
4 The Court knowing fully that [] was solely responsible for the
5 delays and had no explanation for such, again gave her additional time; that
6 being []

7 VII. Prior to trial [] advised the Court he expected the
8 proceedings to last approximately six (6) hours. The Court set the trial for
9 [] and allowed only four (4) hours. During the cross
10 exam of the Respondent the Court stated "Okay we're gonna have one more
11 question and then I'll have the witness step down"---RT Pg. 123, lines 22 - 23
12 Judge [] then attempted to end the cross exam. "Alright, thanks, we're
13 gonna end on that"; RT Pg. 123, line 10. [] informed the Court he had
14 not completed his cross exam. The Court asked how much time [] required
15 to which [] replied "half an hour". The Court dismissed the Respondent
16 as a witness, RT Pg. 123 lines 17 - 25 stating he would reset the matter for
17 an additional hour by telephone. [] then stated he would be able to
18 conclude in five (5) minutes to which the Court stated, "I'll give you one
19 minute"; RT Pg. 124 line 8. [] then asked to review his notes and the
20 Court stated "You got one quick second." [] was intimidated and
21 acquiesced. Additionally, at a number of the hearings, the Court repeatedly
22 tells [] to "Make it quick" while allowing the Respondent ample time.

23 VIII. During the divorce trial of [] [] provided three
24 key witnesses that were close acquaintances of both parties to testify
25 to disturbing behavior of the Respondent to the couples' young children,

1 [redacted] and herself. The witnesses were [redacted]
2 [redacted] all of whom are mature, law abiding citizens and who swore
3 oaths to "tell the truth and nothing but the truth". Each witness testified
4 regarding verbal and physical abuse of the children and detrimental behavior
5 and remarks by the Respondent. During Judge [redacted] cross-exam of the
6 Respondent he asked her opinion of their testimony to which she replied "I
7 have no idea what they are talking about." Judge [redacted] gave no further
8 consideration of the testimony given by the three conscientious witnesses
9 whose concern was for the safety of the two minor children.

10 In addition to the afore mentioned facts, a letter of complaint has
11 been submitted to the Commission of Judicial Conduct at 1501 W. Washington,
12 Ste. 229 in Phoenix Arizona and to local media and [redacted] groups.

13 VIII. MEMORANDUM OF POINTS AND AUTHORITIES

14 A. Arizona Rule of Evidence 401, Relevancy and It's Limits declares:
15 "Relevant evidence means evidence having any tendency to make the existence
16 of any fact that is of consequence to the determination of the action more
17 probable or less probable than it would be without the evidence. To satisfy
18 Rule 401's standards, evidence need only have some basis in reason to prove a
19 material fact. It is not necessary that the evidence in and of itself be
20 sufficient to support a finding of fact; it is enough if the evidence renders
21 the fact more probable or less probable than it would be without the evidence
22 being received. Hawkins V. Allstate Ins. Co., 152 Ariz. 490; 733 P.2d 1073
23 (1987); 484 U.S. 874, 108 Sct 212, 98 L.Ed.2d 177 (1987); 484 U.S. 972, 108
24 Sct 477. The taped offered into evidence absolutely meets this requirement.
25 A.R.E. 104(B) "Relevancy Conditioned on fact" declares: When the relevancy

1 of evidence depends upon the fulfillment of a condition of fact, the Court
2 shall admit it upon, or may submit it subject to the introduction of evidence
3 sufficient to support a finding of the fulfillment of the condition. The
4 proponent of evidence has the burden of establishing the predicates for its
5 admissibility; DeElena V. Southern Pacific Co., 121 Ariz. 567; 592 P.2d 759
6 (1979). When Judge [] stated a dedacted tape was not acceptable, []
7 [] offered the full tape recording and complete transcripts to which the
8 Court refused to acknowledge [] after he twice informed the Court
9 the complete versions were made available incase the Respondent would have
10 objected to the dedacted tape pursuant to A.R.E. 106. The complete tape
11 recording and transcripts also met the "original" requirements of A.R.E.
12 1002. In accordance to A.R.E. 901, there were two witnesses present that
13 would have been able to authenticate the recording. The Court's ruling
14 excluding the evidence absolutely affected the rights of the Petitioner
15 [] to present both relevant and material evidence which at a minimum
16 would have shown [] deceitful conduct, if not perjury, in order
17 to prevail in the custody and support issues. This is clear prejudice
18 against the proponent of the evidence, [] Gemstar Limited V. Ernst &
19 Young, 185 Ariz. 493; 917 P.2d 222 (1996); Harvest ex rel Harvest V. Craig,
20 202 Ariz. 529; 48 P.3d 479 (App 2002); Elia V. Pifer, 194 Ariz. 74; 977 P.2d
21 796 (App 1998).

22 B. In regards to the Court's direct examination of the Respondent under
23 A.R.E. 614, the Court, in its calling or interrogation of witnesses must be
24 careful not to show or imply any partiality to any parties' position on the
25 issues in the case. Ruth V. Rhodes, 66 Ariz. 129; 185 P.2d 304; Tom Reed

1 Gold Mines Co. V. Brady, 55 Ariz. 133; 99 P.2d 97. Under the Rules of the
2 Supreme Court, Code of Judicial Conduct "impartiality" or "impartial" is
3 defined as: denotes absence of bias or prejudice in favor of, or against,
4 particular parties or classes of parties, as well as maintaining an open mind
5 in considering issues that may come before the Judge. Canon (2) A Judge
6 shall avoid impropriety and the appearance of impropriety in all of the
7 Judge's activities. The 1993 commentary of this canon further mentions
8 appearance of impropriety, not even actual impropriety. Of further note in
9 the commentary is if the questioned conduct creates even a perception this
10 occurred. Pursuant to Canon (3): A Judge shall perform the Duties of
11 Judicial Office Impartially and Diligently. Subsection (B) 5 declares, a
12 Judge shall not, in the performance of judicial duties, by words or conduct
13 manifest bias or prejudice. Again, the 1993 commentary on (B) (3) declares:
14 A Judge who manifests bias on any basis in a proceeding impairs the fairness
15 of the proceeding..... The commentary also denotes that oral communication
16 can give the appearance of judicial bias. It is the complete and repeated
17 spelling out to the Respondent followed by Judge [redacted] specific request
18 of "Can you ask me to consider...." that fully evidences bias against the
19 Petitioner [redacted]

20 In making its determination for child support, the Court quoted State
21 of Arizona et rel., Dept. of Economic Security V. Ayala, 185 Ariz. 314, 916
22 P.2d 504 (1996). Judge [redacted] chose to conveniently select the aspects
23 suited for awarding the highest possible amount. These aspects were: 1) the
24 children's need for support continues throughout and is not altered by a
25 parent's incarceration. 2) incarceration is a factor, but only one factor.

1 He also stated that incarceration alone is insufficient to suspend his
2 support obligation and that the child support guidelines allow for deviation
3 when the Court finds their application would be inappropriate and unjust.
4 Looking at Ayala, the critical inquiry that had the case remanded was what
5 were Ayala's other assets. Judge [] again ignored critical information
6 supplied to him by both the Petitioner and Respondent, that being [] has
7 no other assets. Additionally, the children would not suffer. The
8 Respondent now had a profession as [] due in no small part
9 to [] supporting her through her college education, in which she was
10 earning []. The annual income she is now making of [] as
11 calculated by the Court is in excess of the combined wages during the
12 marriage. Multiple Arizona Courts have found that incarceration is not a
13 matter of choice and that imputing income to pre-incarceration may result in
14 an ARS §25-511 charge for failure to pay child support. See McEvoy 191 Ariz.
15 350; 955 P.2d 988 (App 1998) and Little V. Little, 193 Ariz. 518; 975 P.2d
16 108. These two cases are precedent setting cases and it is hard to believe a
17 judge would ignore them. Under ARS §25-320 (C)(3) it declares: if
18 application to the guidelines would be unjust or inappropriate in a
19 particular case, the Court shall deviate. Judge [] placed [] in a
20 double jeopardy situation. If he was unaware of the precedent setting cases
21 his conduct would fall squarely under Canon (3)(B)(2) that is a Judge shall
22 maintain professional competence in the law. Again, it is hard to believe a
23 judge would be ignorant of so many established issues. The same is true of
24 ARS §25-320(S)(E). This states: If earnings are reduced by a matter of
25 choice and not for reasonable cause, the Court may attribute income to a

1 parent up to his or her earning capacity. Incarceration has been established
2 as not a matter of choice; "McEvoy" and "Little, supra.

3 C. Although Judges may take Judicial Notice, there are limitations. One
4 such limitation pursuant to A.R.E. 201 is that a party is entitled to be
5 heard as to the propriety of judicial notice and the tenor of the matter
6 noticed. Judge [] took Judicial Notice in his ruling of []
7 [] Additionally, he did not ever afford [] an opportunity to be
8 heard on matters when it was requested. In order to be judicially noted the
9 fact in question must be one which is not subject to reasonable dispute.
10 Beyerle Sand & Gravel Inc., V. Martinez, 118 Ariz. 60; 574 P.2d 853 (App
11 1977), It is also key that "a high degree of probability of the truth of the
12 fact is not enough; the fact to be noticed must not be subject to reasonable
13 dispute. Phelps Dodge Corp. V. Ford, 68 Ariz. 190, 203 P.2d 633. The most
14 significant aspect here is that although notice can be taken of records or
15 actions in the Superior Court, "Notice can be taken that testimony was given,
16 or allegations were made, in a separate case, but not that the testimony is
17 true or that the allegations are accurate". Matter of Ronwin, 139 Ariz. 576;
18 680 P.2d 107 (1983); 464 U.S. 977; 104 SCT 413; 78 LEd. 2d 351 (1983). This
19 is exactly what Judge [] did.

20 Some of the statements by Judge [] that were completely disproved
21 in the criminal trial were:

22 1) (Item #11 of Ruling) [] asked [] if she wanted to be
23 re-hydrated. [See Exhibit B - [] told police and confessed at
24 trial that she asked for the intravenous infusion.]

25 2) (Item #12 of Ruling) [] awoke in the bathroom and saw the

1 Defendant holding the empty IV bag. [See Exhibit C - [redacted]
2 testified she believed this was a dream.]
3 3) (Item 12 of Ruling) [redacted] said she was raped by [redacted]
4 [See Exhibit D - [redacted] had no memory of a rape and was told by detectives
5 that [redacted] raped her.]

6 4) (Item #13 of Ruling) [redacted] denied drinking any alcohol and
7 taking any medication. [See Exhibit E - [redacted] admitted to
8 drinking alcohol and taking valium.]

9 5) (Item 15 of Ruling) [redacted] left an apology note. [The letter was
10 not an apology; it was a letter asking [redacted] to come back to her
11 husband per [redacted] testimony in criminal trial.]

12 6) (Item 16 of Ruling) [redacted] mother called 911 alleging [redacted]
13 was going to kill his wife. [See Exhibit F. This never occurred.
14 [redacted] mother never called 911 nor ever alleged that [redacted] was going to
15 kill his wife.]

16 Also see Exhibit G - [redacted] admission that she told people she
17 wanted to get [redacted] arrested so she could get the house.

18 These are key points that were proven falsehoods at trial. There were
19 many other issues that I choose not to address.

20
21
22 IX. CONCLUSION

23 The major issues are (1) the exclusion of material and relevant
24 evidence in the form of a complete original tape recording and transcripts,
25 (2) Eliciting a request from the Respondent regarding child support and

1 inappropriate - unjust application of those guidelines. (3) Altering the
2 Rule 35 applications and previous rulings despite prior intent to proceed
3 under Rule 35 in order to prevent a Bar complaint and afford the Respondent
4 the opportunity to utilize a sub standard evaluator with ties to Child
5 Protective Services in order to prevent the Petitioner visitation with his
6 children. (4) Ordering the letter of family counselor [redacted] to be
7 used only as verification of services and then utilizing [redacted]
8 opinion against visitation. (5) Improperly using Judicial Notice. (6)
9 Allowing the Respondent to continue to frustrate telephone contact with
10 Petitioner's children and (7) continually shortening the Petitioner's oral
11 arguments during hearings and his cross exam of the Respondent.

12 It is not dependant on whether there is actual bias or the appearance
13 thereof, rather it is the possibility of bias that implicitly calls for the
14 recusal of Judge [redacted]. There is ample evidence that his actions could be
15 reasonably questioned. U.S. V. Wilkerson, 208 F.3d 794, 797 (9th Cir 2000),
16 Ronwin V. State Bar, 686 F.2d 692, 700 (9th Cir 1981). These fact intensive
17 issues reasonably question judicial bias or prejudice and as such a judge
18 should disqualify himself sua sponte. U.S. V. \$292, 888.04 in U.S. Currency,
19 54 F.3d 564, 566 (9th Cir 1995). Additionally because a complaint has been
20 filed to the Commission of Judicial Conduct as well as to the media and
21 [redacted] groups against Judge [redacted] I would request this action be
22 conducted by a Judicial Officer other than [redacted] pursuant to
23 Little V. Kern County Superior Court, 294 F.3d 1075, 1082-83 (9th Cir 2002).

24
25 With all the information provided, under ARS §12-409 and A.R.C.P. 42 I

1 respectfully request a change of Judge.

2 Pursuant to A.R.C.P. 80(i), I declare, under penalty of perjury that the
3 foregoing is true and correct. Executed on this 22 day of September,
4 2006,

5
6 By:

[Redacted signature box]

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9 CC:

[Redacted CC box]

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