

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 09-073

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Complainant: No. 0308110518A

Judge: No. 0308110518B

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**ORDER**

The commission reviewed the complaint filed in this matter and found no misconduct on the part of the judge. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: June 25, 2009

FOR THE COMMISSION

\s\ Keith Stott

\_\_\_\_\_  
Executive Director

Copies of this order were mailed to the complainant and the judge on June 25, 2009.

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



Mr. Keith Stott, Executive Director  
 Commission on Judicial Conduct  
 1501 W. Washington St., Suite 229  
 Phoenix, AZ 85007

**COPY**

FEB 23 2009

February 20, 2009

Pursuant to our recent telephone conversations, the first of which was on January 21, 2009, this letter and its attachments constitute my written self report of a possible violation of Canon 2(A.) of the Arizona Code of Judicial Conduct. As we discussed, I have delayed this report in order to include details concerning a related motion filed by the \_\_\_\_\_ Attorney's office on January 29.

The motion and its 9 exhibits, referred to herein, were sent to you on February 17, 2009. Attachments 1 - 6 accompany this letter and are being sent to you by mail as previously requested.

QUALCOMM MATTER

On December 4, 2008, I attended a professional football game at Qualcomm Stadium in San Diego, California. At one point, I left my seat to go to the restroom. On the way, I tripped and fell on some stairs, injuring my head, nose, forearm and back. I do not remember what happened after striking my head but according to a San Diego police report, I was helped by a bystander and thereafter taken to a local police facility since I could not care for my safety.

I had been drinking alcoholic beverages and had little to eat, so I am certain that I was "under the influence of intoxicating liquor" as contemplated by California Penal Code Section 647(f). I am not sure, however, that my disorientation and lack of ability to care for my safety were a result of the alcohol as opposed to the head injury. Perhaps it was a combination of both. In any event, my detention was brief and no charges were filed against me.

I was, and still am, embarrassed by this incident. It was of my own making, not much fun at all, and nothing of which I can be proud. Still, what's done is done, and I know it will not occur again.

A few weeks after the incident the Presiding judge of \_\_\_\_\_ became aware of this matter. At his request, the Associate Presiding Judge, \_\_\_\_\_ the Superior Court Human Resources Manager \_\_\_\_\_ and the Court Administrator \_\_\_\_\_ discussed the incident with me. I told them what I knew, essentially what is stated above. After the meeting, a few days later I met with Judge \_\_\_\_\_ Judge \_\_\_\_\_ and Mr. \_\_\_\_\_. We again discussed the matter. Judge \_\_\_\_\_ advised me that the Court was attempting to get a copy of a police/incident report. Judge \_\_\_\_\_ advised me that depending on the contents of the report, it may or may not be necessary to report the matter to the Judicial Conduct Commission. The next day I asked whether I could self report in the event that it became necessary and Judge \_\_\_\_\_ agreed. I told the Judge that at all times I would cooperate fully in the investigation. I discussed the matter further with Judge \_\_\_\_\_ over the next few days, and he advised me that they had been unable to obtain a copy of a police/incident report.

On January 16, 2009, I was called to Judge \_\_\_\_\_ office and provided a copy of a letter from the County Attorney, \_\_\_\_\_ dated January 16, 2009 (attachment 2), a copy of a fax transmittal sheet from \_\_\_\_\_ of the City of San Diego traffic division to \_\_\_\_\_ who I am told is an investigator for the \_\_\_\_\_ County Attorney office (attachment 3) and a copy of a San Diego Police Department report. I had neither seen nor heard of these documents. After reviewing them, Judge \_\_\_\_\_ deemed the matter to be reportable as a possible violation of Canon 2(A.). I agreed after consulting an attorney and contacted you by telephone on January 21, 2009.

#### YUMA COUNTY ATTORNEY MOTION

On January 29, 2009, an extraordinary motion was filed by the office of the \_\_\_\_\_ County Attorney in twenty-six DUI cases assigned to me, requesting that I remove myself "... ON ALL PRESENT AND FUTURE DUI CASES BECAUSE OF THE APPEARANCE OF IMPROPRIETY". The memorandum attached to the motion essentially alleged that I had not and could not be impartial when ruling on DUI cases. It also suggested other ethical violations.

After the motion was filed, the local newspaper received an anonymous call concerning the entire matter. A page one headline and story appeared in the newspaper shortly thereafter. I refused to comment on the substance of the motion when contacted by a news reporter, because the cases in question were pending before me.

Left out of the news story and the County Attorney's motion were my six and a half years as a Justice of the Peace, during which I have handled approximately 1,300 DUI cases and countless other matters involving alcohol (domestic violence, open container, etc.) with no suggestions or complaints of partiality.

The County Attorney's motion asks me to remove myself "from all current and future DUI cases because of the appearance of impropriety pursuant to Canon 2(A.) and Canon 3 (E.)". The same pleading, however admits that "This is not a Rule 10.1 motion". Rule 10.1 of the Arizona Rules of Criminal Procedure concerns the disqualification of a judicial officer upon a showing of bias and prejudice. A Rule 10.1 motion would not only have been untimely in the pending cases, but I respectfully submit that there would have been no support for it in fact or law.

For example, the County Attorney's motion refers to my June 2, 2001 arrest for DUI (I was not a judge at this time). The motion's description of this arrest is neither correct nor complete. Most importantly, it fails to mention that I was not convicted of DUI, yet the county attorney says I violated the law.

The county attorney also apparently failed to review an exhibit to the motion containing 2 pages concerning a \_\_\_\_\_ who is unknown to me and 2 more pages showing my social security number which may violate A.R.S. 44-1373 because numerous copies of this exhibit were distributed as shown on pages 2 and 3 of the motion. The distribution included defendants not represented by attorneys.

The San Diego police department facility to which I was taken is a California Penal Code section 647(g) facility. The county attorney's discussion is not correct in saying that I was arrested. Attachments 1 and 4 demonstrate that pursuant to California Penal Code section 647(g) I was placed in civil protective custody, not arrested. I am not "subject to any criminal prosecution" as shown by California Penal Code section 647(g)), despite the county attorney's unsupported assertion that I violated the law. Further, the county attorney apparently failed to review motion exhibit 2 because it contains a page showing my home address which may violate A.R.S. 39-123. I did not consent in writing to this release of my home address.

I find it unnecessary to dignify the County Attorney's complaints about past cases, numbering less than a dozen, in which my rulings have been challenged and/or overturned. I believe that my record is at least on a par with most other judges. The suggestion that I routinely fail to follow clearly established DUI law is, I believe, unsupported.

I genuinely regret the Qualcomm incident. The publicity it has received, prompted in large part by the aforementioned actions of the County Attorney' office, is terribly unfortunate. I can assure you that it has not been pleasant for me.

I have attempted to be a credit to the bench since I first put on a judicial robe. I respect the judicial office I am privileged to hold.

I stand ready to answer any questions the Judicial Conduct Commission may have.

\_\_\_\_\_  
Very truly yours,

Justice of the Peace,