

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 09-221

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Complainant: No. 1371010550A

Judge: No. 1371010550B

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**ORDER**

The commission reviewed the complaint filed in this matter and found no evidence of ethical misconduct on the part of the judge. The issue raised is legal or appellate in nature and a more appropriate remedy would have been to file an appeal. Therefore, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: October 15, 2009.

FOR THE COMMISSION

\s\ Keith Stott

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Executive Director

Copies of this order were mailed to the complainant and the judge on October 15, 2009.

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

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

CJC^09-221

COMPLAINT AGAINST A JUDGE

Your Name:

Judge's Name:

Date: 6-15-09

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times, and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

I believe the Honorable Judge made and erroneous decision when she denied our motion to suppress. The Fifth and Fourteenth Amendments to have counsel present during custodial interrogation states that's once an accused has expressed his desire to deal with police only through counsel he is not to be subjected to further interrogation until counsel has been made available to him unless accused himself initiates further communications with police. In Edwards v. Arizona no. 79-5009 the defendant had invoked his right to have counsel present during custodial interrogation. Valid waiver of that right could not be established by showing only that he responded to police initiated interrogation after being advised of his rights; thus the use of his confession violated his rights under Fifth and Fourteenth amendments. In my case on Dec 21, 2007 I asked "at this point can I see for an attorney?" At that point I had invoked my right to have counsel present and at no time did I waive my rights. In Edwards just cause he spoke with the detective does not mean he waived his rights and neither did I. Furthermore during our hearing on Feb 20, 2009 Detective Hickman stated that prior to the taped confession that he did not talk to the defendant or see the defendant, on Feb 26 2009 officer stated that not

(Attach additional sheets as needed.)

only did collect the information talk to me, and that he did not talk to me. In light of these findings the court should ask the officers what was said. Again during the hearing I stated that the detectives made promises to me what could happen if I did not tell the truth in which I did. IT was never distinguished if the conversation took place nor was the detective on the scene ask what was said. Again going to other's case laws Kennedy v. Fairman, 618 F.2d 1242 (ca7 1980) no. 79-6601; United States v. Rodriguez-Gastelum, 569 F.2d 486 (ca9). Stating that it makes no sense to hold that once an accused has requested counsel "he may never, until he has actually talked with a counsel, change his mind and decide to speak with the police without an attorney being present." Also when detective Shoop A policeman came to question me, he (det. ) ask detective if I ask for an attorney and "he" (det. ) stated no. In which det Shoop never advised me of my Miranda Rights. In State v. Startz, 159 Ariz 411, 768 P.2d 143 (1988), the Arizona Supreme court stated that Arizona employs the second, or "clarifying" approach. The court held that the statement "maybe I should be talking to a lawyer" was an ambiguous request that required police to either cease questioning or attempt to clarify the defendant's

Request. Id. at 414, 768 P.2d at 146. The Supreme Court cited *State v. Toman*, 151 Ariz. 413, 728 P.2d 286 (App. 1986), in which we held that the defendant's statement "when can I get a lawyer?" was at least an ambiguous request that required clarification before police could proceed with questioning. In the present matter during my conversation with Detective

I inquired about speaking to an attorney, creating an ambiguity similar to the *Stagitz* case as noted supra. Rather than clarifying whether I was requesting an attorney det. Hochman fast-talked his way around the request, nor at any time did I waive my right to speak to him.