

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 09-257

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Complainant: No. 1373810572A

Judge: No. 1373810572B

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

Dated: February 4, 2010.

FOR THE COMMISSION

\s\ Keith Stott

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

Copies of this order were mailed to the complainant and the judge on February 4, 2010.

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

September 21, 2009

SEP 23 2009

Attorney Consumer Assistance Program  
4201 N. 24<sup>th</sup> St.; Suite 200  
Phoenix, AZ 85016

Attorney Discipline Unit  
Supreme Court of Arizona  
1501 W. Washington; Suite 104  
Phoenix, AZ 85007

Ethics Counsel  
4201 N. 24<sup>th</sup> St; Suite 200  
Phoenix, AZ 85016

Judicial Ethics Advisory Commission  
1501 W. Washington St; Suite 229  
Phoenix, AZ 85007

Re: Judicial/Prosecutorial Misconduct

Greetings;

Recently I was arrested for violations of Title 28 of the Arizona Revised Statutes. The case was brought before the honorable; Justice of the Peace; \_\_\_\_\_, of the \_\_\_\_\_ Justice Court, in \_\_\_\_\_, Arizona.

There were several motions filed and a hearing set before Judge \_\_\_\_\_. A week prior to that first scheduled hearing I filed a motion to dismiss for lack of subject matter jurisdiction, on the premise that, under Arizona law, the Department of Transportation has original jurisdiction with regard to enforcement of Title 28 of ARS. (Motion Enclosed).

The Honorable Judge \_\_\_\_\_ has, in the recent past, ruled favorably on such a motion for dismissal, under similar circumstances.

My motion was based upon this prior motion which was favorably ruled upon.

At the initial hearing before Judge \_\_\_\_\_, the state's attorney; \_\_\_\_\_; with the Yavapai County Attorney's Office, argued that he had not sufficient time to answer the motion to dismiss and requested the hearing continued for one month.

He later filed an answer to my motion stating the justice court "is not an agency" and therefore has subject matter jurisdiction??

This answer is at odds with other written opinions/motions/determinations, coming out of this same prosecutor's office.

At the assigned date and time of the continued hearing, lo and behold a new judge, an out of town judge, was on the bench. Judge [redacted] from out of town, was presiding on this day. I think she was described as "Pro Tem" or some such designation.

The original judge; Judge [redacted] was not ill, she was not on vacation, and she just wasn't there. The state's attorney; Mr. [redacted] was meeting (*ex parte?*) with this new, out of town judge, when I arrived--15 minutes before the scheduled hearing time.

The new judge listened politely during oral arguments. She and the state's attorney agreed, the court is "not an agency" and, therefore has original jurisdiction--contrary to the laws of the state of Arizona. (Motion Enclosed)

I asked this new judge, this out of town judge, for citations upon which she was basing her ruling and none seemed to come to her so she said "that's only for civil actions."

This ruling (now on appeal) is contrary to opinions heretofore promulgated by the same County Attorney's office and ruled upon affirmatively by the regularly sitting judge.

What do I suspect? I suspect the state's attorney went shopping for a judge, who may not have estoppels issues, and w/could more likely rule in favor of the state's erroneous and dissonant position, even though the state, this same office, has argued an opposite position, in this area of law, in the recent past.

Kindly inform me if you share my concerns.