

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 09-269

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Complainant: No. 1373210634A

Judge: No. 1373210634B

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

Dated: December 18, 2009.

FOR THE COMMISSION

    /s\ Keith Stott      
Executive Director

Copies of this order were mailed to the complainant and the judge on December 18, 2009.

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

**COMPLAINT AGAINST JUDGES THAT CAN NOT BE SETTLED BY APPEAL – ONLY BY RECOURSE TO A.R.S.Const. Art.6.1 §§ 1-6**

**C2006-5166 SUPERIOR COURT**

1. Three separate Dismissals were granted by the Superior Court; for the College Defendants, for the County Defendants, and for the State Defendants;

2. Three separate Notices of Appeals all separate in time were duly and properly made for each Dismissal;

3. Three Payments of \$500 for Bonds were made, \$1500.00.

4. Only one Appeal, that for the College Defendants, was transmitted and entered and accepted in the Court of Appeals Division 2.

5. Repeated oral protests in Superior Court and Court of Appeals that only one Appeal was transmitted and entered in the Court of Appeals were ignored.

**2CA-CV COURT OF APPEALS,**

6. Motion that the Court of Appeals order the Clerk of the Superior Court to transmit the lost Appeals, County and State, was denied by the Court of Appeals.

7. Motion that the Court of Appeals consider the status of the three Bonds for the three Appeals was denied by the Court of Appeals.

Sections 6 and 7 are violations of the U.S. FOURTEENTH AMENDMENT (denial of access to the courts) and 42 U.S.C. § 1983 Remedy of § 5 of the above.

Both Motions of 6 and 7 were reasonable and in accord with all the principles of Justice and Equity; yet were summarily denied without explanation.

1 8. , Clerk of the Court of Appeals, altered the docket with  
2 two different versions so could file some 122 days late;  
3 a violation of A.R.S. § 13-2407 Tampering with a public record; classification.

4 Court Dockets with entries deleted and then substituted by the Court of Appeals  
5 become without historical probity; they become like Soviet Era Encyclopedias.

6 9. The first Mandate was issued and then withdrawn.

7 **2 CA-CV Con. COURT OF APPEALS,**

8 10. Only after flagrant misconduct by , Assistant Arizona  
9 Attorney General, were the two lost and ignored Appeals, against County and State  
10 Defendants, accepted; this is the reason for **2 CA-CV Con.** in the  
11 Caption of the Court of Appeals.

12 Fortunately Plaintiff had ignored Court Protocol and had previously filed  
13 in the Court of Appeals, the required Copies of the Opening Brief against the  
14 County Defendants and the required Copies of the Opening Brief against the State  
15 Defendants; otherwise they would probably have never been accepted.

16 11. Court of Appeals issued a Memorandum-Decision September 19, 2008  
17 and by Order on that date *sent* to the Prosecutor, the Arizona  
18 Attorney General, and the Attorneys of P.L.C.,

- 19 Hard Paper Copies of the Memorandum-Decision;
- 20 Electronic-Filing Copies of the Memorandum-Decision;

21 The Pro se Plaintiff received neither of the above nor did he receive a Copy  
22 by e-mail as an attachment nor did he go downtown to the Annex  
23 Computer of the Court of Appeals on the

24 **He had been given the Status of a Second Class Citizen before the Court.**  
25 **THERE ARE NO SECOND CLASS CITIZENS IN THE STATE OF ARIZONA**

1 a. The Memorandum Decision of September 19, 2008 is defective as it was  
2 not served by the Court of Appeals in accordance with:

3 **Rule 4. Filing and Service (b) Service of All Papers Required; Notice by**  
4 **the Court; Manner of Service. Rules of Appellate Procedure.**

5 “Copies of all papers filed by any party shall, at or before the time of filing,  
6 be served by a party or person acting for him on all other parties to the  
7 appeal.

8 This rule shall not apply to the transcript filed pursuant to Rule 11(b).  
9 Service may be personal, by mail, or by delivering the paper by any other  
10 means, including electronic means, if the recipient consents in writing to  
11 that method of service or if the court orders service in that manner.

12 Personal service includes delivery of the copy to a clerk or other  
13 responsible person at the office of counsel.

14 Service by mail includes every type of service except same day hand  
15 delivery and is complete on mailing.

16 Service by other means is complete upon transmission.

17 **Service of copies of notices and papers that that the clerk of the**  
18 **court must serve on parties to the appeal shall also be made in**  
19 **accordance with the foregoing.**” (Emphasis supplied)

20 **b. Rule 124. Electronic Filing, Delivery and Service of Documents**  
21 **(Adopted October 2000) Rules of the Arizona Supreme Court**

22 “(d) **Electronic Delivery of Documents by the Court.** A court may  
23 deliver judgments, minute entries, orders requiring the signature of a  
24 judge or a clerk to be effective, and notices electronically, instead of  
25 by mail, **to any party or any party’s attorney who files either**  
**traditionally or electronically a consent.** Such consent is effective in  
all subsequent litigation in that court involving the consenting party.

A party or that party’s attorney may withdraw such consent at any  
time upon notice to the clerk of the court filed either traditionally or  
electronically. An implementing court may adopt, by appropriate  
court rule, additional procedures relating to the e-delivery of  
documents, to the extent such additional procedures are not  
inconsistent with this Rule 124.” (Emphasis supplied)

24 **Plaintiff,**

**never filed consent and there was no transmission.**

**c. Ariz. Const. Art 2, § 13. Equal privileges and immunities**

“No law shall be enacted granting to any citizen, class of citizens, or corporations other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.” AND

**Ariz. Const. Art 2, § 32. Constitutional provisions mandatory**

“The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.”

**THERE ARE NO SECOND CLASS CITIZENS IN THE STATE OF ARIZONA**

**12.** A Petition for Review was denied by the Court of Appeals itself.

Clerk of the Court of Appeals, stated falsely in Appeal

Court Order Docket 3/5/2009 **“A Petition for Review was filed and DENIED by Order of the Arizona Supreme Court”** (his exact words); this being a violation of A.R.S, § 13-2703 **False swearing: classification.**

**The Court of Appeals had usurped the Powers of the Arizona Supreme Court.**

The Fee for Review by the Arizona Supreme Court was replaced by a Check of the Court of Appeals which has never been cashed nor will it ever be cashed.

It has been laminated for future permanent reference.

That check is so iridescent that it glows green in the dark.

**13.** of P.L.C., upheld by REJOINDER of Attorney and REJOINDER of Ass’t Ariz. Atty General, in filings falsely averred, **“Plaintiff lost this case via dismissal two years ago. The Court of Appeals affirmed and the Supreme Court denied his petition for review.”** Docket 12 May, 2009 p.2 lines 1-3

**a.** Statements **12.** and **13.** by the opposing adverse parties; are violations of:

## ER 3.3. Candor Toward the Tribunal

## RULES OF THE SUPREME COURT RULES OF PROFESSIONAL CONDUCT

“(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by ER 1.6.”

of

P.L.C. states

on page 2 line 1-3 of her Strike Motion of May 12, 2009, falsely averred,

“Plaintiff lost this case via dismissal two years ago. The Court of Appeals affirmed **and the Supreme Court denied his petition for review.**” A.R.S. § 12-2102

The duty to disavow this false averment by the opposing parties continues.

**b. FRAUD WAS AMPLY DEMONSTRATED IN PLAINTIFF’S “FINAL”**

**RULE 60(c) MOTION** and Statement of the Case **1. through 13. AND IS NOW AUGMENTED BY THE ABOVE “(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party,”** (page 2 lines 1-3 of her Strike Motion by \_\_\_\_\_ dated 12 May, 2009).

**14.** Influenced by all of the above and relying on the “false averments” the good Judge of the Superior Court consequently did not rule specifically as requested on the Issues of the Motion of May 11, 2009: but summarily denied.

**“I declare under penalty of perjury that all the foregoing in the Statement of the Case is true and correct.**

**Executed on September 30, 2009.**

1 COMPLAINT AGAINST JUDGES THAT CAN NOT BE  
2 SETTLED BY APPEAL – ONLY BY RECOURSE TO  
3 A.R.S.Const. Art.6.1 §§ 1-6  
4

5  
6 I. FACTUAL BACKGROUND

7 For denying access to the Court of Appeals in this case C2006- of two  
8 lost appeals, against County Defendants and State Defendants, a lawsuit was filed  
9 against

10 Superior Court Case No. C2007 for violation of the  
11 Fourteenth Amendment of the U.S. Constitution (denial of access to the courts).

12 As it was of interest to the State of Arizona that the Appeals against County  
13 Defendants and State Defendants never reach the Court of Appeals,

14 ASSISTANT ARIZONA ATTORNEY GENERAL  
15 ACTED AS PERSONAL DEFENSE LAWYER FOR  
16 , ,

17 as they were sued both as individuals and in their official capacity.

18 This intervention by the Arizona Attorney General was a violation of:

19 A.R.S.Const. Art. III which reads,

20 “The powers of the government of the State of Arizona shall be  
21 divided into three separate departments, the Legislature, the  
22 Executive, and the Judicial; **and except as provided by in this**  
23 **Constitution**, such departments shall be separate and distinct, and no  
24 one of such departments shall exercise the powers properly belonging  
25 to either of the others.” (emphasis supplied)

1 There is no Constitutional provision that the Arizona Attorney General act as  
 2 a defense attorney for individuals nor when in their official capacity, Judges are  
 3 acting as defense lawyers for the State, in denying access to their Court of Appeals  
 4 of two properly filed Appeals against the State of Arizona and County as surrogate.

5 This was a conflict of interest and the Judges should have recused themselves  
 6 which they did not.

7 Motion for Recusal of the Judges was **STRICKEN** by an unsigned **ORDER**  
 8 by an unknown judge of the Court of Appeals, Division Two. **APPENDIX A**

9 **II.** Judgment was rendered in Superior Court that in **Case No.**  
 10 **C2007** for violation of the Fourteenth Amendment of the U.S. Constitution  
 11 that Judges, enjoyed state judicial immunity.

12 This is contrary to: U.S. v. Mandel, 415 F.Supp. 997, 1005-1015 (D. Md. 1976):

13 “State cannot render immunity from federal crime as a public official.”  
 14 (summation of a ten page discussion)

15 Mason v. Arizona, 260 F.Supp.2d 807 (D.Ariz. 2003) held,

16 [6]“Prospective relief that requires a state official to comply with the  
 17 federal constitution operates against the official in her personal  
 18 capacity and falls outside the Eleventh Amendment.”

19 Regardless of the Law the Arizona Attorney General got the job done.

20 There is no intention here to re-argue the case, only to present the entry of  
 21 the Arizona Attorney General as a defender of Judges and as he thereby gained  
 22 their personal and perpetual gratitude for his benefit in this present case.

23 **III. COURT OF APPEALS CAN HANDLE THEIR OWN DEFENSE**

24 and preserve their Constitutional Separation of Powers as they have their own  
 25 corps of Staff Attorneys.



1 These Staff Attorneys write most of the Unpublished Memorandum-Decisions  
 2 which usually do not constitute precedent in civil and in civil rights cases and  
 3 cannot therefore be cited except under certain conditions.

4 has at least one Staff Attorney. **APPENDIX B**

5 Court of Appeals has a Chief Staff Attorney. **APPENDIX C**

6 **IV. HOWEVER STATE AND FEDERAL GROSS INCOME BY JUDGES**  
 7 **MUST BE DECLARED AND TAXES PAID**

8 Anderson v. United States, 929 F.2d 648 (Court of Appeals, Federal Circuit 1991)  
 9 held that “fringe benefits” are included in “gross income” under 26 U.S.C. § 61.

10 This is also the position of the State of Arizona per:

11 **A.R.S. § 43-101 Declaration of intent** which reads in pertinent part,

12 “A. It is the intent of the legislature by the adoption of this title to  
 13 accomplish the following objectives:

14 1. To adopt the provisions of the federal Internal Revenue Code<sup>1</sup>  
 15 relating to the measurement of adjusted gross income for individuals,  
 16 to the end that adjusted gross income reported each taxable by an  
 individual to the internal revenue service shall be the identical sum  
 reported to this state, subject only to modifications contained in this  
 title.”

17 And **A.R.S. § 43-301 Individual returns; definition** which reads in part,

18 “A. An individual whose income is taxable under this title shall file a  
 19 return with the department if, for the taxable year, the individual has  
 20 any of the following.

21 1. An Arizona adjusted gross income of five thousand five hundred  
 22 dollars or over, if single or married filing a separate return.  
 23 2. An Arizona adjusted gross income of eleven thousand dollars or  
 24 over, if married filing a joint return pursuant to § 43-309.  
 3. A gross income of fifteen thousand dollars or over, regardless of the  
 amount of taxable income.”

25 Deferred and forgiven Attorney Fees are “fringe benefits” and therefore taxable.

1 **Discharge from indebtedness**

2 One form of income listed in the Code, that of "discharge of indebtedness" is not  
3 often considered income by lay persons. If, however, a taxpayer owes a debt to any  
4 other party, and that debt is forgiven without being fully repaid, the taxpayer must  
5 as a general rule declare the forgiven amount as income and must pay tax on it.

6 Deferred Attorney Fees for defense in a lawsuit, whether by the Arizona  
7 Attorney General or by Staff Attorneys of the Court of Appeals or any other court,  
8 must be declared and taxes paid thereon.

9 Have complied ? Doubtful

10 **26 U.S.C. § 61 Gross Income** is presented in **APPENDIX D.**

11 **V. IMPARTIALITY IN CRIMINAL CASES BROUGHT BEFORE**  
12 **JUDGES BY THEIR PERSONAL DEFENSE ATTORNEY, THE**  
13 **ARIZONA ATTORNEY GENERAL, BECOMES IMPUGNABLE**

14 However this issue, not present in this case and therefore moot, can only be  
15 decided by the Arizona Supreme Court on a case by case basis.

16 **"I declare under penalty of perjury that all the foregoing in the Statement of**  
17 **the Case is true and correct.**

18 **Executed on September 30, 2009.**

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