

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 13-210

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Judge: Diana Quezada

Complainant: Aaron Kizer

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**ORDER**

The complainant alleged a municipal court judge is not following the proper procedure in accepting guilty pleas and is not providing counsel adequate notice of the judge assigned a case in order to allow for the timely filing a notice of change of judge as a matter of right.

The commission dismissed the allegation related to assignment of judges, finding no evidence of judicial misconduct.

Rule 2.2 of the Code of Judicial Conduct requires judges to uphold and apply the law. Comment 3 to that rule clarifies that, while a “good faith error of fact or law” should not be considered judicial misconduct, “a pattern of legal error” may constitute misconduct.

The complaint provided two examples of guilty plea proceedings in which Judge Quezada failed to comply with legal requirements in advising defendants of their constitutional rights, and the judge’s response acknowledges those failures. Such error in two cases is sufficient to demonstrate a pattern of legal error, and the evidence presented to the commission in the complaint as well as the judge’s response suggests that Judge Quezada’s standard guilty plea colloquy did not comply with the law.

Judge Quezada has served on the bench for 30 years, and has previously received an advisory to ensure she is familiar with the procedural rules governing her cases. Limited jurisdiction court judges in Arizona are provided with “Bench Books” that provide specific guidance in presiding over guilty plea proceedings, for the purpose of avoiding the type of errors that occurred in Judge Quezada’s handling of such proceedings.

The judge’s failure to heed either her previous training or the commission’s prior warning to follow procedural rules is an aggravating factor. The pattern of legal error by Judge Quezada is a violation of Rule 2.2.

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

Accordingly, Municipal Court Judge Diana Quezada is hereby publicly reprimanded for her conduct as described above and pursuant to Commission Rule 17(a). The judge is also ordered to attend, at her own expense, the portions of a limited jurisdiction new judge orientation provided by the Education Services Division of the Administrative Office of the Courts in 2014 that relate to criminal procedure. The record in this case, consisting of the complaint, the judge's response, and this order shall be made public as required by Rule 9(a).

Dated: December 12, 2013.

FOR THE COMMISSION

/s/ Lawrence F. Winthrop

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Lawrence F. Winthrop  
Commission Vice-chair

Copies of this order were mailed to the complainant and the judge on December 12, 2013.

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

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

**2013-210**

**COMPLAINT AGAINST A JUDGE**

Your name: Aaron Kizer Judge's name: Diana Quezada Date: 8-15-2013

**Instructions:** You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

Complaint #1: Diana Quezada is the Magistrate for the Tolleson City Court. She does not follow the Rules of Criminal Procedure. Attached are two guilty plea proceedings conducted by this judge. They do not comply with the legal requirements.

Complaint #2: Previously Judge Quezada would email a calendar to the attorneys a couple of weeks in advance of court in order to prepare. If a judge pro tem was assigned, the judge's name would be on the calendar. See attachment C. After a notice of change of judge was filed as to Debbie Weecks, the next time that person was assigned as a judge pro tem, Judge Quezada removed that name from the calendar that was emailed to the attorneys (attachement D) and instructed her staff to not tell the attorneys in advance that a judge pro tem was covering court that day. The right to file a notice of change of judge remained but at greater inconvenience to victims, witnesses, defendants, and attorneys who are forced to come to court only to be told that the case was continued. It also jepordizes some cases due to the speedy trial rules. The Tolleson Mayor said that management is unable to deal with these problems due to seperation of powers/ judicial independence issues.

*(Attach additional sheets as needed)*

APRIL 11, 2013  
PROTEM - D. WEECKS

PRETRIALS/TRIALS

revised 3-28-13\*\*\*

9:00  
3/8/13  
Felony holds

CR 20120320  
Violation

Brian Romero 121110002  
FTA/DV-Interf.Jud.Procdg.  
DV-Crim.Damage  
DV-Dis.Conduct  
Suspended Dr.License  
Manuel Bustamante

Attorney

9:00

TR 20120539  
Violation  
Attorney

Scott Ray\*  
Review Hrg-Non-Com.Div.  
Manuel Bustamante

9:00  
Jail 3/11/13  
Probation Hold

CR 20120329  
Violation  
Attorney

Alexander Kephart 121106018  
FTA/Shoplifting  
Manuel Bustamante

9:00  
Jail 3/18/13  
Other holds

CR 20130011  
Violation  
CR 20130082  
Attorney

Ronald Thomas 130113039  
FTA/Poss.Drug Para.  
DV-Crim.Damage 130217017  
Manuel Bustamante

9:00  
Jail 2/14/13

CR 20130035  
Violation  
Attorney

Robert Duque\* 130214047  
Assault/Dis.Conduct  
Manuel Bustamante

9:00

CR 20120322  
Violation

Sharnice Holt-Love\* 120123006  
Dis.Conduct  
Interf.Edu.Insti.  
Manuel Bustamante

Attorney

9:00

CR 20120042  
Violation  
Attorney

Cynthia Chavez\*  
Status Conference  
Manuel Bustamante

10:00  
TRIAL

CR 20120293  
Violation

Adams Brockway\* 120816017  
Assault  
Criminal Damage  
Manuel Bustamante

Attorney

10:00  
TRIAL

CR 20120319  
Violation

Melissa Tellez \* 121109017  
DV-Assault  
DV-Crim.Dam.  
Manuel Bustamante

Attorney

JULY 25, 2013

PRETRIALS/TRIALS

revised 7-8-13\*\*\*\*

9:00	TR 20130220 Violation Attorney	Julia Meyer* Dui/Dui-Drugs Jason Eastman	120906027
9:00	CR 20130175 Violation Attorney	Guillermo Hernandez DV-Dis.Conduct Candy Marrufo	130528050
9:00	CR 20130063 Violation Attorney	Steven Valencia* Non-Comply-Jail Manuel Bustamante	
9:00	CR 20130084 Violation Attorney	Mary Lamb* Shoplifting Manuel Bustamante	130314019
9:00	CR 20130210 Violation  Attorney	Connie Laguna DV-Dis.Conduct DV-Assault Manuel Bustamante	130621054
9:00*	CR 20130197 Violation Attorney	Gilberto Manriquez Interf.Jud.Procdg. Manuel Bustamante	130408026
10:00*	CR 20130181 Violation Attorney	Jose Ordaz-Onofre Disorderly Conduct (co-defendant) Manuel Bustamante	130525010
10:00	CR 20120290 Violation CR 20120343 Attorney	Jessica Lara* Non-Comply/MCAP Non-Comply/MCAP Manuel Bustamante	
10:00	TR 20120416 Violation  Attorney	Edwin Rivera Restricted License Fail.Signal None	130504015
10:00	CR 20120381 Violation Attorney	Esteban Esparza* Non-Comply Diversion Manuel Bustamante	



1 P R O C E E D I N G S

2  
3 JUDGE QUEZADA: We're on the record in the case  
4 of the State versus Gabriel Hines.

14:46 5 Okay. Mr. Hines, you are pleading guilty to one  
6 count of domestic violence/disorderly conduct?

7 THE DEFENDANT: Yeah.

8 JUDGE QUEZADA: You are placed -- you are  
9 sentenced to serve 30 days in jail, suspended if you  
10 complete one year of unsupervised probation.

11 While on probation, you shall remain law-abiding,  
12 have no contact with Brittany Williams, have no uninvited  
13 contact with Mahasin Robinson, pay \$50 in restitution to  
14 Ms. Robinson through the Court and complete a domestic  
15 violence program.

14:46 16 THE DEFENDANT: I didn't understand it like that,  
17 but now I do.

18 JUDGE QUEZADA: Let me give you copies. You need  
19 to register with the agency for the class within 24 hours.

14:47 20 Now, restitution, you already made an agreement  
21 to pay it no later than the 8th of September, so you can  
22 have a copy of that.

23 Do you have any questions?

24 THE DEFENDANT: No, thank you.

25 (Off the record.)

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JUDGE QUEZADA: Back on the record in Gabriel Hines. He pled guilty to Count 1. Count 2 and 3 are dismissed.



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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof and that the foregoing 3 pages constitute a full true and correct transcript of said shorthand record all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 8th day of August, 2013.

DEBORAH S. WORSLEY GILGAD,  
Certified Reporter  
Certificate No. 50477

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IN THE TOLLESON CITY COURT  
MARICOPA COUNTY, ARIZONA

STATE OF ARIZONA, )  
 )  
Plaintiff, )  
 )  
vs. ) CASE NO:  
 ) TR 20130540  
JAMES MCELHENN, )  
 )  
Defendant, )  
 )

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Tolleson, Arizona  
August 8, 2013

Before: THE HONORABLE DIANA QUEZADA

APPEARANCES:

FOR THE STATE: Aaron Kizer, Esq.  
(Appearance waived.)

REPORTED BY:  
Deborah J. Worsley Girard  
Certified Reporter  
Certificate No. 50477

WORSLEY REPORTING, INC.  
Certified Reporters  
P.O. Box 47666  
Phoenix, AZ 85068-7666  
(602) 258-2310

(COPY)

"B"

1 P R O C E E D I N G S

2  
3 JUDGE QUEZADA: On the record in the case of  
4 James McElhenn. Mr. McElhenn, you are pleading guilty to  
11:19 5 Count 3 of the three charges of DUI. Count 1 and 2 are  
6 dismissed per the plea agreement. This is an extreme DUI.

7 Your fine is \$2,748. That does not include any  
8 jail costs or any time-payment fees. You're sentenced to  
9 serve 30 days in jail. There will be jail costs incurred.

11:20 10 All but six days of the jail are suspended, so 24 days of  
11 jail are suspended, and you will have to serve six days.

12 You are ordered to complete an alcohol screening  
13 program and any classes they recommend.

14 You will get a letter in the mail regarding the  
11:20 15 interlock device. It's a device you have to put on your  
16 vehicle for a year.

17 You are also placed on 18 months of unsupervised  
18 probation, so you are not reporting to anybody. This is  
19 soft probation. Is that your understanding?

11:20 20 THE DEFENDANT: Yes.

21 JUDGE QUEZADA: Jail costs are going to be  
22 \$646.23.

23 I'm assuming you are going to pay this in  
24 payments; right?

11:21 25 THE DEFENDANT: Yes.

1 JUDGE QUEZADA: It's important that once we place  
2 you on payments that if your payments are going to be late  
3 or you become unemployed, tell us so we know, because  
4 unless you notify us, we won't know.

11:21 5 THE DEFENDANT: Right. Okay.

6 JUDGE QUEZADA: Let's see. So your total fine is  
7 \$3,434.23.

8 You need to report to this agency within 24 hours  
9 for classes.

11:22 10 Do you have a copy of your plea agreement?

11 THE DEFENDANT: Yes.

12 JUDGE QUEZADA: They gave you a copy already?

13 THE DEFENDANT: Yes.

14 JUDGE QUEZADA: So your total fine was

11:22 15 Do you have any questions at all?

16 THE DEFENDANT: When do I do the six days in

17 jail?

18 JUDGE QUEZADA: Let me see. Did you set up that  
19 already with my staff? You haven't talked to her about

11:22 20 when?

21 THE DEFENDANT: No.

22 JUDGE QUEZADA: Do you need to speak to your  
23 employer before you set that up?

24 THE DEFENDANT: I do.

11:22 25 JUDGE QUEZADA: Okay. So let's have you come

1 back to see her on Monday. That gives you time to speak  
2 to your employer and advise him that you have to serve  
3 this time in jail because it cannot be on weekends, it has  
4 to be consecutive days.

11:22

5 THE DEFENDANT: Okay.

6 JUDGE QUEZADA: Let's see. Copy of probation,  
7 your payment contract. Officer.

11:23

8 These are your copies. Monday you just need to  
9 come back either -- let's see. Let's schedule you to come  
10 in on Monday at ten to see the Court Supervisor, and she  
11 will set up your jail time.

12 THE DEFENDANT: Okay. Thank you.

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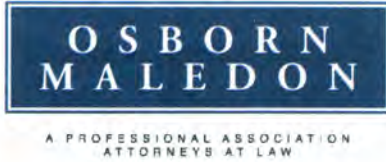
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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof and that the foregoing 4 pages constitute a full true and correct transcript of said shorthand record all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 8th day of August, 2013.

Worsley  
Certified Reporter  
Certificate No.



Anne M. Chapman

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OCT 02 2013

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October 1, 2013

Jennifer Perkins  
Staff Attorney  
Commission on Judicial Conduct  
1501 W. Washington Street, Suite 229  
Phoenix, AZ 85007

Re: Judicial Conduct Complaint No. 13-210

Dear Ms. Perkins:

We represent Judge Diana Quezada in connection with the complaint filed against her by Aaron Kizer. We understand Mr. Kizer has withdrawn his complaint and it is our hope that the following response resolves all of the issues raised by the complaint and enables the Commission to conclude its investigation in Judge Quezada's favor.

Judge Quezada takes her judicial responsibilities and the dignity of her judicial office very seriously. She has served as a City Magistrate for the Tolleson City Court with distinction for thirty years. She appreciates the Commission giving her the opportunity to address the now withdrawn complaint.

### **I. Guilty Pleas**

The complaint attaches two transcripts and alleges that Judge Quezada's guilty plea proceedings do not comply with the legal requirements. Although the Complaint does not specify which legal requirements are at issue, Judge Quezada acknowledges that she did not fully advise the defendants in the two attached two plea colloquies of all of the constitutional rights implicated by a plea of guilty as required by Arizona Rule of Criminal Procedure 17.2 in one case, and Rule 8 of the Rules of Procedure in Traffic and Boating Cases in the other case. Judge Quezada understands that although her courtroom staff and defense counsel fully review plea agreements with every defendant, the Court is also required to properly advise a defendant in open court of the rights outlined in Rule 17.2 or Rule 8, as applicable, including the constitutional rights a defendant gives up when pleading guilty. Judge Quezada has now remedied this issue in her plea colloquies with defendants and properly and consistently advises defendants as required.

### **II. Pro Tem Assignment Notice**

Mr. Kizer's complaint also alleges that Judge Quezada's practice of sending calendars to counsel without an indication of the assigned *pro tem* judge creates an inconvenience to litigants

who come to court on cases where the *pro tem* judge is “noticed” by counsel pursuant to Rule 10.2 that same day.<sup>1</sup> He also alleges, without identifying any particular cases where speedy trial rights were implicated, that speedy trial issues are jeopardized by Judge Quezada’s practice of sending calendars to counsel without an indication of the assigned *pro tem* judge.

First, the Tolleson City Court uses the AZTEC court case management system, which automatically generates a calendar including only the name of the Presiding Judge, Judge Quezada. The Tolleson City Court calendar referred to in Mr. Kizer’s complaint is a second calendar generated as a courtesy by the Tolleson City Court. The courtesy calendar includes information not available on the AZTEC calendar, including whether a particular defendant is detained and if so, how long he or she has been detained. There is no requirement that the courtesy calendar include the name of the judge assigned to the case. The Administrative Office of the Supreme Court advised Judge Quezada’s staff that the Tolleson City Court is not required to identify the assigned judge on a courtesy calendar absent a Tolleson City Court rule to the contrary.<sup>2</sup> There is no local Tolleson City Court rule or other rule requiring identification of a judge on the Tolleson City Court courtesy calendar.

More importantly, when properly used by counsel, a Rule 10.2 notice does not create serious disadvantages to litigants or to the administration of justice. However, Judge Quezada is aware that Mr. Kizer recently filed “blanket” Rule 10.2 notices in 19 cases on a single day when judge *pro tem* Debbie Weecks was covering Judge Quezada’s calendar. As a result of the filing

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<sup>1</sup> Rule 10.2 of the Rules of Criminal Procedure provides, in relevant part:

- (a) Entitlement. “... In any criminal case other than a death penalty case, each side is entitled as a matter of right to a change of judge. ... .”
- (b) Procedure. A party may exercise his or her right to a change of judge by filing a pleading entitled “Notice of Change of Judge” signed by counsel, if any, stating the name of the judge to be changed. The notice shall also include an avowal that the request is made in good faith and not:
  - 1. For the purpose of delay;
  - 2. To obtain a severance;
  - 3. To interfere with the reasonable case management practices of a judge;
  - 4. To remove a judge for reasons of race, gender or religious affiliation;
  - 5. For the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group or law firm (*State v. City Court of Tucson*, 150 Ariz. 99, 722 P.2d 267 (1986));
  - 6. To obtain a more convenient geographical location; or
  - 7. To obtain advantage or avoid disadvantage in connection with a plea bargain or at sentencing, except as permitted under Rule 17.4(g).The avowal shall be made in the attorney’s capacity as an officer of the court.
- (c) Time for Filing. A notice of change of judge in a non-death penalty case shall be filed within ten days after any of the following:
  - (1) Arraignment, if the case is assigned to a judge and the parties are given actual notice of such assignment at or prior to the arraignment;
  - (2) Filing of the mandate from an Appellate Court with the clerk of the Superior Court;
  - (3) In all other cases, actual notice to the requesting party of the assignment of the case to a judge.

<sup>2</sup> In August 2013 Judge Quezada’s staff called the Administrative Office of the Supreme Court and spoke to Nara Long who indicated that if a calendar is created outside of AZTEC, the judge’s name is required on the calendar only if a Tolleson City Court policy requires the judge’s name to appear.



Jennifer Perkins

October 1, 2013

Page 3

of these 19 improper blanket Rule 10.2 notices by Mr. Kizer, there was inconvenience and disruption to multiple litigants. However, the disadvantage to litigants was caused not by Judge Quezada's failure to identify the designated *pro tem* on the courtesy calendar, but rather by Mr. Kizer's improper use of Rule 10.2, which requires counsel to avow, as an officer of the court, that the filing is made in good faith and **not** "[f]or the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency ... ." Rule 10.2 (b)(5). Judge Quezada understands that a charge has been filed with the State Bar by the *pro tem* judge against whom Mr. Kizer filed his "blanket" Rule 10.2 notices and believes that this apparent retaliatory Judicial Complaint was filed after the State Bar charge was made against Mr. Kizer by the *pro tem* judge.

As Mr. Kizer did not identify specific cases where speedy trial rights were implicated by the Tolleson City Court's permissible calendar practice and Judge Quezada is aware of no such case, we would simply reiterate that proper use of a Rule 10.2 notice has a minimal effect on a litigant's speedy trial or other rights.

In sum, there is no requirement for Judge Quezada to identify a *pro tem* judge on the courtesy Tolleson City Court calendar and the calendar practice creates no serious disadvantages to litigants when Rule 10.2 notices are properly used. I trust this response will permit the Commission to resolve this matter in Judge Quezada's favor and close the file. Please feel free to contact me or my colleague Mark Harrison if you or the Commission members have any questions or if I can be of further assistance in resolving this matter.

Sincerely,

Anne M. Chapman

AMC

cc: Mark Harrison