

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 14-080

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Judge:

Complainant:

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**ORDER**

The complainant alleged that a superior court judge was biased and issued a delayed ruling.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

The commission does not have jurisdiction to review the legal sufficiency of court rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: August 21, 2014

FOR THE COMMISSION

/s/ George A. Riemer

\_\_\_\_\_  
George A. Riemer

Executive Director

Copies of this order were mailed to the complainant and the judge on August 21, 2014.

*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**

<b>2014 080</b>
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**COMPLAINT AGAINST A JUDGE**

**Name:** \_\_\_\_\_ **Judge's Name:** \_\_\_\_\_

**Instructions:** Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

Please see attached 6-page explanation along with 20 exhibits

## Complaint Against

Pursuant to Arizona state bar ethics opinion 90-13 and Ethics Rule 8.3(b), I find myself duty-bound to submit this complaint against the Honorable (hereinafter referred to as \_\_\_\_\_), Division \_\_\_\_\_ of the \_\_\_\_\_ County Court. I am a \_\_\_\_\_ who also happens to be a criminal defendant in \_\_\_\_\_ County \_\_\_\_\_ Court case \_\_\_\_\_ is the judge currently assigned to the criminal case. The case is in the pre-trial stage. I am greatly troubled by actions during the pendency of the case, including but not limited to (1) issuing frivolous and arbitrary rulings; (2) misstating matters in the record; (3) exhibiting overt bias and prejudice toward me; and (4) repeatedly violating the 60-day rule (Arizona Constitution, Article 6, Section 21: "Every matter submitted to a judge of the \_\_\_\_\_ court for his decision shall be decided within sixty days from the date of submission thereof.")

To summarize the background leading up the case, in \_\_\_\_\_, there was a single vehicle rollover accident on \_\_\_\_\_ . A \_\_\_\_\_ was damaged. I was arrested for alleged DUI, felony criminal damage, felony failure to stop, and for an open container allegedly found in the vehicle, but subsequently the county attorney declined to press any charges. No witness saw who the driver of the vehicle was, and a witness who saw me at the scene shortly after the accident, and who interacted with me, told the police he did not detect any odor of alcohol on me. He also said that he asked me if I had fallen asleep, and I indicated that I had. The responding deputies arrived at the scene after I had already left to go home (I live about \_\_\_\_\_), and after speaking to the witness, who indicated I only suffered some minor abrasions, the deputies went to my house and proceeded to break in and to arrest me without a warrant.

In \_\_\_\_\_ I filed notices of claim with \_\_\_\_\_ County against the county and the arresting officers, alleging, among other things, that they lacked probable cause and exigent circumstances to break in and to arrest me in my home without a warrant. Around this time I learned that Deputy \_\_\_\_\_, my arresting officer, was demoted. I also submitted complaints against, *inter alia*, \_\_\_\_\_, first in \_\_\_\_\_ to the \_\_\_\_\_ County Sheriff's Office \_\_\_\_\_, and then again in \_\_\_\_\_. I never received any response to my first \_\_\_\_\_ complaint. In the second complaint, I alleged that \_\_\_\_\_ perjured \_\_\_\_\_ on the ADOT affidavit in which \_\_\_\_\_ suspended my driver's license for an implied consent refusal. The license suspension was not sustained by ADOT. The second complaint made its way to \_\_\_\_\_, who shelved it. In \_\_\_\_\_ I filed a civil lawsuit against former deputy \_\_\_\_\_

the end of attorney filed an answer at

had been demoted to and, upon information and belief, began work at the around In late supervisor at the , called the County Attorney's Office to inquire when charges would be brought against me. I had been unaware of this fact until the admitted it in a motion. See Exhibit 1 hereto at 4:25 to 5:1. The then had me indicted on on charges of DUI, hit-and-run, open container and felony criminal damage. The original felony failure to stop charge was not presented to the grand jury, but apparently the misdemeanor hit-and-run charge was substituted in its place. Upon information and belief, the charging unit would have reviewed the notices of claim that I filed, and should have known that because of the private status of where the accident occurred, it was impossible to commit a violation of the open container and the hit-and-run statutes on that road because it was and . This was a fact that I had pointed out in my notice of claim. See Exhibit 2 hereto at 2:16-17.

Shortly after having been served with the indictment in , I filed a motion to dismiss for prosecutorial misconduct. The shortly thereafter admitted that the open container charge could not be sustained because of the status of , and moved to dismiss it. See Exhibit 3 hereto. The events that followed in the criminal case are the basis of my complaint against . I refer you to Exhibit 4 hereto, my Rule 10.1 motion to change judge for bias which is currently pending. This motion explains in more detail some of the actions and omissions of complained of herein. In summary, should be held accountable for the following acts:

- 1) Summarily denying my motion to extend the page limit without waiting for any response from the State (the State later indicated in its response that it had no objection to the requested extension). See Exhibit 5 hereto.
- 2) Forcing me to re-file my motions to dismiss and to remand for a third time because I had changed the font from 12 size to 10 size, even though there are no rules about font size in County, and even though I had called to inquire if 10 font size was appropriate before filing the motions. See Exhibit 6 hereto. I believe that this order was issued for no reason other than to harass me, and to show overt contempt toward me.
- 3) Misstating matters in the record. In order denying remand, stated that "[t]he Defendant received documentation from the State indicating that any discipline of was not related to the instant case." See

Exhibit 7 hereto (out of an abundance of caution, this order has been redacted to ensure compliance with A.R.S. §13-2812). The prosecutor later confirmed in an email to me that he had not disclosed any documentation regarding demotion to me. In order denying dismissal (see Exhibit 8 hereto), stated that the parties stipulated the motion to dismiss could be decided without an evidentiary hearing. In fact, the parties did not enter into any such stipulation, and I had requested an evidentiary hearing not only in the motion to dismiss itself (see Exhibit 9 hereto), but also in a separately filed request for an evidentiary hearing. See Exhibit 10 hereto.

- 4) Repeatedly missing the 60-day deadline to rule on my motions. My motion to disqualify was filed in (see Exhibit 11 hereto) and the State did not timely respond; however, held it without a ruling (and without any explanation) until the finally filed a late response at the end of . See Exhibit 12 hereto. then denied this motion on (see Exhibit 13 hereto); the State did not ask for any extension, did not explain its tardiness, and the judge simply ignored the fact that the response was almost half a year late. My motion to dismiss (the third iteration of it, dated - see Exhibit 9 hereto) was fully briefed on when the State filed a notice it was standing on its previous responses (see Exhibit 14 hereto); held the motion without a ruling until when indicated that was taking it under advisement. See Exhibit 15 hereto. then denied it on after it had been briefed, and incorrectly stated in order that the parties agreed to have the motion decided without an evidentiary hearing. See Exhibit 8 hereto, page 1 thereof. I had specifically requested an evidentiary hearing on this motion in the motion itself (see Exhibit 9 hereto), as well as in a written request previously filed in in which I requested evidentiary hearings on several motions that were pending (see Exhibit 10 hereto). To this day, has not even acknowledged the existence of my separate written request for an evidentiary hearing. My motion for protective order filed in (see Exhibit 16 hereto) was fully briefed in late (see Exhibit 17 hereto); completely ignored it, and only ruled on it on (after I reminded at the status conference that it was still outstanding). When finally ruled on it, summarily denied it without addressing any of the issues I raised, without an evidentiary hearing (which I had requested on ), and without any explanation as to why no evidentiary hearing would be held. See Exhibit 15 hereto.

- 5) Arbitrarily denying my motion to remand to the grand jury, even though I pointed out in my motion, among other things, that (1) the failed to instruct the grand jury on the definition of “recklessly,” a key element of the

criminal damage charge, and (2) that my \_\_\_\_\_ told the police that he did not detect any odor of alcohol on me after the accident, which was clearly exculpatory, but never presented to the grand jury. \_\_\_\_\_ completely ignored the clearly exculpatory nature of the \_\_\_\_\_ statement, instead indicating that the statements “are not necessarily exculpatory let alone clearly exculpatory...The evidence is not clearly exculpatory, but only the Defendant’s assertions of what happened on the night in question. The Defendant’s assertions regarding those statements are subject to cross-examination at any trial or pretrial motion hearing...” even though the statement about no odor of alcohol was not mine, but my \_\_\_\_\_, who was the only witness at the scene immediately after the accident. Regarding the issue of failure to instruct, \_\_\_\_\_ did not find that the \_\_\_\_\_ read the definition of “recklessly”; instead \_\_\_\_\_ capriciously noted in \_\_\_\_\_ order “why only read certain statutes and not others.” See Exhibit 7 hereto. \_\_\_\_\_ order denying remand is replete with zingers intended to show open contempt for my arguments. It is one thing to deny someone’s legal argument on valid grounds, it is quite another to openly mock someone’s argument instead of addressing it.

Even though a judge is not only supposed to be unbiased, but must also appear to be unbiased, \_\_\_\_\_ made every effort during the case to go out of \_\_\_\_\_ way **to appear biased** against me. \_\_\_\_\_ dinged me on every possible minor procedural technicality, even though the intent of Rule 35.4 is otherwise (and even though \_\_\_\_\_ knows that although I am an \_\_\_\_\_, I do not \_\_\_\_\_), and \_\_\_\_\_ made every effort to extend a helping hand to the State. When the State did not respond on time to my motion to disqualify the \_\_\_\_\_, \_\_\_\_\_ overlooked the State’s unexcused tardiness, even though the State did not seek any extension of time and did not provide any justification for filing a late response. See Exhibits 11-13 hereto.

\_\_\_\_\_ rulings were intended to intimidate me into thinking I would eventually be convicted, so that I would be forced to eat my words about rejecting the State’s plea offer. Even though a judge is not supposed to favor any one side, \_\_\_\_\_ violated this sacred principle, and decided to carry water for the prosecution during this entire case. I believe that this problem started in \_\_\_\_\_, when I stood up in open court and indicated that I had “no interest whatsoever” in the State’s plea offer. This was \_\_\_\_\_ (see Exhibit 18 hereto), and I believe that \_\_\_\_\_ decided from that point on that I needed to be taught a lesson about unequivocally rejecting the \_\_\_\_\_ plea offer in \_\_\_\_\_ court. What better way to do that than to throw every ruling in favor of the prosecution. In fact, I am confident that \_\_\_\_\_ decided very early on in the case that \_\_\_\_\_ would deny all of my pre-trial motions, and \_\_\_\_\_ spent the rest of the time inventing creative ways to torment and to harass me.

**THE COMMISSION'S POLICY IS  
TO POST ONLY THE FIRST FIVE  
PAGES OF ANY DISMISSED  
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE  
REMAINDER OF THE  
COMPLAINT IN THIS MATTER,  
PLEASE MAKE YOUR REQUEST  
IN WRITING TO THE  
COMMISSION ON JUDICIAL  
CONDUCT AND REFERENCE  
THE COMMISSION CASE  
NUMBER IN YOUR REQUEST.**