

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-398

Judge: Joe "Pep" Guzman

Complainant: David M. Cantor

ORDER

The complainant alleged a justice of the peace made delayed rulings during the pendency of a DUI case, but continued to file monthly certifications swearing he had no pending or undetermined cause for more than 60 days.

After investigation, the commission found that Judge Joe "Pep" Guzman had delayed three rulings past 60 days notwithstanding his periodic certification that he had no pending or undetermined cause for more than 60 days. One ruling was unreasonably delayed for over three months. The commission found the foregoing conduct violated Rule 1.1, which requires a judge to comply with the law, including the Code; Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary; and Rule 2.5 which requires a judge to perform his judicial and administrative duties competently, diligently, and promptly.

Accordingly, Justice of the Peace Joe "Pep" Guzman is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). 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). The commission expects Judge Guzman to review Formal Advisory Ethics Opinion 06-02 (Prompt Disposition of Judicial Matters) and to implement appropriate procedures to avoid delays such as occurred in the case in question in the future.

Dated: March 26, 2015

FOR THE COMMISSION

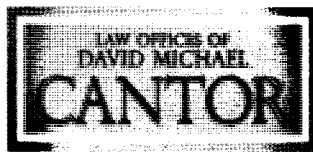
/s/ Louis Frank Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on March 26, 2015.

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

David Michael Cantor*
David J. Maletta †
Christine Whalin
Joey Hamby*
Jonathan Goebel
Elizabeth Mullins
Michael Alarid, III
Jonathan E. Hupp
Stephen S. Garcia



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2014-398

* Certified Criminal Law Specialist
Arizona Board of Legal Specialization
† Also licensed in New Jersey

December 15, 2014

CONFIDENTIAL

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

COMPLAINT AGAINST A JUDGE

Name: David Michael Cantor

Judge's name: Judge Joe "Pep" Guzman

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 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.

Facts

State v. Joel Jensen, TR2012-151844: This is a misdemeanor DUI case that has been pending since the November 15, 2012 initial appearance. **(Exhibit A.)** The parties have waited for months for rulings throughout the pendency of the case. Despite these excessive delays, Judge Guzman filed monthly certifications swearing that no cause had been submitted for decision which remained pending and undetermined for sixty (60) days or more. **(Exh. B.)**

www.dmcantor.com

Cityscape • One East Washington St., Suite 1800 • Phoenix, AZ 85004
Office: 602.307.0808 • Facsimile: 602.255.0707 • Toll Free: 888.822.6867

David Michael Cantor is also a member of Cantor Law Group (a separate and distinct law firm which emphasizes only Family Law).

The Law Offices of David Michael Cantor (DMC)¹ filed a Motion for Deposition of two witnesses and a Motion to Compel additional discovery on 2/14/13. **(Exh. C.)** On 3/14/13, Judge Guzman had not ruled on either motion and the date for deposition that was provided in the original proposed order had passed. On 3/15/13, DMC appeared for a pretrial conference and provided an updated proposed order for deposition. **(Exh. D.)** Judge Guzman granted the Motion for Deposition, but inadvertently signed the original proposed order for deposition with the expired date, rather than the updated proposed order with the future date. **(Exh. E.)** Judge Guzman would not rule on the Motion to Compel. Instead Judge Guzman allowed the State an opportunity to provide a written response to the Motion to Compel prior to his ruling even though the 10-day response deadline had expired three weeks prior. The State did not file a Response. Judge Guzman never ruled on the Motion to Compel filed on 2/14/13. The State disclosed the requested items on 3/10/14, over one year after the Motion to Compel was filed.

On 3/19/13, DMC staff contacted the court to obtain the signed updated order for deposition. Court staff advised DMC staff to fax a second proposed order. Court staff advised that Judge Guzman would sign the order and return it to DMC immediately. DMC staff sent a second proposed order on 3/19/13. **(Exh. F.)** On 4/19/13, DMC had not received the signed order for deposition and the proposed deposition date had expired for the second time. On 4/19/13, DMC staff contacted the court and was again advised to send a third proposed order for Judge Guzman to sign and return. DMC staff sent a third proposed order on 4/19/13. **(Exh. G.)** On 4/25/13, DMC staff contacted the court and was advised Judge Guzman had not signed the third proposed order. Court staff advised DMC staff to send the original signed order from 3/15/13, to “speed up the process.” On 4/25/13, DMC received the signed order and served the two witnesses that day. **(Exh. H.)**

¹ The Law Offices of David Michael Cantor (DMC) employs nine associate attorneys. DMC associate attorneys who have appeared on this matter are Elizabeth Mullins and Jonathan Goebel and former DMC attorneys, Tom McDermott, Eric Rothblum, and Cindy Castillo. Dates of a specific attorney’s appearances may be provided upon request.

On 5/3/13, both witnesses failed to appear for their court ordered depositions. On 5/10/13, DMC filed Motions to Preclude both witnesses. **(Exh. I.)** On 6/6/13 and 6/13/13, the Motions to Preclude were denied with a hand-written paragraph by Judge Guzman indicating the witnesses *were* available (despite their refusal to comply with court ordered depositions) and on 6/14/13 the case was set for a final pretrial conference on 7/15/13. **(Exh. J.)** On 6/28/13, DMC filed a Second Motion to Preclude one of the civilian witnesses. **(Exh. K.)**

On 7/15/13, the parties set the case for trial. The last day for Rule 8² purposes was 12/27/13 (Rule 8 time was included from the 11/15/12 arraignment to first pretrial conference on 11/30/12, and excluded from 12/1/12 to 7/15/13). A status conference was scheduled for 9/20/13, and a jury trial was scheduled for 10/1/13. **(Exh. L.)** The parties then received a second order setting the status conference for 9/20/13, and a jury trial for 10/15/13. **(Exh. M.)** Time was not excluded. On 9/12/13, Judge Guzman granted DMC's Second Motion to Preclude filed on 7/1/13. **(Exh. N.)**

On 9/20/13, DMC appeared for the status conference and was advised an older trial was also set on 10/15/13. DMC was also advised that the precluded civilian witness could be made available for interview by 10/2/13. A status conference was scheduled for 10/9/13.

On 10/2/13, DMC interviewed the civilian witness and, based on that witness' interview, filed a Motion to Suppress and a Motion for Leave to File Motions Within 20 Days of Trial. **(Exh. O.)** At the status conference on 10/9/13, the judge *pro tempore* set an Oral Argument/Evidentiary Hearing on the Motion to Suppress for 10/14/13 at 2:30pm. **(Exh. P.)**

On 10/14/13, DMC appeared for the Evidentiary Hearing and was advised that the State had filed a Motion to Continue Trial on 10/11/13 and both the Evidentiary Hearing and the 10/15 trial date had been vacated by Judge Guzman that same morning. **(Exh. Q.)** DMC had not

² Rule 8 of the Arizona Rules of Criminal Procedure codifies the constitutional right to speedy trial. The pertinent language of Rule 8.2 reads: "Rule 8.2 (a) General. Subject to the provisions of Rule 8.4, every person against whom an indictment, information or complaint is filed shall be tried by the court having jurisdiction of the offense within the following time periods: (2) Defendants released from custody. 180 days from arraignment if the person is released under Rule 7..."

received the State's motion and was not given an opportunity to respond. Judge Guzman granted the State's motion and failed to note on the order whether a responsive pleading was, or was not filed. Judge Guzman vacated an Evidentiary Hearing and Jury Trial hours before their commencement without input from, or notice to, the Defense.

DMC requested to go on the record to state the objections to the continuance and late notice. DMC was advised that Judge Guzman was no longer in the court and would not be returning that day. This occurred between 2:00 and 2:30 pm. DMC requested to appear on 10/15/13, the original trial setting, to go on the record to state the objections to the continuance and late notice. DMC was advised that Judge Guzman would not be in court on 10/15/13. A new status conference was scheduled for 12/6/13 and trial was rescheduled for 12/17/13. **(Exh. R.)** Time was not excluded. The Evidentiary Hearing was not rescheduled at that time.

On 11/1/13, DMC received notice that the Evidentiary Hearing on the Motion to Suppress was rescheduled for 11/15/13. **(Exh. S.)** On 11/15/13, the Evidentiary Hearing was held with witness testimony. Judge Guzman took the matter under advisement and informed the parties he would issue a ruling by 11/22/13.

On 11/25/13, DMC had not received a ruling and contacted the court. Court staff advised that Judge Guzman had not issued a ruling and would not be in court until 11/27/13.

On 12/3/13, DMC had not received a ruling and contacted the court. Court staff advised that Judge Guzman had not issued a ruling and the 12/6/13 status conference was affirmed.

On 12/6/13, DMC appeared for the status conference. Judge Guzman had not issued a ruling and was not present. The state advised the judge *pro tempore* that one of the state's witnesses would be unavailable for trial on 12/17/13 and the State filed a Motion to Continue Trial. Defense objected to the Motion to Continue Trial and requested a ruling on the 10/2/13 Motion to Suppress. The parties requested a status conference on 12/9/13 at 10:00 am to request a ruling from Judge Guzman.

On 12/9/13 at 10:00 am, DMC appeared for the status conference. DMC waited in the courtroom until 11:30 for Judge Guzman to call the matter. Judge Guzman inquired on the record why the parties were present. The parties advised that there had been no ruling on the 10/2/13 Motion to Suppress. Judge Guzman then asked for oral argument on the Motion. DMC reminded Judge Guzman that he already heard oral argument and sworn testimony at the Evidentiary Hearing on 11/15/13 and that he had informed the parties he would issue a ruling by 11/22/13. Judge Guzman took oral argument on the State's Motion to Continue Trial. Judge Guzman advised the parties that he would rule on the Motion to Suppress and the Motion to Continue Trial on 12/11/13.

On 12/11/13, DMC had not received a ruling and DMC staff contacted the court. The court advised there was no ruling yet. DMC staff contacted the court again at the end of the day. The court advised there was no ruling yet and recommended calling back on 12/12/13.

On 12/12/13, DMC had not received a ruling and DMC staff contacted the court. The court advised that the Motion to Suppress was denied and the Motion to Continue 12/17/13 trial was granted over objection. **(Exh. T.)** Time was not excluded despite a need to extend the original last day of 12/27/13. A new status conference was set for 1/27/14 and trial was rescheduled for 2/4/14. **(Exh. U.)**

On 1/17/14, DMC filed a Motion to Suppress Statements in Violation of Miranda (based upon officer testimony at the Evidentiary Hearing on 11/15/13) **(Exh. V.)** and a Request for a *Willits* Instruction. **(Exh. W.)** On 1/24/14, the State filed a Motion for Defendant's Medical Records.

At the status conference on 1/27/14, the court heard argument on the Request for *Willits* Instruction and the State's Motion for Defendant's Medical Records. The State requested a continuance of the trial to respond to the Motion to Suppress Statements (the response deadline was 1/27/14). DMC objected to a third continuance of the trial and filed a Motion to Dismiss for Denial of Right to Speedy Trial. **(Exh. X.)**

On 1/28/14, Judge Guzman vacated the jury trial and gave the State an additional 10 days to respond to the 1/17/14 Motion to Suppress Statements. **(Exh. Y.)** Time was not excluded. On 1/28/14, Judge Guzman also issued a “Minute Entry and Addendum to Ruling on Motion Dated 12/11/13” providing the court’s reasoning for its denial of the Motion to Suppress filed on 10/2/13. **(Exh. Z.)**

On 1/31/14, DMC filed a Motion to Reconsider the Denial of the Motion to Suppress based upon Judge Guzman’s reasoning in the 1/28/14 minute entry and addendum to ruling. **(Exh. AA.)**

On 2/13/14, the State filed a Motion to Continue the Evidentiary Hearing set on 2/14/14. DMC had never been given notice of an Evidentiary Hearing on 2/14/14. That same day, Judge Guzman granted the Motion to Continue the Evidentiary Hearing and reset the Evidentiary Hearing for 3/21/14. **(Exh. AB.)** Time was not excluded.

On 3/21/14, DMC appeared for the Evidentiary Hearing. There were four pending defense motions: Motion to Suppress Statements **(Exh. V)**; Request for *Willits* Instruction **(Exh. W)**; Motion to Dismiss for Denial of Right to Speedy Trial **(Exh. X)**; and Motion to Reconsider the Denial of the Motion to Suppress **(Exh. AA)**. The State advised that it did not intend to elicit the statements referenced in the Motion to Suppress Statements. The parties argued the three remaining motions. Judge Guzman took all three under advisement. Time was not excluded. This was day 264 for Rule 8 purposes.

On 3/31/14, Judge Guzman submitted a certification pursuant to A.R.S. §11-424.02, avowing that no cause had been submitted for decision which remained pending and undetermined for sixty (60) days or more. **(Exh. B.)**

On 4/8/14, DMC had not received rulings on the three motions and DMC staff contacted the court. The court staff advised there were no rulings and no dates on the docket. This was day 282 for Rule 8 purposes.

On 4/30/14, Judge Guzman submitted a certification pursuant to A.R.S. §11-424.02, avowing that no cause had been submitted for decision which remained pending and undetermined for sixty (60) days or more. **(Exh. B.)**

On 5/1/14, DMC had not received rulings on the three motions and DMC staff contacted the court. The court staff advised there were no rulings and no dates on the docket. This was day 305 for Rule 8 purposes.

On 5/31/14, Judge Guzman submitted a certification pursuant to A.R.S. §11-424.02, avowing that no cause had been submitted for decision which remained pending and undetermined for sixty (60) days or more. **(Exh. B.)**

On 6/2/14, DMC had not received rulings on the three motions and DMC staff contacted the court. The court staff advised there were no rulings and no dates on the docket. This was day 337 for Rule 8 purposes.

On 6/30/14, Judge Guzman submitted a certification pursuant to A.R.S. §11-424.02, avowing that no cause had been submitted for decision which remained pending and undetermined for sixty (60) days or more. **(Exh. B.)**

On 7/15/14, DMC spoke with the deputy county attorney who had been assigned to the case, but had since been transferred, regarding the excessive delay in receiving rulings. DMC was advised that there had been similar delays in other matters before Judge Guzman. This was day 380 for Rule 8 purposes.

On 7/30/14, DMC had not received rulings on the three motions and DMC staff contacted the court. The court staff advised there were no rulings and no dates on the docket.

On 7/30/14, DMC filed a Continuing Objection to Denial of Right to Speedy Trial arguing that 380 days had passed since the matter was set for trial (this was actually the 395th day including the 15 days between arraignment and the first pretrial conference), and that 184 days had passed since DMC filed its original Motion to Dismiss for Denial of Right to Speedy Trial filed on 1/27/14. **(Exh. AC.)**

On 7/31/14, Judge Guzman submitted a certification pursuant to A.R.S. §11-424.02, avowing that no cause had been submitted for decision which remained pending and undetermined for sixty (60) days or more. **(Exh. B.)**

On 8/14/14, the fourth deputy county attorney assigned to the case filed her Response to the Continuing Objection to Denial of Right to Speedy Trial. The newest county attorney argued the State still had 146 days remaining to bring Defendant to trial.³ **(Exh. AD.)**

On 8/26/14, Judge Guzman issued a Ruling and Order Regarding Defendant's Motion to Dismiss for Denial of Right to Speedy Trial. **(Exh. AE.)** Judge Guzman agreed that Rule 8 time had expired but determined that 3/21/14 was day 176 rather than day 264. Defendant's Motion to Dismiss for Denial of Right to Speedy Trial that was filed on 1/27/14 was granted without prejudice. The remaining substantive motions including the Motion to Reconsider the Denial of the Motion to Suppress were not addressed by the 8/26/14 ruling.

On 9/2/14, DMC filed a Motion to Reconsider Dismissal Without Prejudice for Denial of Right to Speedy Trial. **(Exh. AF.)**

On 10/31/14, Judge Guzman submitted a certification pursuant to A.R.S. §11-424.02, avowing that no cause had been submitted for decision which remained pending and undetermined for sixty (60) days or more. **(Exh. AG.)**

On 11/19/14, over 60 days after filing, Judge Guzman issued a Ruling denying the Motion to Reconsider.⁴ **(Exh. AH.)**

Violation of Judicial Canons

Pursuant to the most recent Arizona Code of Judicial Conduct (2014), Rules 1.1, 1.2, 2.1, 2.2, 2.5, 2.6, 2.7, 2.8, and 2.9 have been violated by Judge Guzman's failure to timely rule on

³ The State argued that all but 34 days in the last 622 days between arraignment and the filing of the State's response have been excluded. It should be noted that Judge Guzman's "Ruling on Motion" orders have a pre-printed checkbox for the exclusion of time which is never checked, even when Rule 8.2 time has been excluded by stipulation of the parties.

⁴ Although the Ruling is dated 11/19/14, it was not sent to counsel until 12/2/14.

motions, filing of false certifications, and ruling on State's motions and vacating hearings without input from, or notice to, defendants or their counsel.

Rule 1.1 specifically states that a "judge shall comply with the law, including the Code of Judicial Conduct," while Rule 2.1 states that the "judicial duties of a judge take precedence over all of a judge's other activities." Rule 2.2 states that a "judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." According to comment 3 of Rule 2.2, "a good faith error of fact or law does not violate this rule...however a pattern of legal error or an intentional disregard of the law may constitute misconduct."

The issue of delayed rulings has already been addressed by the Judicial Committee in Advisory Opinion 06-02 (April 25, 2006). Specifically, in this opinion it was noted that the Arizona Constitution requires, "[e]very matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period." Art.VI §21 Ariz. Const. This provision is reinforced by A.R.S. §§11-424.02(A) and 12-128.01, Arizona Supreme Court Rule 91(e), and Rule 2.5 of the Code of Judicial Conduct which states a "judge shall perform judicial and administrative duties competently, diligently, and promptly."

Advisory Opinion 06-02 also outlined the financial consequences for superior court judges and justices of the peace who violate these rules and the corresponding certification procedure for implementing the rules. A.R.S. §12-128.01 provides:

A. A superior court judge or commissioner shall not receive his salary unless such judge or commissioner either certifies that no cause before such judge or commissioner remains pending and undetermined for sixty days after it has been submitted for decision or there is submitted by the chief justice of the Arizona supreme court a certification that such superior court judge or commissioner has had a physical disability during the preceding sixty days or that good and sufficient cause exists to excuse the application of this section to particularly identified litigation then pending.

B. Any certification submitted by the chief justice pursuant to subsection A shall set forth in detail the nature and duration of the physical disability involved or the reason why subsection A should not apply to the specified pending litigation.

C. Any person who issues or causes to be issued any check, warrant or payment to a judge or commissioner knowing that, pursuant to this section, such judge or commissioner should not receive his salary is guilty of a class 3 misdemeanor.

See also A.R.S. §11-424.02(A) (identical requirement for justices of the peace). The Advisory Opinion cited two Arizona Supreme Court cases wherein the Court approved the Commission's recommendation to publicly censure judges who failed to rule promptly.

In re Weeks, 134 Ariz. 521, 658 P.2d 174 (1983), concerned whether the failure to dispose of matters under advisement within a reasonable time frame was a violation of the Canons of the Code of Judicial Conduct and the Arizona Constitution, and whether the signing of a false statement that a judge has no cases over 60 days old under advisement was a violation of the Canons and the Constitution. *Weeks*, a justice of the peace, had met with the Commission of Judicial Qualifications after complaints regarding unreasonable delays in rendering decisions in his court. *Id.* After the Commission had required status reports from *Weeks*, it received additional complaints involving four matters which had not been ruled on for four to eight months after submission. *Id.* at 522. While the matters were pending, *Weeks* had completed and filed with the Maricopa County finance department, certifications "certifying under oath that no cause had been submitted to him for decision which remained pending or undetermined for 60 days or more since the date of submission for decision." *Id.* The Supreme Court followed the Commission's recommendation for public censure and held unreasonable delay in deciding matters under advisement is a valid ground for discipline of a judge, and the filing of inaccurate monthly salary certifications claiming to have no cases under advisement for more than 60 days merits censure even where it is contended that such filing is due to oversight. *Id.* at 525.

Advisory Opinion 06-02 also cited *In re Braun*, 180 Ariz. 240, 883 P.2d 996 (1994), in which the Supreme Court suspended without pay a justice of the peace who was “habitually tardy in the conduct of court business.” *Id.* at 241.

Furthermore, Advisory Opinion 92-10 (September 1, 1992) noted that the Arizona Constitution allows for the removal of a judge for “willful and persistent failure to perform duties.” The opinion cited to Canon 3A(1) (renumbered in 2009 to Canon 2.1) indicating that taken together, the Constitution and Judicial Canons, make clear that “a judge has an ethical as well as legal obligation to apply the law – including the court’s rules of procedure – fairly and consistently.” This opinion goes on to state that there are four (4) criteria to determine whether judicial misconduct is being exhibited or, rather, mere legal error. The criteria are:

1. There should be a repeated pattern of disregarding procedures and the law.
2. The degree of egregiousness of the error is taken into consideration. (If there is an utter disregard of the law and of established rules of practice over a protracted period of time, a judge would be subject to discipline.)
3. The motive of the judge in disregarding the law or procedure is considered.
4. The availability of appeal may be a mitigating factor although it will not necessarily save a judge from judicial discipline.

As evidenced in the facts section above, Judge Guzman has been habitually derelict in his responsibility to rule on matters under advisement, has filed false certifications to the contrary in order to collect his salary, and has demonstrated bias against and unfairness toward defense counsel in granting State motions and vacating hearings *ex parte*.

Respectfully submitted this 15th day of December, 2014.

David Michael Cantor
The Law Offices of David Michael Cantor

Resp

2014-398

JAN 20 2015

Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

Re: Response to Complaint; Case No. 14-398

The following is Judge Joe Guzman's response to the complaint filed with the Commission on Judicial Conduct by defense attorney David Cantor.

State of Arizona v. Joel Jensen TR2012-151844

The case of State v. Jensen concerns the prosecution of a misdemeanor DUI involving an accident.

The case of State v. Jensen is not a matter pending before the Agua Fria Justice Court as suggested by the complainant. A review of this case shows there is no matter submitted before this Court which requires a judicial decision. Upon further review, it has been determined by this Court that the matter is a closed misdemeanor DUI case. The law office of David Cantor filed a Motion to Dismiss which was granted by the Court. The misdemeanor DUI complaint was dismissed without prejudice on August 26, 2014. The Defendant did not appeal the Court's ruling dismissing the complaint without prejudice. Instead the Defendant filed a Motion for Reconsideration of the Dismissal Without Prejudice which was received by the Court on September 4, 2014. The Motion for Reconsideration is date stamped as received by the Court on September 4, 2014. Exhibit One.

The State filed its Response to the Motion for Reconsideration of Dismissal Without Prejudice on September 19, 2014. Pursuant to the Rules of Criminal Procedure, specifically Rule 16.1, the

Court waited 10 days to allow the Defendant to file a Reply. Defendant had until September 29, 2014, to submit a Reply. The Defendant did not file a Reply to the State's Response although defense counsel had every opportunity to do so. The Motion for Reconsideration was denied by the Court on November 19, 2014. Exhibit Two. Contrary to the opinion of defense counsel, the Court did not fail to comply with the 60 day rule when it denied the Motion for Reconsideration on November 19, 2014. The 60 days granted to the Court for a ruling on the Motion for Reconsideration began to run on September 29, 2014. The Court denied the Motion on the 51st day of the 60 day time period.

The Defendant did not appeal the Court's ruling denying the Motion for Reconsideration. Instead defense counsel filed the complaint with the Commission on Judicial Conduct.

David Cantor alleges that the Court has demonstrated 'bias against and unfairness toward' the defense in its handling of this matter. To suggest that Judge Guzman has shown bias against the Defendant, complainant must show that Judge Guzman has some personal reason to rule in favor of the State and against the Defendant. Or that through his words and action demonstrates a personal preference for the State and disfavor towards persons charged with misdemeanor DUI. Moreover, alleging bias connotes that Judge Guzman possesses some highly personal and unreasoned distortion of judgment which tends to favor the State and not the Defendant. Notwithstanding complainant's argument regarding the delay in rulings, nothing in the record of this case demonstrates preferential treatment to any person or party. Complainant fails to cite any judicial behavior that may be interpreted as bias towards the defendant or defense counsel. Admittedly, there may exist a good faith argument that Judge Guzman violated that 60 day rule, but that is a tenuous basis upon which to allege bias or prejudice. It goes without saying that the record is silent in regards to Judge Guzman hinting at making any part of the DUI prosecution a personal matter. After all, it is a court of law and any decision made by the Court will be based on the present facts and law, and not on age, gender, ethnicity or any extrajudicial reason.

On October 2, 2013, Defense Counsel filed a Motion to Suppress a blood sample collected by Officer Robert Hicks of the Arizona Department of Public Safety. The State filed a Response dated October 21, 2013, which was received by the Court on the same date. At the request of the parties an evidentiary hearing with witness testimony was conducted by the Court on November 15, 2013. At that time the Court took the matter under advisement and eventually denied the Motion to Suppress on December 11, 2013; that would be 26 days after the hearing. The Defendant did not appeal the Court's ruling. Exhibit Three. The Court ruling was made within the 60 day time period.

On February 14, 2013, Defense Counsel files a Motion to Compel the disclosure of six items. The Motion to Compel was filed prior to and in anticipation of the pre-trial conference

scheduled for March 15, 2013. Complainant refers to the pertinent Motion to Compel at page two of his complaint against Judge Guzman. The six items are listed below.

911 Audio

CAD History

Photographs

2nd Page of Witness Statement

Goodyear Fire Department #181 Report

Avondale Fire Department #171 Report

On the day of the pre-trial conference (March 15, 2013) the State's attorney had yet to file a Response to the Motion to Compel. The State has assigned at least three prosecutors to this case. The State and the Defendant stipulated to a continuance and agreed to reset the pre-trial conference to allow the State an opportunity to file its Response to the Motion to Compel. Exhibit Four. The agreement was to continue the pre-trial conference for 45 days. The Court granted the stipulated Motion to Continue to allow the parties to resolve matters within the Motion to Compel. Defense Counsel received a copy of the Release Order in open Court showing that the new pre-trial conference was set for May 3, 2013. Complainant has had at least three different defense attorneys appear on behalf of the Defendant. On April 5, 2013 the State filed its Response to the Motion to Compel. Exhibit Five. In its Response the State indicates that item #4 has been mailed to Defense Counsel and the other 5 items will be delivered to Defense Counsel soon, as long as they exist. The Defendant did not submit a Reply or any other objection to the State's Response to the Motion to Compel. Based on the State's Response and there being no objection or Reply from Defense Counsel, the Court deemed the matter to be resolved. The record shows that Defense Counsel remained silent on any of the issues raised in its Motion to Compel after April 5, 2013. The Court presumed the State had complied with Defendant's request for discovery, and that it had received the six items listed on the Motion to Compel. And there was nothing that led the Court to believe otherwise. Interestingly, only now does Defense Counsel raise the disposition of the Motion to Compel as being an issue. (The Defendant and Defense Counsel failed to appear at the May 3, 2013 pre-trial conference and a warrant was issued for failure to appear. Defense Counsel filed a Motion to Quash arrest warrant on May 13, 2013, and the request was granted the same day, and a pre-trial conference was set for June 14, 2013.) Between April 5, 2013, and the filing of his complaint with the Commission on Judicial Conduct, a total of 19 months, David Cantor and the other eight attorneys in his law office acquiesced regarding any issue raised in the Motion to Compel. Collectively they said and did nothing before this Court in search of the items listed in the Motion to Compel. And that is not to say they didn't have ample opportunity to act.

On June 14, 2013, Defense Counsel appeared in person for a pre-trial conference and did not advise the Court whether the State had complied with its request for discovery. Instead Defense Counsel files a Motion to Continue because "Defense needs to complete the

interviews and consider the state's offer." The Motion to Continue was granted the same day and a pre-trial conference was set for July 15, 2013.

On July 15, 2013, Defense Counsel appeared in person for a pre-trial conference and did not advise the Court whether the State had complied with its request for discovery. Instead Defense Counsel files a Motion to Continue because "Defendant intends to proceed to trial."

And then on September 20, 2013, Defense Counsel appeared in person for a status conference and did not advise the Court whether the State had complied with its request for discovery. The matter was proceeding to trial and the Court assumed discovery was completed. In hindsight, the Court should have denied the Motion to Compel based on the State's Response dated April 5, 2013, and the fact that Defense Counsel did not advise the Court of the State's failure to comply with discovery, if any.

Let's return to what happened on March 15, 2013, the day of one of several pre-trial conferences in the Jensen matter. On this day, as stated above, Defense Counsel and the attorney for the State 'stipulated' to a continuance, 45 days to be precise, to allow the State an opportunity to file a Response to the Motion to Compel. This is the complainant's licensed attorney acting on behalf of Mr. Jensen that has agreed to give the State time to respond to the Motion to Compel. But yet, the Complainant asserts on page two of his complaint with the Commission that on March 15, 2013, "Judge Guzman would not rule on the Motion to Compel." The Court wasn't going to rule on the Motion to Compel in the face of a stipulated motion granting the State time to respond. Another error charged to the complainant can be found on the same page of his complaint. David Cantor argues that the State "did not file a response" to the Motion to Compel. This is an erroneous assessment of the record. As stated previously, the State did file its Response to the Motion to Compel on April 5, 2013. Obviously, this is something the Complainant may have overlooked.

On May 13, 2013, the Court received the Defendant's Motion to Preclude Witness Testimony of Phlebotomist Tammy Coronado. The State submitted a Response setting forth its objection to said motion on May 22, 2013. The Court received the Defendant's Reply in Support of the Motion to Preclude the Witness Testimony on June 4, 2013. On June 6, 2013, the Court denied to Motion to Preclude the Testimony of Witness Tammy Coronado. The court ruling was made within the 60 day time period.

On May 13, 2013, the Court received the Defendant's Motion to Preclude Witness Testimony of Officer Hicks #6713. The State submitted its Response setting forth its objection to said motion on May 22, 2013. The Defendant did not submit a Reply. The Court denied the Motion to Preclude the Testimony of Officer Hicks on June 13, 2013. The Court ruling was made within the 60 day time period.

On February 14, 2013, defense counsel filed a Motion for Deposition of Officer Hicks and Phlebotomist Tammy Coronado. The Court granted the Motion for Deposition on March 15, 2013. The Court made a ruling on the Motion for Deposition within the 60 day time period. The Court did sign an Order for Deposition in March 2013, but the dates within the order had expired. Anyways, after a bit of confusion regarding the correct Order for Deposition and dates, defense counsel submitted a proposed Order for Deposition on April 19, 2013. It was signed on April 24, 2013. Complainant refers to conversations with court staff regarding the Order for Deposition and how his office was made to send the proposed order more than once. Be that as it may, Judge Guzman does not recall any of these alleged contacts between the court and complainant's law office. And lacks personal knowledge of the same. The Order for Deposition was delivered to defense counsel on April 25, 2013.

A status conference was set for September 20, 2013. Defense counsel filed a Motion to Waive Defendant's Appearance at the September 20, 2013, status conference on July 23, 2013. The State did not object and advised the Court of its position on July 26, 2013. The Court granted the motion on July 26, 2013, and within the 60 day time limit.

On July 1, 2013, the Court received defense counsel's Second Motion to Preclude the testimony of Tammy Coronado. The State did not file a Response. The Court granted the Motion to Preclude the Testimony of Tammy Coronado on September 12, 2013, three days outside of the 60 day time period. It should be noted that defense counsel proceeded to interview Tammy Coronado anyways, and that interview took place on October 2, 2013. The interview took place seven days before the next status conference and 13 days before the October 15, 2013, jury trial.

The Court received a faxed copy of the Defendant's Motion to Suppress and Motion for Leave to File Motions Within Twenty Days of Trial (Motion for Leave) at about 2:50pm on October 9, 2013. Exhibit Six. This would mark six days prior to the jury trial. The jury trial was set for October 15, 2013. The Court granted defense counsel's Motion for Leave and the Order is signed and dated by the Court October 11, 2013. The jury trial was originally set for October 1, 2013, but due to a calendar conflict it was reset to October 15, 2013. And that was done by the court sua sponte on July 15, 2013.

At the October 9, 2013, status conference (3:30pm) the judge pro tem covering the Court for Judge Guzman scheduled an Oral Argument/Evidentiary hearing to take place on October 14, 2013, one day before the jury trial. Judge Guzman was not present on October 9, 2013, so he has no knowledge or information as to what actually occurred in the courtroom, if anything. It is not clear from the record whether the judge pro tem was given a copy of the Motion to Suppress on October 9, 2013. Many times the parties to a criminal action are able to manage the case on their own. And they do so outside the presence of the judicial officer. And when that happens, the Court is brought in when the parties are unable to resolve a legal issue. So,

on October 14, 2013, it was the intention of the Court to accept oral argument on the Motion to Suppress and hear witness testimony, if necessary. It should be noted that the Defendant's Motion to Suppress is dated October 2, 2013, but not received by the Court until a faxed copy is sent on the 9th of October. The calendar was set. Oral argument and evidentiary hearing on the 14th of October and a jury trial the next day. On October 11, 2013, the Court receives the State's Motion to Strike Defendant's Motion to Suppress and/or State's Motion to Continue. Exhibit Eight. In its Motion to Strike/Motion to Continue the State argues that Rule 16.1 states that "the opposing party shall have 10 days within which to file a response, unless the opposing party waives response". The state's attorney goes on to argue that it received its copy of the Motion to Suppress on October 9, 2013, and the matter already was set for an evidentiary hearing and jury trial before the State was given a chance to fully read defense counsel's motion. Moreover, the State goes on to say that the quick turnover does not give the State their required ten days to file a response to the substantive motion. Exhibit Seven. The Defendant's Response to the State's Motion to Strike Defendant's Motion to Suppress and/or Motion to Continue is dated October 11, 2013. It was date stamped by the Court on October 16, 2013. In the Defendant's Response, the attorney representing the complainant's law office acknowledged a miscue in filing the Motion to Suppress with the Agua Fria Justice Court. As it turns out, according to legal counsel for the Defendant, the Motion to Suppress was 'misfiled' with the Glendale City Court rather than the Agua Fria Justice Court. The licensed attorney representing Mr. Jensen cites clerical error as the reason neither the State nor the Court received a copy of the Motion to Suppress on October 2, 2013, the date that appears on the signature page of the document. Exhibit Nine. The Court did not rule that the Defendant's Motion to Suppress was untimely. Instead the Court granted the State's Motion to Continue so that it would have the required ten days to file a Response to the Motion to Suppress. The Court granted the Defendant Leave of Court to file pre-trial motions within 20 days of the trial. And in doing so, the Court intended to give the State the required ten days to submit a response. It was in the best interests of justice to allow the State time to respond to the Motion to Suppress. It was a substantive motion, and not procedural, after all. So it meant vacating the Oral Argument/Evidentiary Hearing set for October 14, 2013, and the Jury trial set for October 15, 2013. Complainant alleges that the Court erred in vacating the October 14th and 15th scheduled proceedings, and goes on to accuse Judge Guzman of not giving the Defendant an opportunity to respond to the state's Motion to Continue. At page four of judicial complaint, Complainant goes on to state that Judge Guzman vacated an "Evidentiary Hearing and Jury trial hours before their commencement without input from, or notice to, the Defendant". Judge Guzman disagrees with defense counsel on this point because the record indicates otherwise. First of all, on page two of Exhibit Nine, the licensed attorney for the Defendant states as follows, "as stated on the record on October 9, 2013, Defendant has no objection to the State seeking leave to respond to the Motion to Suppress or any continuance necessary to do so". This is a statement made on the record by defendant's attorney after being apprised by the State of its objection to the Motion to Suppress. Furthermore, Exhibit Nine was filed by the Complainant's law office as its Response to the State's Motion to Strike

the Motion to Suppress/Motion to Continue dated October 11, 2013. Based on the foregoing, it is logically not plausible to believe the defendant was not given an opportunity to respond to the State's Motion to Strike the Motion to Suppress/Motion to Continue or that Court action was taken without notice to the Defendant. The record and filings indicate the defendant had notice and actually responded with no objection to a continuance.

The State filed the Motion to Strike Defendant's Motion to Suppress/Motion to Continue on October 11, 2013, and the Defendant filed his Response the same day. The Court denied the Motion to Strike on October 11, 2013. The Court granted the Motion to Continue on October 11, 2013.

The defendant filed the Motion to Suppress on October 9, 2013, and the State filed its Response on October 21, 2013. The Court received the Defendant's Reply on October 28, 2013. The Motion to Suppress was denied on December 11, 2013, well within the 60 day time period.

A status conference was set for December 6, 2013, and Jury Trial for December 17, 2013.

On November 8, 2013, the state filed a Motion to Continue the December 17, 2013, jury trial citing the unavailability of one of its key witnesses. Defense counsel objected to the State's Motion to Continue in open Court on December 6, 2013. A judge pro tem covered the calendar on December 6, 2013, and continued the Status Conference to December 9, 2013. The Court granted the Motion to Continue on December 11, 2013. The ruling was made within the 60 day time period.

On January 24, 2014, the State filed a Motion to Obtain Defendant's Medical Records Related to Treatment at Banner Good Samaritan Medical Center. Defense Counsel filed a Response January 27, 2014. The Court granted the Motion on January 28, 2014, and advised the State to submit a proposed order for the Court's consideration. The ruling was made within the 60 day time limit.

A status conference was set for January 27, 2014, and Jury Trial for February 4, 2014.

On January 27, 2014, seven days before the Jury Trial, Defense Counsel submitted a dispositive Motion to Dismiss. It is date stamped January 27, 2014, by the Court.

On January 22, 2014, 13 days before the Jury Trial, Defense Counsel submitted a Motion to Suppress Statements Made in Violation of Miranda. This filing is date stamped January, 22, 2014, by the Court.

On February 3, 2014, one day before Jury Trial, Defense Counsel filed a Motion to Reconsider the Denial of Defendant's Motion to Suppress (blood draw by Officer Hicks). The filing is date stamped February 3, 2014, by the Court.

On January 22, 2014, 13 days before Jury Trial, Defense Counsel filed a Motion for Willits Instruction. The filing is date stamped January 22, 2014, by the Court.

The four filings listed above fall outside of the 20 days each party has to file pretrial motions pursuant to Rule 16 of the Arizona Rules of Criminal Procedure. Defense Counsel did not request nor did he receive leave of the Court to file motions less than 20 days prior to the February 4, 2014, Jury Trial. This was another instance where defense counsel violates Rule 16 and does not afford the opposing party the required ten days to submit a Response. A review of the record shows that the State did not receive a copy of the Willits motion until January 26, 2014, when it was delivered to the prosecutor's residence. And on January 29, 2014, the assigned prosecutor underwent a medical procedure related to her pregnancy and did not return to work until February 6, 2014. On January 28, 2014, the Court granted the State ten days to file a Response to each of the motions. The Court went on to advise the parties that it expected the Defense to submit a Reply. Needless to say, the Court vacated the February 4, 2014, jury trial to allow time for the parties to resolve issues pending before the Court. Exhibit Ten.

An Evidentiary Hearing was set for February 14, 2014, and court staff faxed a copy of the Notice of Court date to defense counsel on January 28, 2014. Exhibit Eleven. On February 13, 2014, one day before the hearing, the State filed a Motion to Continue citing the unavailability of Officer Hicks. Additionally, the prosecutor met with defense counsel that day and learned Defendant had not received notice of the February 14, 2014, court proceeding. The Motion to Continue was granted. An Evidentiary hearing was set for March 21, 2014.

The Court granted the Defendant's Motion to Dismiss based on violation of Rule 8 time limits. The misdemeanor DUI complaint was dismissed without prejudice on August 26, 2014. The defendant filed a Motion for Reconsideration which was discussed earlier in this response.

The Court did not rule on the Motion to Suppress Statements Made in Violation of Miranda within the 60 day time limit. This motion was later withdrawn by the defendant once it learned the State did not intend on introducing any of the Defendant's statements at trial.

The Court did not rule on the Motion to Reconsider Denial of Defendant's Motion to Suppress (blood draw by Officer Hicks) within the 60 day time limit. The Court originally denied the Motion to Suppress the blood draw by Officer Hicks, and then later affirmed its decision with a written opinion.

The Court did not rule on the Motion for Willits Instruction within the 60 day time period. Willits is a jury instruction that may be granted by the Court any time prior to trial. It is a jury instruction that allows the jury to infer that particular evidence would have been exculpatory.

The Court acknowledges the fact that it did not rule on pending motions within the 60 day period. After the March 21, 2014, evidentiary hearing, the Court took the matter under advisement. Time passed and the case remained open and was not calendared for any further proceedings. In hindsight, the Court should have put in place a method of tracking open files to avoid unnecessary delay and ensure compliance with the 60 day time limit. It did not. And the Court apologizes to the Defendant and the State of Arizona for its lack of oversight in managing this misdemeanor case. But stating with confidence, the Court's failure to act within, and comply with, the 60 day time limit was not intentional and not designed to prejudice the Defendant or the State. And it should be known that the Court's failure to rule on the motions submitted by the parties in the Jensen matter is not an accurate reflection of the administration of justice at the Agua Fria Justice Court. Thousands of cases make their way through the justice court on an annual basis, and most of them are resolved without delay and in a expeditious manner. Nonetheless, the Court accepts responsibility for the delay in making a ruling on motions presented by the parties in this action.

Judge Joe Pep Guzman
Agua Fria Justice Court