State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-064

Complainant: No. 0115510336A

Judge: No. 0115510336B

ORDER

A review of the complaint filed in this matter reveals that there was no violation of the Code of Judicial Conduct.

The commission is not a court and cannot make determinations regarding when a rule or statute applies or evaluate whether or not a judge correctly applied a statute or rule. There was no evidence that the judge engaged in any improper *ex parte* communications. The remaining issues are legal or appellate in nature and outside the jurisdiction of the commission.

This complaint is dismissed pursuant to Rule 16(a).

Dated: June 27, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed
to the complainant and the judge
on June 27, 2006.

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

CJC-06-064

STATEMENT OF THE FACTS

Complainant: [ ] Judges Name: [ ] March 1, 2006

I. INTRODUCTION.

This Complaint is all about failure to obey the law.

The purpose of the law is to provide justice, including an honorable, respected and effective litigation forum, in order to prevent or correct injustice.

Often courts make mistakes, so injustice proliferates, regard vanishes and relief is oppressed.

Clearly in Arizona, if a Superior Court makes a judgment error, there is the guaranteed avenue of *one* appeal, to the Arizona Court of Appeals, under Rule 22 of the Arizona Rules of Civil Appellate Procedure. This rule and Rule 23(j) also *appear* to prevent any additional appeal to the Court of Appeals, after the initial appeal should be exhausted.

HOWEVER, what if not only the lower Superior Court, and also the higher Arizona Court of Appeals should both make a mistake in judgment, along with the Arizona Supreme Court, such that wrong judgments are made, and injury and damage continues to abound unchecked?

In the event such compound error happens, and it often does, the Legislature has provided one more avenue of correction known as Rule 3, of the Rules of Civil Appellate Procedure.

This superceding and paramount rule reads as follows:

> Rule 3 – Suspension of Rules:
>
> "The court may for good cause shown, and in the furtherance of justice, suspend the operations of any of these Rules in particular cases. These rules shall be liberally construed in the furtherance of justice."

I.e., any rule must yield and be "suspended" that tries to prevent a filing for correction when "good cause" is shown. The court(s) cannot claim that any Rule, such as Rule 22 or Rule 23(j) ARCAP, prohibits additional filings or prevents relief for shown error.

On two occasions, Judge [redacted] failed his legal duty to accept proper Rule 3 application.

There is no time frame – or other limitation or interference – that supercedes this vital Rule 3, in order to correct any error of Court of Appeals. The only requirement is that "good cause" be shown to trigger the operation of correction to any previous judgment error by the Appeals Court – or any other court – that makes judgment error. This is the law.

The Rules of Court, as specified by the Legislature and articulated in the Arizona Revised Statutes, Volume 17(B), uphold the mechanism of Rule 3, of the Arizona Rules of Civil Appellate Procedure, to be the preferred, plus most economical and prompt avenue for correcting judgment error committed by the Arizona Court of Appeals.

Judge [redacted] routinely denies Rule 3 as a valid means of correction to error within his court. Consequently – by refusing to do his duty to provide justice as required – enormous injustice occurs that is denied any means of correction, contrary to the law. In this manner, Judge [redacted] fails to abide by the law and to perform his duty to maintain this proper avenue of correction, and to preserve the honor, respect and integrity for the law, which is necessary for the citizens of Arizona to have confidence in the judiciary.

Twice I have gone to civil court to obtain relief from damages. The first case [redacted] was to recover a real estate sales commission that the seller refused to pay, in accordance with our written agreement. The second time was to recover damages caused by the [redacted] for the loss of my [redacted] company.

In [redacted] the Superior Court judge simply issued summary judgment against me. In the [redacted] case, the Superior Court Judge merely dismissed my case. I appealed both cases, and in each case, the Appeals Court, [redacted] affirmed the lower court judgments.

HOWEVER, in each case, the judges at all levels utterly failed to rule in accordance with the law and the evidence of the case. Moreover, in each case, the opposing attorneys manufactured false law and false evidence to win these litigations by deception.

Unfortunately, this above scenario happens all too often. Numerous cases in Arizona are decided wrong, because of overworked judges who have massive docket calendars, and they are under great pressure to simply dispose of cases. The Arizona Republic newspaper reported in December, 2005, that Maricopa County Superior Court must process 145,365 civil, family, criminal and juvenile cases per year, among only 84 judges, which means each judge must hammer out 1,730 cases per year, or about seven cases per day. Clearly it is burdensome and haphazard trying to obtain quality justice in Arizona, at all court levels.

The Legislature and the established Rules of Court have provided a separate avenue for false judgment correction – when "good cause" is shown – such that if a false judgment is ruled, and even after all standard appeals are exhausted, the aggrieved party may still approach the court and obtain correction. Obviously, this is the way it should be.

This mechanism for relief is known as Rule 3, of the ARCAP. It is further solidified by the Arizona Supreme Court precedent of Lindus v. Northern Ins. Co., 103 Ariz. 160, 438 P.2d 311, a landmark case wherein Arizona's High Court re-considered the same case three times in order to ultimately correct its own false judgment. Clearly the Arizona Supreme Court set the example of not being limited by Rule 22 or Rule 23(j) of the Arizona Rules of Civil Appellate Procedure, when "good cause" is shown for judgment error correction.

I have already cited Rule 3, ARCAP, I will now cite Lindus supra, which confirms the ability of the Appeals Court to suspend any rule to accomplish the paramount end of ultimate justice.

> "Where the interests of justice outweigh the interest in bringing litigation to an end, the court should recall the mandate. Of course, where there has been either fraud, imposition, or mistake of fact, the court can **always** recall the mandate to modify or correct its own judgment."

There is no limitation for judgment correction. *Res judicata* cannot prevent relief, when it can be shown that fraud, imposition or mistake of fact resulted in a false judgment. The achievement of justice outweighs denial to correct a false judgment. It is the express duty and job of every judge to impartially determine if any judgment error deserves correction.

II. COMPLAINT.

Count One of my complaint against Judge [ ] is that he acted on his own and failed his duty to allow a proper panel of Judges to determine if evidence existed for judgment reversal. Instead, he individually dismissed out-of-hand my request for review, without any substantiation or Memorandum of Points and Authorities to indicate that any consideration had been given to the fraud, deception and mistake of fact that caused false judgment.

The official results of Judge [ ] failure to determine the existence of "good cause" is shown in the attached "Orders" signed by him, one in the [ ] case, filed with the Clerk of the Court [ ] and one on the [ ] filed with the Clerk of the Court [ ] See: **Exhibits "H" and "I" attached.**

In both cases, the above Orders are void of any "good cause" determination or review. All that is mentioned in each Order is a history of the prior denials, in which other requests I have made were summarily rejected, without a determination on the merit. It is barbaric for a court to issue false judgment, then to automatically insist the case is closed.

Judge [ ] dereliction negates the entire mechanism and intent of Rule 3 ARCAP and also Lindus supra. It is unacceptable that clear showings of opposing attorney fraud and deception, coupled with erroneous judgment decisions, are simply ignored.

Judge [ ] violated **Canon 1**, because he failed to uphold the integrity of the Judiciary. When a litigant comes to the court in good faith, he expects professional deportment, and a proper consideration of the facts and law of the case.

Judge [ ] violated **Canon 2**, because he did not avoid impropriety or its appearance. No consideration was given to my good cause showings that overwhelmingly justified having the other side respond to my charges of wrongful judgment, and then after my reply, having each of my cases put before a full panel of Appellate Judges for review.

Judge [ ] violated **Canon 3**, because he did not do his impartial, or specifically diligent duty, to determine the validity of my requests for reconsideration.

To show that astonishing "good cause" does exist, to fully justify the relief requested from the subject false judgments, I now attach appendages **"X"** and **"Y"**. Appendage "X" contains the facts and law of the [ ] case, and Appendage **"Y"** is for the [ ] case.

On the line is truth and integrity for Arizona. Finally, after many years, there are now new Code of Conduct Rules, as of January 1, 2006, that allow more oversight scrutiny and power to eliminate improper conduct in office that has injured me and many others.

The end result is that I want to be assured of a proper open avenue to a correction for a shown false judgment, as per the existing safety net of the law, and conformation to the true law and to the true evidence of the case. I also want to make it easier for others, who have also been abused by false judgments, to be respected in their proper efforts to accomplish correction.

I now address Count Two of my complaint against Judge [ ]

To make a long story short, I wrote a letter to [ ] Judge [ ] to inform him that my case [ ] had been horribly misjudged by him. I also asked him to deem my letter to be a Motion for Reconsideration. **See: Exhibit "A" attached.**

Judge [ ] turned my letter to him over to [ ] Clerk [ ] [ ] for a decision. On [ ] [ ] wrote to me stating that my letter to Judge [ ] had to be returned to me, and that it could not be "accepted for filing as a Motion for Reconsideration" for only two reasons. One, I did not serve a copy to the opposing counsel, and Two, the court lacked jurisdiction to review the case, since it had already been decided and the mandate had already issued. **See: Exhibit "B" attached.**

I was pleased with this letter. I only had to overcome two obstacles cited by the clerk of the court, which I did. By letter dated [redacted] I wrote a new and detailed eight-page letter to [redacted] Judge [redacted] in which I corrected the two deficiencies cited by the clerk of the court, in order to then allow a proper Motion for Reconsideration.

I also cited Rule 3, ARCAP, which specifies a Suspension of the Rules to allow full jurisdiction to process a Motion for Reconsideration, when "good cause" is shown to correct a court's own prior judgment error. In addition, I provided enormous evidence that "good cause" did exist for reversal. I also cited Lindus supra, which upholds this rule.

The issue of notification to the opposing counsel was overcome when I made an original and six copies of my new Motion for Reconsideration for the [redacted] then I also hand-delivered a copy to opposing counsel, [redacted] **See: Exhibit "C" attached.**

By letter and package dated [redacted] Clerk [redacted] returned all of my material to me, and stated that my case could not be considered for review because my case had already been decided by Memorandum Decision on [redacted] and my original Motion for Reconsideration had been denied on [redacted] as well as my Petition for Review to the Arizona Supreme Court by denial dated [redacted] and the [redacted] Court had issued its mandate on [redacted] This paragraph finished by saying, "That ended the case".

The next paragraph stated: "Rule 22 of Arizona's Rules of Civil Appellate Procedure contains no provision permitting the filing of multiple motions for reconsideration of a single decision of the Court of Appeals, and makes no provision for filing a motion for reconsideration beyond the original due date for such a motion or any extension of that due date sought and granted under ARCAP 23(j)." **See: Exhibit "D" attached.**

Here we see that Rule 3 of the ARCAP was ignored and denied by the clerk of the court, [redacted] yet Rule 3 supercedes all other rules of the ARCAP, including Rule 22 and Rule 23(j). ARCAP Rule 3 is designed to correct injustice – without time limitation – and specifically, as per Lindus supra, the mandate shall be recalled, when it can be shown that "good cause" exists to overturn a false Memorandum Decision.

How else can a false Memorandum Decision and Mandate be corrected, when it is plain that all the prior rulings of a particular lawsuit simply do not conform to the true law and the true evidence of the case? Obviously, harsh rules must giveway to the correction of injustice.

Clearly the legislature has spoken on this issue, and has ratified Rule 3 of the ARCAP, so that when error is identified, correction can not only occur, but also occur promptly.

The problem is that the Arizona Court [redacted] denies and ignores the superiority of Rule 3 ARCAP, in the face of achieving ultimate justice.

Judge [redacted] notoriously refuses to do his duty to facilitate the established recourse for judgment correction. He simply and automatically rejects any avenue for relief even when massive good cause and precedent law for correction is presented to him.

Judge [redacted] failed his duty to uphold and administer the superceding law of Rule 3, ARCAP. No doubt hundreds of other erroneous Mandates persist without correction – and each of those citizens are injured – even though the mechanism exists to provide relief. What is need here, perhaps in conjunction with the Arizona Supreme Court, is a ruling from this Commission on Judicial Conduct that the higher Rules of Court will be obeyed for the good of Arizona. The reason I invoke the Arizona Supreme Court is because under Article 6.1, § 1 of the Arizona Constitution, the Arizona Supreme Court has equal responsibility with this Commission on Judicial Conduct to provide Justice in Arizona.

After I got denied by the Appeals Court for no good reason, which ignored its errors and jurisdiction authority I had presented to it, then on [redacted] I simply re-filed my same Motion all over again. It takes a lot of time and effort to make a brief, and the one I had presented was excellent, so I did not re-do it. I only added a title stating it to be a specific "Motion for Reconsideration". After hand delivering this Motion back to the Appeals Court, I also hand delivered a copy to [redacted] **See: Exhibit "E" attached.**

I also provided a separate cover letter, which began by saying to the Appeals Court: "You keep changing the goal posts and missing the point. In other words, you completely fail to recognize the law or to implement the law." **See: Exhibit "F" attached.**

Normally, the other side then has about 20 days to respond by sending an answer to the Motion to both the court and to the one who filed the Motion. Then there are about 15 more days allowed for the one who filed the Motion to reply, then the court reviews the material from both sides and enters judgment on the merit regarding the arguments.

In this case, however, it is evident that [redacted] immediately viewed my re-filed Motion as nothing but an annoying nuisance, similar to other motions I had presented to the court in an effort to reverse the original erroneous judgment and decision on appeal.

The next day after re-filing, I determined that some of the language in my cover letter was too abrasive and inflammatory, so I re-wrote the first page to be more polite and diplomatic. I drove to [redacted] to substitute the new front page for the old original page, which had to be given to opposing counsel as well. **See: Exhibit "G" attached.**

After I delivered this corrected page to the Appeals Court; I walked across the street to also give a copy to opposing counsel. In order to do this; I had to go through a security station on the bottom floor. When I presented my material to be examined for entry into the building, the security guard, a lady named [redacted] would not let me pass.

[redacted] informed me that [redacted] a receptionist from upstairs, had come down with orders and a photograph of me, and I was now no longer allowed in the building to deliver any more papers to [redacted]

[redacted] then said papers I had already delivered were being "arranged" to be returned to me. I thought to myself… Why does an "arrangement" have to be made to return papers to me? If [redacted] wants to return papers to me, all he has to do is put them in the mail.

In any event, I had to leave the security station without giving my material to [redacted]

[redacted] later told me that [redacted] another secretary from upstairs came down and lifted the "no access" decision that had been effected by [redacted] Consequently, [redacted] can also shed light on my now separate and following claim of an *ex parte* violation.

It occurred to me that the "arrangement" was actually the result of an illegal *ex parte* communication that [redacted] had initiated and conducted with the [redacted] Court, to assure that the [redacted] Court would simply reject and return to me my new Motion for Reconsideration – and give it no consideration at all – so that [redacted] could rest assured that he would not have to answer my brief or risk losing the case.

Obviously, I was being persistent to achieve justice and [redacted] could plainly see that he would lose the case, if the Appeals Court should simply recognize my "good cause" and grant a review of its false Memorandum Decision that had originally given false judgment to [redacted] The last thing [redacted] wanted was to have to impossibly try and answer my very valid and true exposure of each and every error of the original and incorrect Memorandum Decision, which would easily result in having the case reversed.

I had directed all of my material to [redacted] with copies to [redacted] because I believed that the [redacted] should champion the valid rule I had stated to achieve ultimate justice. However, Judge [redacted] turned the matter over to Judge [redacted] **See: Order of Denial from Judge [redacted] Exhibit "H" attached.** I believe that either Judge [redacted] or Judge [redacted] or both, received a secret and improper communication from [redacted] to quash my Motion for Reconsideration. If Judge [redacted] was involved and influenced, he must be disciplined also.

There is no question that [redacted] went to extraordinary means – including barring me to pass security -- to pursue his objective of preventing relief for me. Nevertheless, with or without an *ex parte* communication, Rule 3 should have been abided by.

Both Judge [redacted] and Judge [redacted] should have recognized that my proper Motion had "good cause" and jurisdiction under Rule 3 ARCAP to overturn the error of my case.

I.e., since my case was a tort case, there is no quasi-judicial immunity for State officials in fraud/negligence claims, neither is it necessary to skip Superior Court and go directly to the Appeals Court regarding tort issues, nor was there any problem with my Notice of Claim, which was timely written and filed by a lawyer in my behalf. Also, the fraudulent *res judicata* issue had only been invented by opposing counsel, and it had been corrected by the Superior Court before my appeal to the Court of Appeals. Consequently, all the rulings in my wrongful Memorandum Decision were false and in need of correction.

More precisely, all of the wrongful rulings in the Appeals Court's false Memorandum Decision – that I was trying to overturn by means of Rule 3, ARCAP – are carefully detailed in the attached "Motion for Reconsideration". **See: Appendage "X" attached.**

I am also enclosing Appendage "Y", along with Appendage "X". Appendage "Y" is a separate "Motion for Reconsideration", also to the [redacted] This is necessary due to yet another false Memorandum Decision, known as [redacted] (for the recovery of a large real estate sales commission), which decision did not conform to the evidence or the law. **See: Appendage "Y" attached.**

In this case, three prominent lawyers for the other side combined to manufacture false law, by altering the text of the true law, to deceive the court(s) into wrongfully ruling that the definition of "procuring cause" – to earn a real estate sales commission – was the opposite of what the true law actually stated. By this counterfeiting, false judgment was given to the attorneys who cheated to steal justice, and again, after I repeatedly cited Rule 3 of the ARCAP as jurisdiction for correction, – Judge [redacted] steadfastly refused to recognize Rule 3 as being a proper avenue for correction to the massive error I had exposed "with good cause" for relief. **See: Order signed by Judge [redacted] Exhibit "I" attached.**

Of particular note is the harsh, condescending and venomous tone in which Judge [redacted] viciously attempts to intimidate and enforce his will of improper justice denial in this matter. The above Order of refusal, attached as Exhibit "I", concludes with these words:

> The clerk of this court is also directed to reject and return to [redacted] all future documents or correspondence tendered by him pertaining to [redacted] and [redacted] Any further attempt by [redacted] to file documents in this court pertaining to [redacted] will render him subject to citation for contempt of court.
>
> IT IS FURTHER ORDERED that in addition to the usual mailings, a copy of this order shall be sent to the Clerk of the Supreme Court of Arizona
>
> [redacted]

I was offended by this wrongful and arrogant language – as would any other citizen who had lost more than $2,000,000 due to fraudulent judgments – then be denied due process. I also recognize that the Clerk [redacted] was only following orders.

III. GOOD CAUSE – [redacted]

In order for this Commission on Judicial Conduct to see the depth of the false judgments rendered in both of my cases, I now include the following: This material is repeated in the

attached Appendages "X" and "Y", the difference being that the actual Exhibits are attached to those two Appendages, but they are absent here.

The [redacted] defending attorney, [redacted] from the [redacted] argued four reasons for dismissal of my case in the lower Superior Court, but none of those arguments had any basis.

One of those arguments was that [redacted] enjoyed quasi-judicial immunity to force dismissal. The lower court agreed in error, but the Appeals Court did not address this issue of quasi-judicial immunity for [redacted] I now refute the findings of the Superior Courts on this issue.

The Original Superior Court Judge [redacted] first ruled this to be a tort case at open hearing on [redacted] See: Transcript attached as **Exhibit 3**, page 13. Since this was a tort case, and not a regulatory case, then under these tort circumstances, [redacted] does not have quasi-judicial immunity as stated in the landmark case of Pritchard v. State, 163 Ariz. 788 P.2d 1178, which rules as follows:

> "There is perhaps no doctrine more firmly established than the principle that liability follows **tortuous wrongdoing** that where negligence is the proximate cause of injury, the rule of liability and immunity is the exception. *** Employing the spirit of the *Stone* decision, we propose to endorse the use of government immunity as a defense **only** when its application is necessary to avoid a severe hampering of a governmental function or thwarting of established public policy. **Otherwise, the state and its agents will be subject to the same tort law as private citizens.** *** It is hereby declared to be the public policy of this state that public entities are liable for acts and omissions of employees in accordance with the statutes and common law of this state."

I now address the key rulings of the 13-page Memorandum Decision in [redacted] dated [redacted] See: **Exhibit 1,** which rulings are now refuted: See also: **Exhibit 2**.

Pp. 3, ¶ 3: This case was a "tort" claim, not a regulatory claim, against the Arizona [redacted] This misconception caused wrong law to be applied in this case.

This case centered on [redacted] deliberate withholding of taxes it was required to pay on a large [redacted] company it ran for me, which served four subdivisions. In addition, this [redacted] company was under Court Order to be returned to me. However, [redacted] engaged in secret fraud to "set up" the Ariz. Dept. of Revenue (ADOR) to seize and auction my assets away from me.

At oral argument conducted on [redacted] before Judge [redacted] opposing counsel either argued or could have argued for dismissal on the claims of (1) quasi-judicial immunity (2) any failure as to form, content, or accrual date for the Notice of Claim, and (3) whether I had to skip Superior Court and go directly to the Appeals Court as per A.R.S. § 40-253, etc.

At this hearing, See: Transcript, **Exhibit 3,** pp., 13, Judge [ ] overruled each of the above arguments for dismissal presented by [ ] by granting me permission to re-file. Also at page 13, Judge [ ] specifically ruled this to be a "tort" (fraud/negligence) case, not a "regulatory" rate case

Later, in [ ] the opposing attorney argued as follows: (see brief attached, **Exhibit 13,** pp. 3, dated [ ] before Judge [ ], quoting Hall v. Lalli, 194 Ariz. 54, 57, 977 P.2d 776:

> Briefly stated, the doctrine of res judicata is that an existing final judgment rendered upon the merits, without fraud or collusion by a court of competent jurisdiction, is conclusive as to **every point** decided therein **and also**, as to every point raised by the record which **could have been** decided, with respect to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.

The following arguments by opposing counsel were overruled by Judge [ ] on [ ] See: Transcript, **Exhibit 3**, pp. 7, which barred these matters from argument in subsequent courts:

> "If this is in fact a tort claim, then quasi-judicial immunity applies and notice of claim applies... And, again, the Court has no jurisdiction if he doesn't comply with the notice of claim".

Clearly "quasi-judicial immunity" and "notice of claim" issues were presented and eliminated from further litigation of consideration by operation of *res judicata.* At this same hearing, Judge [ ] also examined my Notice of Claim from the bench, and ruled it to be acceptable.

However, Judge [ ] ruled my case had to be temporarily dismissed for one small reason. I had failed to wait the full 60 days, after I filed my Notice of Claim, before I filed my Complaint in Superior Court. This was ruled to be an "administrative remedy" avenue I had failed to abide by, as required by A.R.S. § 12-821.01(E), so Judge [ ] ruled I had to wait 55 more days, then I had express *leave of court* to re-file back into Superior Court and a level playing field. Judge [ ] also specifically ruled, as shown on pages 12-13 of the [ ] transcript, **Exhibit 3**, that since this was not a standard [ ] regulatory case, I did not have to skip Superior Court and go directly to the Appeals Court as per A.R.S. § 40-253, etc. Judge [ ] clarified this issue as follows:

> THE COURT: To the extent stated on the record, I granted the State's motion (to dismiss) for failure to exhaust administrative *remedies*. I am not sure if it is clear. It is **not** the *appellate process* from the [ ] to the Court of Appeals; (i.e., failure to skip Superior Court and go directly to the Appeals Court as per A.R.S § 40–253). It is the administrative *remedy* doctrine for failure to exhaust administrative *remedies* before you sue the state in a tort claim. That is the (only) basis upon which I am dismissing the case. (Wait 60 days after filing the notice of claim for the State to possibly settle out of court.)

I waited 60 days then I re-filed. However, opposing counsel fraudulently ruined my fair day in court by immediately presenting a false Order from Judge [ ] See: **Exhibit 8**, – later corrected – that showed improper dismissal "with" prejudice from his original court. This hoax was a "kiss of death". No Judge will respect any case that has already been dismissed "with" prejudice.

Also, opposing counsel continued to wrongfully argue and confuse the [ ] court with false Notice of Claim matters, a false quasi-judicial immunity claim and false, inapplicable and specifically denied "skip Superior Court" claims, PLUS, the false *res judicata* deception. See: **Exhibit 9**. Opposing counsel's strategy was to pitch everything on the wall and hope some of it sticks.

My primary injustice was the lack of a fair day in court, after [ ] Justice was denied to me because the opposing attorney from the [ ] tainted the [ ] court against me. Also, the [ ] Judge who wrote the Memorandum Decision against me on appeal was a former member of the same [ ] that now defended this case against me, so he was biased in favor of his former colleagues at the [ ]

I will now address the actual flaws of the Memorandum Decision from the Appeals Court.

Pp. 3, ¶ 4: There was no basis to rule that I failed to comply with A.R.S. ¶¶ 40-253 and 40-254.01(A), or that defendant [ ] had quasi-judicial immunity. These are matters that were first rejected by Judge [ ] as they do not apply to my case because my case is a tort case, not a regulatory case, and A.R.S ¶ 40-253 and ¶ 40-254.01(A) do not apply to tort cases. See: Transcript of Hearing, **Exhibit 3**.

[ ] has no immunity when it is being sued on tort matters, as opposed to regulatory matters. See: Pritchard v. State, 163 Ariz. 420, 778 P.2d 316 (1996), already demonstrated above.

Also, [ ] was not the accrual date for filing my Notice of Claim, to thus make it untimely. The court ruled in error I "asserted" [ ] to be the accrual date. I made no such assertion. Such an assertion by me does not exist. [ ] was the date [ ] manager for my [ ] company filed for a rate increase to [ ] This was a good thing, not a bad thing, so there was no damage/basis to file a Notice of Claim regarding this event. Also, the filing of a rate application to [ ] is a "regulatory" matter and my Complaint was a "tort" issue, i.e., that [ ] stripped me of my assets due to its tax payment failure and fraud, plus [ ] failure to return to me my [ ] company it was responsible for.

[ ] was the true accrual date for filing my Notice of Claim. This was the day I realized, by my discovery of a letter written by [ ] to [ ] that the loss of my [ ] company had been secretly orchestrated by [ ] due to its constructive tax fraud. See: Letter, **Exhibit 16**.

Pp. 4, ¶ 4: The Appeals Court ruled that I did not seek relief from the judgment of [ ] nor did I Appeal [ ]

The opposite is true. I sought *immediate* relief from the [redacted] judgment by re-filing [redacted] back into Superior Court, after I saw that Judge [redacted] was so biased against me, [redacted]

[redacted] was the freshest, most fair and economical way under the circumstances. Motions for Reconsideration are seldom effective, because they declare that a judge blundered, and no judge or fellow judge is likely to favor an attack on themselves or another fellow judge.

In any event, [redacted] did happen and the Appeals Court on appeal must examine the entire record in the combined lower courts, as if it were all one single case, which included [redacted] See: State v. Flemming 184 Ariz. 110, 907 P.2d 496, which states as follows:

> "... [T]here is only one superior court in Arizona. See: Ariz. Const. art. VI, ¶ 1; See also: Massengill v. Superior Court, 3 Ariz. App. at 591, 416 P.2d at 1012."

I.e., even though there are many Superior Court Judges and different courtrooms in separate Counties, they are all one single court when it comes to matters affecting the same case.

The Appeals Court did not accept [redacted] as being one single case. Neither did it review all of the combined arguments of facts and law *de novo* as required, to find reasons why the Denial of my case should be reversed to further justice. Instead, the Appeals Court wrongfully ruled that since I did not immediately appeal [redacted] the time for appeal tolled, so the lower court Denial of my case had to be sustained for time-lapse reasons.

There is no legal or effective difference between me filing a new case, or a Motion for Reconsideration, since any motion had to be re-assigned to a different judge anyway due to [redacted] the day after she Dismissed me from her court. Any question as to the acceptability of my good faith action must be ruled in my favor by law, as now shown:

Fairway Const. Inc. v. Ahern, 193 Ariz. 122, 970 P.2d 954 requires the Appellate Court to review "*de novo*" every portion of **any** Superior Court case on appeal to ferret justice, **and**, when Dismissal is the issue -- as in this case -- then by Johnson v. McDonald 197 Ariz. 155, 3 P.3d 1075; and Walters v. Maricopa Co., 195 Ariz. 476, 990 P.2d 677, the Appeals Court must view the law and the evidence in the "best light" possible to the plaintiff. *See also:* McDonald v. City of Prescott, 197 Ariz. 566, 5 P.3d 900. **Also**, Rule 3 ARCP suspends any rule that blocks justice. My many Rule 3 applications should have been accepted to "further justice" when good cause was shown, as was the case here.

After wrongfully ruling on selected portions of [redacted] the Appeals Court then ruled I should have appealed [redacted] independently. However, since the Appeals Court examined parts of [redacted] but only for reasons to sustain Dismissal, then in reality, I **did** get [redacted] in front of the Appeals Court, and at that point, my case should have been decided both correctly and in the best light possible, not the worst light possible, as required by law. The opposite occurred.

Pp. 5 ¶ 7. The Appeals Court ruled that: "In reviewing **motions for summary judgment**, we view the facts in the light most favorable to the party against whom judgment was entered, and review *de novo* whether the court properly applied the law. Prince v. City of Apache Junction, 185 Ariz. 43, 912 P.2d 47." NOTE – This rule also applies to appeals from Dismissals, not just summary judgments. The Appeals Court **failed** to apply this above true consideration to my case, on my appeal that stemmed from a lower court **Motion to Dismiss**.

Pp. 6, ¶ 9: The Appeals Court ruled the *res judicata* aspect of Hall v. Lalli to preclude the re-litigation of issues of record that were decided, or could have been decided, in both [ ] and [ ] **But**, in double-standard error, the Appeals Court failed to apply this same *res judicata* provision to [ ] which should have prevented opposing counsel from raising any of the causes for dismissal that were already decided in [ ] to be in my favor. I.e.: Not skip Superior Court, no *res judicata*, no quasi-judicial immunity, and no flaw in my Notice of Claim, which was ruled sufficient to go into [ ]

Not only did [ ] wrongfully re-litigate these already decided issues again in [ ] but they were also judged wrong in [ ] as per the law and the evidence. **Exhibits 9 & 10**.

Pp. 7 ¶ 11 This *res judicata* ruling is in error. Fraud and irregularity did exist. [ ] should not have disclosed to [ ] that [ ] even existed, nor should she have argued her claims that had already been overruled by Judge [ ] in [ ] i.e., the Notice of Claim, that Superior Court be skipped, or that judicial immunity existed for [ ] and, she should not have invented and used her false Order to steal justice. See: False Order, **Exhibit 8**.

[ ] *admitted* making a false "**with prejudice**" Dismissal Order after [ ] **Exhibit 4,** which got wrongfully signed, **Exhibit 8,** which she then used to poison the [ ] courts against me. [ ] would not have made her corrected "**without**" prejudice Order, **Exhibit 5**, unless she first knew her original "**with**" prejudice form of Order was false.

However, once [ ] discovered she had in her possession a massively advantageous but false Order, showing dismissal "with" prejudice, she sought to suppress her true but unsigned Order and to take full advantage of her false Order. [ ] preserved her false Order, and delayed its correction for months, in order to advantage and extend the taintment of the [ ] Judge against me, which ruined my fair day in court. See: [ ] Motion to Dismiss, **Exhibit 9.**

[ ] even gave her false Order to [ ] **after** it was corrected, **Exhibits 11 & 13**. The [ ] Judge was tainted, **Exhibit 14,** because he reflected the tainted [ ] judgment, **Exhibit 10.** All of these court rulings were cancered by [ ] false Order, contrary to the [ ] Court's findings.

It is not necessary to rehearse all the deception of [ ] It is established at lines 75-113 of the Introduction to this brief, and her secretary's affidavit that [ ] made the correction but did not send it for the Judge's signature, **Exhibit 7.** What matters is the Appeals Court's false ruling at pp. 7, ¶ 12:

> Even assuming that [ ] counsel engaged in improper conduct in submitting the incorrect order to the court in [ ] argued in [ ] that the first action was dismissed without prejudice... (but the [ ] court did not believe this and ruled to the contrary) Further, although the court in [ ] expressed unwillingness to collaterally attack the ruling in [ ] the dismissal order in [ ] addressed the merits of the motion to dismiss in greater detail than did the order in [ ] and based its ruling on grounds in addition to those on which [ ] relied, indicating that the court in [ ] did not rely on the erroneous prior ruling.

This is false reasoning! The [ ] court embraced the false "with" prejudice Order that [ ] never should have presented. The [ ] court relied on, and was fully tainted by, this false "with" prejudice Order. See: **Exhibit 10**. Just because the [ ] Dismissal Order has more rulings and detail, does not mean that the [ ] Dismissal Order was not infected by the phony [ ] Order.

Judge [ ] in [ ] previously dismissed all the above false arguments that [ ] had already presented. See: Transcript, **Exhibit 3**, (leave to re-file, pp. 12,13). He rejected the same false "merits" that Judge [ ] slipped into her Dismissal Order. The fact of "*many*" false Judge [ ] rulings do not exonerate the "improper conduct" of [ ] nor do they remove "taintment" against me, nor does it prove that the court in [ ] "did not rely on the erroneous prior ruling". Here is the contamination from [ ] misconduct that reflected in Judge [ ] false Minute Entry in my case. See: **Exhibit 10**:

[redacted]

[2] Judge [ ] was jaundiced and confused. Her key mention of my "prior claim" – that got dismissed "**with prejudice**" – demonstrated fatal bias. [ ] was only temporarily dismissed for the single reason of failing to wait the full 60 days required by A.R.S. § 12-821.01(E), yet somehow, Judge [ ] ruled my case *continued* "to bear the same fatal flaw", and *was dismissed* for failing to abide by A.R.S. §§ 40.253 and 40-254.01(A). However, Judge [ ] in [ ] specifically ruled I did not have to comply with these statutes, which should have been issue preclusion to Judge [ ] Judge [ ] made a point of using influenced prejudicial words like "prior claim was dismissed", **and** "Plaintiffs' refiled and altered their allegations", **and** "This action is a reincarnation of [ ] **and** "still bears the same fatal flaw", **and** "Plaintiffs' claim arises from the exact same actions". This is taintment.

¶ 12 above is erroneous and easily exposed as being ludicrous for the following ruling:

> "The judge in [ ] addressed the merits of the motion to dismiss in greater detail than did the order in [ ] and based its ruling on grounds in addition to those on which [ ] relied, indicating that the court in [ ] did not rely on the erroneous prior ruling"

Judge [ ] relied on both a false Order, **Exhibit 8,** and its wrong perception. Judge [ ] also failed to rule in accordance with the Minute Entry of Judge [ ] **Exhibit 6**, which gave the true and different reason for dismissal (wait 55 days). Hall v. Lalli, 194 Ariz. 54 977 P.2d 776, 799 (1999) rules that:

> Briefly stated, the doctrine of *res judicata* is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive…

Res judicata does not exist to prevent correction if there was "fraud or collusion" that tainted judgment from which relief is sought. To rule otherwise is barbaric. I have shown abundant "fraud, collusion, and mistake of fact and law", that robbed justice. Consequently, the erroneous judgment(s) resulting from these errors are not barred by unfair *res judicata.*

Since [ ] had fraud and collusion *res judicata* does not apply there, and none of the [ ] [ ] Judgment should stand, yet those same errors appeared in the [ ] Decision.

Also, Rule 3 ARCAP suspends all rules that try to prevent judgment correction, including *res judicata.* A Reconsideration Motion to the Appeals Court is the vehicle to correct its exposed error, providing "good cause" is shown, as in this case, to trigger the application of Rule 3.

The greatest focus of the Appeals Court against me was its false ruling, beginning on page 8, ¶ 13, that my Notice of Claim was flawed, so I must now dwell extensively on this issue: The Statute which governs the *timeliness* and *content* of a Notice of Claim reads as follows:

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[3] [ ] was a number error from the false Order but Judge [ ] blindly copied it. The correct number was [ ] This shows more contamination from the false Order.

[4] **Clearly Judge [ ] was openly stricken and totally frozen by the false "with prejudice" dismissal Order that was wrongfully made and presented by [ ]**

A.R.S §12-821.01. Authorization of claim against public entity or public employee

> A. Persons who have claims against a public entity or a public employee shall file claims with the person or persons authorized to accept service for the public entity or public employee as set forth in the Arizona Rules of Civil Procedure within one hundred eighty days after the cause of action accrues. The claim shall contain facts sufficient to permit the public entity or public employee to understand the **basis** upon which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount. Any claim which is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained.
>
> B. For purposes of this section, a cause of action accrues when the damaged party **realizes** he or she has be damaged and knows or reasonably should know the cause, source, act, event instrumentality **or condition** which caused **or contributed** to the damage.

I timely filed my Notice of Claim on [ ], only 90 days after I **realized** I had been damaged by [ ] attorney for [ ] who planned and engineered my property loss. I discovered his secret conspiracy letter to [ ] in his files on [ ] after his [ ] employment ended. This letter **contributed** to my damage. See: Notice of Claim, **Exhibit 16.**

At the time this letter was written, on [ ], [ ] was in exclusive control of my [ ] company. [ ] had obtained an Order from the [ ] Court to lock me out of my company; take over my books and collections; and do all the day-to-day operations of my system. See: Judgment and Decree, dated [ ] **Exhibit 17.**

However, the Judgment and Decree ruled I remained as owner, and [ ] had to maintain and return my system to me upon bringing it into compliance with the [ ] See: Judgment, **Exhibit "17"** and [ ] Letter, **Exhibit 16.** Also, [ ] was required by law to provide to me a fair rate of return on my [ ] system. More particularly, to first pay all the debts, then pay what was left over to me. My system had been appraised at about $1,000,000 and previously, [ ] had determined my system was to receive an 11.4% rate of return, or $114,000 per year, plus expenses, which was to be available to pay the company debts, with the excess going to me.

[ ] had my system for more than two years. During this time, I received nothing for my assets that had been "taken" from me. Neither did [ ] upgrade the system, or bring it into compliance with [ ] or make it financially viable in terms of both paying the day-to-day expenses, plus, returning to me a fair rate of return on my investment. After more than one year, [ ] interim manager did apply for a rate increase to [ ] in order to generate funds to achieve the required viability and improvements. See: Complaint, ¶¶ 1-12, **Exhibit 12,** which must be deemed to be true.

However, by a 2 to 1 vote, the [redacted] denied the [redacted] increase. Nevertheless, [redacted] was required to maintain my system, pay the debts, and to return it to me. [redacted] had a duty to pay the taxes or to provide a fair rate of return to me so that I could pay the taxes from the "fair value" proceeds of my [redacted] company that served [redacted] *Id.* ¶ 12

Rather than maintain my system, or pay the taxes, [redacted] attorney for [redacted] wrote a secret letter to [redacted] saying that [redacted] was responsible for paying the back taxes, and penalties, but that [redacted] would deliberately not pay these taxes, and that [redacted] should seize and auction my assets. This "set up" letter also disclosed that my system was free and clear, except for the tax debt, and that its value exceeded the tax debt, so [redacted] could receive all of its money very quickly if it should simply seize and auction my assets. The letter also disclosed that [redacted] would facilitate very quickly the approval of any new owner as operator. See: Letter, **Exhibit 16** and Complaint, **Exhibit 12,** ¶¶ 37, 44 & 49.

This covert conspiracy succeeded. [redacted] quickly cooperated with [redacted] cut off my negotiations to do a private "offer and compromise" or to pay the $72,000 debt over time, and instead, [redacted] seized and sold at a "fire sale" loss, my company that contained more than [redacted] The high bid turned out to be only $65,000, due to the nightmarish financial losses and compliance failures the company was struggling with under [redacted] adverse management. This "reverse fiduciary" and "deliberate failure" by [redacted] was in contempt of the Court Ordered Decree to maintain and return my company to me. It also gives rise to very substantial and additional punitive damages. See: Complaint, **Exhibit 12,** ¶¶ 30 – 40, 45

Clearly this letter by [redacted] to [redacted] triggered the irresponsible loss of my company. I did not **realize** this conspiracy, which was key and **contributed** to my damage, until I discovered the letter on [redacted] I then filed my Notice of Claim on [redacted] so I was well within the 180 days required by law to file my Notice of Claim. See: Complaint, **Exhibit 12**, ¶¶ 22, 23.

The thesis of my Notice of Claim stated: "RE: Conduct related to seizure of assets and liquidation of [redacted] company." I hired an attorney to professionally prepare my Notice of Claim. The name and the phone number of the attorney appeared on the Claim, and if there were any questions, [redacted] could have inquired for clarification, but the State did not do so. Two paragraphs explained the additional and **basic** nature of the Claim, as required by Statute. My Notice of Claim also stated $1,000,000 as a settlement figure. See: Notice of Claim, **Exhibit 15.**

Mamo v. State, 138 Ariz. 528, 675 P.2d 1347 states the Notice of Claim purpose is as follows:

> The purpose behind A.R.S. § 12-821 is threefold: (1) to afford the agency the opportunity to **investigate** the claim and assess its liability; (2) to afford the agency the opportunity to attain a settlement and avoid costly litigation; and (3) to advise the legislature where settlement could not be achieved. *State v. Brooks* (The legislature can then budget money for claim payment purposes).

A Notice of Claim only has to provide a **basis** for a **liability,** so the State can **investigate** the loss or damage. My Notice of Claim not only disclosed the name and loss of my [redacted] company through a "fraudulent" tax seizure and auction, but it also provided the phone number of my attorney so that further information could be obtained. Consequently, the Appeals Court was in error to rule I did not provide any basis or information for my claim. See: Notice of Claim, **Exhibit 15.**

At ¶ 13, **Exhibit 1,** The Appeals Court also ruled in error that both [redacted] and the State had to be given a copy of my Notice of Claim. This erroneous ruling of the Appeals Court is as follows:

> "A plaintiff alleging that the conduct giving rise to the claim was committed by a public employee in the course of his or her employment must serve a notice of claim on **both** the public entity and on the individual employee. *Crum v. Superior Court*, 186 Ariz. 351, 352, 922 P.2d 316, 317 (App. 1996)."

A cursory reading of the above *Crum v. Superior Court* citation is contrary to above sloppy rendition by the Appeals Court. The actual text from *Crum v. Superior Court* reads as follows:

> "A claimant who **asserts** that a public employee's conduct giving rise to a claim for damages was committed within the **course and scope** of employment must give notice of the claim to *both* the employee individually and to his employer."

Answer: I never **asserted** that [redacted] was acting within both the **course and scope** of his proper employment with [redacted] The Appeals Court in error only conveniently mentioned the **course** of employment, and left out the also necessary **scope** of employment. It was not within [redacted] employment **scope** (job description) to go outside of [redacted] standard regulatory duties and to write secret letters to external tax agencies to "set up" the seizure and auction of property that [redacted] was responsible for maintaining, returning to the owner, and paying the taxes on. Therefore, I was not required to give a Notice of Claim to [redacted] See also: Complaint, **Exhibit 12,** ¶ 26.

The full text of the above *Crumb v. Superior Court* states that if there is a doubt as to whether or not a government employee is acting within the course and scope of their appropriate employment, then this is a question of material fact to be decided by the trier of fact. Consequently, it is up to the trier of fact (lower Superior Court) to decide this issue, not the Appeals Court. Continuing now with the text of the Memorandum Decision against me:

> "The notice must contain facts sufficient to allow the public entity or employee to understand the **basis** of the claim. A.R.S. § 12-821.01(A). The purpose of the notice is to provide the public entity and employee with sufficient information to **investigate** and assess their liability. *Andress v. City of Chandler*, 198 Ariz. 112, 114, ¶ 10, 7 P.3d 121, 123."

Answer: This is exactly what I did. I complied with the above requirements. I provided the **basis** for the claim, including the opening thesis sentence, which stated: "RE: Conduct related to seizure of assets and liquidation of [redacted] company." See: Notice of Claim, **Exhibit 15**.

There is also no question that the State had the opportunity to **investigate** my claim. In addition, if the State had any questions it could have contacted me or my attorney. Our names and addresses were attached to the Notice of Claim. See: Notice of Claim, **Exhibit 15**.

Continuing now with the exact text of the Memorandum Decision:

> "The notice 'must also contain an assertion of liability' regarding "a specifically described event" to achieve this purpose. *Howland v. State*, 169 Ariz. 293, 299, 818 P.2d 1169, 1175 (App. 1991)."

My case is distinguished from *Howland*. In *Howland*, a State Prison inmate sent a letter to various prison officials that was incoherent and seemingly intoxicated. It gave no mention of any personal damage, as did my professional Notice of Claim. This letter only stated vague abstractions and blurred mass grievances that contained no substance that could be taken seriously or investigated. I.e., there was no "basis" for any recoverable harm whatsoever, as contained in my Notice of Claim. Contrary to my case, the *Howland* letter was void of any mention of the inmate's loss of hobby tools, equipment and material that was the subject of his injury. He only jaw boned about abstract whiffs of far out state and federal statutes.

The "specifically described event" in *Howland* was not about a threshold degree of "basis", but instead that no basis was stated at all in that "Notice of Claim". The Appeals Court in my case was in error to try and enlarge the Statute by conjuring that there is a degree of "basis" that must be met. The Statute only requires some "basis" to be stated, and the absence of any basis at all violates the Statute as per *Howland*. This absence of *basis* did not happen in my case, so I am distinguished from Howland's letter, which purports to be a Notice of Claim, but is far beneath the quality of my Notice of Claim. See: My Notice of Claim, **Exhibit 15**, compared to the Howland letter below, copied from *Howland*.

> RE: NOTICE OF CLAIM AGAINST DEPT. OF CORRECTIONS STATE OF ARIZONA: ROBERT GOLDSMITH, LEWIS[,] ARCOR ENTERPRISES CHET HOWLAND, PLAINTIFF Gentlemen:
>
> This letter is to serve as notice of claim by Chet Howland, ADOC #25780 for his claim against the Arizona Department of Corrections, Lewis, Robert Goldsmith, Arcor Enterprises, the State of Arizona, employees and or agents of the State and appropriate Departments. This notice is pursuant to 12-821 et seq.
>
> Mr. [Howland] claims that violations of the U.S. Fair Labor Acts and the Civil Rights Act of 1871 by and through the past and present Directors and agents thereof. That Mr. Howland's claims that the constitutional rights that are guaranteed by the U.S. Constitution's Fourteenth Amendment was violated, as

> well as: the Federal Labor Standards Act, 29 U.S.C. 201 et seq, 42 U.S.C. 1093, 1985, 1986 1997(e): 41-1622 et seq. 31-252 et seq. and 38-532 et seq. Mr. Howland alleges that he has been a victim of intentional breach of contract and others, 31-127 (abuse of Prisoner), 13-204 (ignorance of the law is NO excuse).....
>
> As the proximate cause of the violations of Mr. Howland's rights as described above, he has suffered loss of past, present and future income and earnings and other consequential and compensatory damages.
>
> Therefore, he makes the following claim against the named entities, jointly and severally, for damages in the sum of not less than $50,000.00. If litigation is initiated to redress Mr. Howland's loss of wages and property rights, he will also be able to in addition to damages alleged, attorney fees and costs. Please respond in a timely manner.

The Appeals Court agreed with the defendant State that plaintiff's above letter constituted an insufficient notice of claim that gave no clue as to any "actionable loss" of his personal property, which were certain mechanical tools and merchandise pertaining to a hobby business, within the prison, which became unaccounted for when prisoner Howland got transferred to another unit.

Contrary to Mr. Howland's letter, my Notice of Claim stated the required "actionable loss" in that my specific [redacted] Company" was improperly taken, due to "negligent disposition of assets... conversion, and the time that it was taken was at a "Arizona Department of Revenue tax lien foreclosure sale", and the event and party who caused the injury was: "in relation to seizure of assets and conduct of the [redacted] [redacted] My Notice of Claim reads **in part**:

> Conduct related to seizure of assets and liquidation of [redacted] [redacted] company. [redacted] owner of the [redacted] company... has suffered an abuse of discretion, violation of due process, failure to account for assets, negligent disposition of assets, insufficient accounting, taking, loss, or unlawful conversion of assets, wrongful seizure of property... in relation to seizure of assets and conduct of the [redacted] division, and the appointed agents of sale. Such wrongful conduct began with the seizure of his company... The actions of the [redacted] in denying the [redacted] ultimately resulted in the confiscation of [redacted] company by the [redacted] [redacted] acting through its [redacted] and the subsequent sale of all of the assets of that company to a third party purchaser at a tax lien foreclosure sale.

None of the above basic/specific disclosures were in the deficient *Howland* Notice of Claim, but they were in my credible Notice of Claim. See: Notice of Claim, **Exhibit 15**. The required "best light possible" standard easily concludes that my Notice of Claim clearly measures up to the Statute.

The rulings of the false Memorandum Decision continue at page 9, ¶ 13, now quoted:

> "Under the statute, the "cause of action accrues when the damaged party **realizes** he or she has been damaged and knows or reasonably should know the cause, source, act, event, instrumentality or condition which caused **or contributed** to the damage." A.R.S. § 12-821.01(B)." (emphasis added)

Answer: This is true and I fully complied with this statute as shown. My accrual date began on [redacted] when I discovered the secret letter written by [redacted] that disclosed the conspiracy and misconduct of [redacted] to strip me of my property via a "set up", manipulated and effective tax seizure scheme. I then filed my Notice of Claim within 180 days. See: Complaint, **Exhibit 12**, ¶¶ 22 – 23, which must be taken as true, Johnson v. McDonald, 197 Ariz. 155, 3 P.3d 1075 (1999).

The narrative of the Memorandum Decision now continues:

> "¶14 [redacted] does not dispute that he did not serve a notice of claim individually on [redacted] Accordingly we find that any claim against [redacted] is barred and was properly dismissed."

ANSWER: As stated, I did not need to serve a notice of claim on [redacted] because in *Crum*, as shown, it is not necessary to serve a notice of claim to a government employee unless it is alleged that the employee is operating within both the course and the **scope** of his employment. It was not within the scope of [redacted] standard [redacted] employment to direct [redacted] to seize and auction property that [redacted] was required to maintain.

Continuing now with the text of the Memorandum Decision:

> "¶ 15 [redacted] contends that the trial court erred in concluding that he did not comply with the notice of claim statute, arguing that he served his notice of claim on the [redacted] within the 180-day requirement. [redacted] claims that the relevant accrual date was [redacted] the date he discovered the letter from [redacted] to [redacted] In his complaint, he asserts that the discovery of the letter was the key to the complaint because it was not until that time that he learned that [redacted] secretly and maliciously directed the [redacted] to seize and sell the assets of [redacted] at public auction for the non-payment of taxes." The notice of claim, however, contains no assertion of liability based on an allegation that the [redacted] wrongfully directed [redacted] to foreclose on [redacted] Having not included in the notice facts related to his theory of liability, [redacted] may not make a claim on this basis. *Howland*, 169 Ariz. at 299, 818 P.2d at 1175."

ANSWER: I have already covered this. The ruling of *Howland* only requires **basic** loss information in the Notice of Claim to satisfy the Notice of Claim Statute. I did this, and Mr. Howland did not. The *Howland* decision only established that **something** of a defined loss nature has to be included in the Notice of Claim, which did not exist in any form in *Howland*.

To the contrary, my Notice of Claim included the name of my company that was lost, the time that it was lost, the means of its loss, and the party who caused the loss, and the means to investigate it further. This basic information fully satisfied the Notice of Claim statute.

This above paragraph from the [ ] Court first gives the correct date of [ ] as the proper accrual date for filing my Notice of Claim according to statute. However, that finding then morphs into a false ruling that wrongfully requires my Notice of Claim to contain a **detailed** assertion of liability, specifically based on an allegation that the [ ] through [ ] wrongfully directed [ ] to foreclose on my property, in order for the date of [ ] to be acceptable as the accrual date.

The language of the statute that guides the Notice of Claim content makes no such requirement. There is no link between paragraphs (A) and (B) of A.R.S. § 12-821.01, such that paragraph (A) must be **stated** to be connected in specific detail with any event in paragraph (B), as a requirement for the accrual date in paragraph (B) to be accepted as valid.

In other words, these paragraphs are independent of each other. It is not necessary for me to give a **detailed** account **in my Notice of Claim** that specifically says: "The [ ] [ ] wrongfully directed [ ] to foreclose on my property", in order for [ ] [ ] to be the accrual date for my Notice of Claim.

No "name" is required to be mentioned anywhere in the Notice of Claim. Only **basic** information is required in paragraph A, not **specific** information. Also, Paragraph (B) to A.R.S § 12 – 821.01 does not require me to speak or write anything, but only to *realize* a *contribution* to my damage. Moreover, that "contribution" does not need to be a specific "directive" from the three [ ] to [ ] who was their in-house attorney.

The [ ] Court then tries to portray *Howland* as precedent to require more detail than the Statute. Instead, *Howland* only underscored the need for *basics* in the Notice of Claim, not specific details. *Howland* is noteworthy only because it has no basics at all, contrary to my situation. The *Howland* Court ruled that Mr. Howland's letter violated the statute because it had no "basis" at all that remotely connected to the subsequent Complaint:

> "A cursory reading of those two letters [dated May 3, 1988 and May 21, 1988] shows that they have nothing whatsoever to do with the alleged negligent loss of Plaintiff's hobby craft property at the State Prison, which is the subject of his Complaint filed in Superior Court. Those letters complain of alleged violations of the Federal Fair Labor Standards Act and various other federal and state statutes, none of which have anything to do with the allegations in Mr. Howland's Complaint. Those letters did not provide any notice whatsoever concerning the allegations in Plaintiff's Complaint, contrary to A.R.S. § 12-821.

Contrary to *Howland*, my Notice of Claim specifically mentioned the "loss, conversion, taking and seizure" of my named [ ] company", which was also reflected in the contents of my Complaint. See: Notice of Claim, **Exhibit 15,** and Complaint, **Exhibit 12,** ¶ 49, and all Complaints filed in this case. I am distinguished from the deficiencies of *Howland*.

I continue now with the text of the false Memorandum Decision against me:

> ¶ 16 [ ] argues that in this case, the [ ] had the benefit of a premature complaint, which made specific reference to unlawful contact between [ ] and the [ ] staff, specifically [ ] to encourage foreclosure. Therefore, according to [ ] the [ ] had the necessary knowledge of the basis for the claim.
>
> ¶ 17 We reject this contention. The initial complaint contained allegations of improper contact between [ ] staff and [ ] that, if included in the notice of claim, would have been sufficient to support the assertion of liability on that basis. The notice of claim, however, which was served after the first complaint, did not include those allegations. The [ ] could reasonably conclude, based on the absence of the allegations in the notice, that the plaintiff would not be asserting that basis of liability in his subsequent complaint. The premature complaint cannot therefore act as a supplement to the notice of claim.

ANSWER: This ruling talks in circles.

The [ ] had the benefit of my premature first Complaint, that got temporarily dismissed by the court. Upon its receipt, the [ ] understood the case and turned it over to the Attorney General's office to defend, since the AG's office defends all state agencies, which includes [ ] Upon its receipt, the AG's office clearly had the benefit of adequate detail, which it never denied.

The reason this first Complaint got temporarily dismissed is because I did not first file my Notice of Claim 60 days before I filed the Complaint. Consequently, Judge [ ] briefly dismissed my Complaint, with full "leave of court' for me to re-file a new Complaint, after I should wait the full 60 days required by A.R.S. § 12-821.01(E). This did not change the accuracy of my original Complaint, nor was their any reason to abandon any of my claims.

Consequently, it is undeniable the defending attorneys had excellent detail regarding both the general and specific nature of my litigation. Nevertheless, with or without the premature Complaint, my Notice of Claim gave the necessary "basic" information, and that information stands alone as having satisfied the Notice of Claim Statute.

The opposing attorneys never did argue or complain that they did not understand the basic nature of my Notice of Claim, and if they did, there was no foundation for such argument, that was overruled by Judge [ ] anyway – along with all other aspects of my Notice of Claim, including the timeliness of it – when Judge [ ] ruled that I could proceed back into [ ] Court with the exact same Notice of Claim I first presented in his [ ] court.

It is also egregious that the [ ] Court ruled my Notice of Claim did not refer to an improper tax foreclosure that injured me, such that: "[T]he [ ] could reasonably conclude, based on the absence of the allegations in the notice, that the plaintiff would not be asserting that basis of liability in his subsequent complaint".

The above [ ] Court ruling is in error because my Notice of Claim **did refer** to allegations of improper tax conduct involving [ ] Here are the "basic" words of my Notice of Claim that pertained to an improper property seizure at a tax foreclosure that injured me: **Exhibit 15.**

> Conduct related to seizure of assets and liquidation of [ ] [ ] Company". "...Wrongful seizure of property, ...violations of both state and federal law in relation to the seizure of assets and conduct of the [ ] [ ] and the appointed agents of sale. Such wrongful conduct began with the seizure of his company, and continued through the agreement to pay outstanding invoices signed between [ ] [ ] on or about [ ] " ... and the tax lien foreclosure sale conducted by the [ ] represented a taking without just compensation first having been paid to the owner by the state." "The actions of the [ ] ultimately resulted in the confiscation of [ ] company by the [ ] acting through its [ ] and the subsequent sale of all of the assets of that company to a third party purchaser at a tax lien foreclosure sale.

Clearly my Notice of Claim was laced with information showing I was not about to abandon my claim of liability against [ ] that stemmed from an improper seizure of assets and subsequent wrongful tax foreclosure sale, all due to wrongful "conduct by the [ ] [ ]. *Id.*

Also, my Notice of Claim *twice* mentioned [ ] ..."failure to grant requested rate increases in a timely manner sufficient to allow the company's continued viability". This mention of failed rate increases did not -- in this case -- throw this litigation to that of being a regulatory dispute with [ ] but instead, was to preserve my right to additional *punitive* damages, which was signaled as follows: "Such wrongful conduct has resulted in financial harm, emotional distress, and pain and suffering with irreparable harm to [ ] and his company." See: Notice of Claim, **Exhibit 15.**

This present matter of the failed rate increase applications was **after** the fact of the loss of the company through a fraudulent tax seizure, so it would be ridiculous for me to skip superior court, as would otherwise be required by A.R.S. § 40-253, etc., and ask the Appeals Court for a rate increase on a company that was already seized away from me and held by a third party.

In addition, my Notice of Claim also preserved yet another action for liability against [ ] which was that [ ] failed its duty to return to me my [ ] company, after the [ ] [ ] Court Ordered [ ] to preserve and maintain my system, and upgrade it to ADEQ standards, then restore my assets to me, since I was the owner. This additional claim of damage and liability against [ ] was stated with the following language in my Notice of Claim: [ ] suffered an abuse of discretion, violation of due process, failure to account for assets, negligent disposition of assets, insufficient accounting, taking, loss, or unlawful conversion of assets..."

The [ ] Court was in error to conclude that my Notice of Claim had any fault whatsoever, and particularly, that there was any violation as to its content or timeliness. Judge [ ] in the lower [ ] court both specifically ruled -- and could have ruled – in my favor as to each of these matters. Therefore, fact that he did not rule against me as to any of these Notice of Claim matters indicates that the law of the case in my favor was set, and *res judicata* prevented any more litigation on these already decided Notice of Claim issues.

Moreover, the [ ] Court failed to rule in the "best light possible" in my favor, and the [ ] Court also failed to grant all inferences to be in my favor as required in cases like this that stem from a lower court granting of a Motion to Dismiss. See: Fairway Constructors v. Ahern, supra, McDonald v. City of Prescott, supra, etc. More now on ¶¶ 16-17:

1. It is irrelevant what the [ ] or their attorneys might "conclude" after receiving the **basics** of my Notice of Claim, with or without the helpful but premature Complaint.

2. Any "conclusion" of any kind by the opposing attorneys is at their own risk, since it is their duty to do any and all **investigations** following the Notice of Claim.

3. In any event, whatever opposing attorneys' "assumptions" are is irrelevant, and does not invalidate my Notice of Claim, since my Notice of Claim met the threshold requirements of the Statute.

4. The presence of **basic** information in my Notice of Claim – not the absence of **precise** information – is the standard for Notice of Claim validity, and at worst, this presence of **basic** information is to be determined by a trier of fact.

5. The original [ ] Court [ ] Judge [ ], did examine my Notice of Claim in open court from the bench, and he ruled on [ ] that there was no flaw of any kind in my entire Notice of Claim, including its content and timeliness. See: Transcript, **Exhibit 3**, pp. 11 beginning on line 8, when my attorney handed to Judge [ ] my Notice of Claim.

6. Consequently, the proper rules of *res judicata* apply to preclude defendants, or any other court, from considering or litigating – after [ ] – as to whether or not any part of my Notice of Claim is valid or deficient. I.e., as of [ ] before Judge [ ] my Notice of Claim stands adjudicated and settled to be fully valid. See: Hall v. Lalli, 194 Ariz. 54, 57 977 P.2d 776, 779 (1999), now quoted below:

> "Briefly stated, the doctrine of *res judicata* is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is **conclusive** as to every point decided therein, and also as to every point raised by the record **which could have been decided**, with respect to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction."

7. The only flaw – which caused temporary dismissal of my case – was not a flaw in my Notice of Claim, but instead was a flaw in my Complaint *timing*, because I did not wait the full 60 days before I filed my *Complaint* in [redacted] Court, after I filed my Notice of Claim. Judge [redacted] ruled all I had to do was wait the full 60 days required by A.R.S. § 12-821.01 (E), then re-file my case, based upon my same and original Notice of Claim. Also, the contents of my premature Complaint did serve as additional and effective investigative material for the benefit of the defendant.

8. Additionally, what matters is the disposition of opposing counsel during the 60 days after my Notice of Claim was filed. I.e., the defending AG lawyer went the full 60-day period without offering settlement, then sought dismissal on other grounds without mentioning any deficiency in the information/content of my Notice of Claim. Consequently, it was in error that the [redacted] Court tried to invent an expired reason (lack of basic information) as a foundation to sustain dismissal of my case.

9. The resulting Judgment from this second [redacted] case does not rule that there was any flaw in the **basic** content/information of the Notice of Claim, but only in the *timeliness* of the Notice of Claim, which was "off limits" for discussion due to *res judicata*, and which notion of lacking "timeliness" I have already fully refuted above.

Also, at any time, the State may settle out-of-court, far beyond the mere 60 days specified in the Notice of Claim act, and even after the case is in actual trial. This is unfair because it only causes a 60-day delay to file a Complaint, which is more expensive lawyer "paper work" for both sides, which is routinely ignored by the State anyway. The State has nothing to lose by customarily snubbing settlement during the first 60 days, and instead, filing a routine Motion to Dismiss – with the Notice of Claim itself being an issue for dismissal. The whole Notice of Claim "hoop" is only an obsolete and unreasonable imposition placed upon the citizens of Arizona before they can proceed to sue the State.

Page 10, ¶18, Memorandum Decision continued:

> "The allegations in the Notice of Claim asserted that the failure of the Commission to prescribe rates sufficient to permit [redacted] to meet its obligations resulted in the confiscation of the [redacted] Company by the state through an ADOR tax lien foreclosure sale."

ANSWER: This isolated issue does not stand alone. Other claims stated in my Notice of Claim are also relevant and were identified as separate causes for loss. This separate [redacted] issue pertains to additional "*punitive*" damages. [redacted] conspiracy letter was the *key* fraud that directly triggered the formal loss of my assets. I am not precluded from selecting the latest discovery, and **realization** from that discovery, that **contributed** to the **cause** of the actual loss of my firm.

This concludes the showing of "good cause" to reverse the above case. I now briefly touch on the second and separate case that also deserves reversal due to "good cause" now shown.

IV. GOOD CAUSE CONTINUED, SECOND CASE (AKA)

In the second case re: Recovery of a sales commission, even more fraud and deception took place. Here the Court ruled, without basis, that in order for a broker to be entitled to a sales commission as the Procuring Cause, the final *sales* terms, and the original *listing* terms had to be precisely the same.

This is not true and there is no law to substantiate this notion. This deception was hoaxed by opposing counsel, which fraud was the result of openly counterfeiting of the true law of Bishop v. Norell, 88 Ariz. 148, 353 P.2d 1022. This text of Bishop was altered by opposing counsel – and the falsely doctored language was accepted by the Court and written into its wrongful Memorandum Decision, even though the standard law of the case was the opposite. This egregious error and much more is articulated in Appendage "X" attached.

The Court also misjudged what hired me to do, which was to get the to issue a formal commitment to acquire land, and at any time, after such a commitment – If benefited from that commitment – then I was to be paid my agreed real estate marketing fee. I did what I was hired to do. I achieved Resolution "B" from during my listing period, and this Resolution anchored gain for from my efforts, so was obligated to pay my agreed fee.

My Listing did not require a close of escrow during the Listing term. To the contrary, it stated when got paid, then I got paid. The Court ruled in error against my Listing language, and all other legal precedent, and denied me relief because the deal did not close escrow during my Listing term. Such closing time was not a requirement for fee payment to me. It was also wrong for the Court to rule that: "There is nothing in the record indicating that would have agreed to an "exchange of lands". An exchange did occur, and was expressly stated in my Listing to be the condition of commission payment to me.

The Court also misruled Hearrold v. Gries, 115 Ariz. 560, 566 P.2d 1036 and Olson v. Neale, 116 Ariz. 522, 570 P.2d 209. Both Hearrold and Olson are distinguished from me because those brokers did not procure a ready, willing and able purchaser, during the required term of their respective Listings, yet I did so in my case for full fee recovery according to the law of the land and also the express language of my Listing (employment) Agreement.

The Court also refused to apply the relevant precedents of Bowser v. Sandige, 74 Ariz. 397, 250 P.2d 589; J & B Motors v. Margolis, 75 Ariz. 392, 257 P.2d 588; Clark v. Ellsworth, 66 Ariz. 119, 184 P.2d 821; Mohamed v. Robbins, 23 Ariz. 199, 531 P.2d 930; and Restatement (Second) of Agency § 448 (a), all of which law applies properly for me, in harmony with the facts and the events of my case.

V. CONCLUSION.

It is the duty of the courts to impartially effect justice. Otherwise, integrity and respect for the courts suffer. When Judgment errors occur, as shown here, then adequate avenues for redress must be respected and not be summarily denied, contrary to law, as in these above two cases.

This Commission on Judicial Conduct has a constitutional duty to insure that Rule Three of the ARCP stays firmly in place as a safety net to provide relief for abused citizens who are improperly misjudged in court. This Commission cannot overrule a judgment. **However,** what this Complaint is all about is that if any case is misjudged, as shown here with "good cause" for correction, then Rule 3 of the ARCAP must stand firmly in place as an avenue for relief – provided only that *good cause* is shown to justify a reversal. Judge [ ] has repeatedly failed this duty, which justifies this Complaint against him.

What Judge [ ] should have done, according to the law, was to either recognize – or allow a standard panel of [ ] Judges to recognize – that there was enough "good cause" for relief shown to accept these two cases for review. AND, to either expressly Order the other side to respond within the required number of days, or in the alternative, at least wait the required number of days for the other side to respond to the copy provided to it, and then further wait for the petitioner to timely reply to that Response, or non Response, then entertain oral argument if requested. At the conclusion of this "due process" provided by law, the full panel of [ ] should then render a competent Decision at that point.

In any event, Judge [ ] should not have routinely dismissed these worthy cases out of hand, without reason, by ordering the Clerk [ ] to return my "good cause" material to me, merely because these cases had already been "decided", and the Mandates had issued.

It is Judge [ ] repeated pattern of contempt and disregard for the statutory and necessary law of Judgment Correction, as expressly provided by Rule 3, ARCAP, that compels me to file this Complaint against Judge [ ] so that not only can these above cases be granted an impersonal avenue for relief, but also, so that the same avenue for relief can be provided for other abused citizens that are likewise unjustly injured and ignored.

I now ask this Commission on Judicial Conduct to send the message that the ARCAP Rule 3 law of correction is valid and effective – and that impartial legal processing on the merit is required for all cases that show "good cause" for relief – in order that public confidence and judicial integrity can be restored to the court system and be assured for all Arizona citizens.

Special Note – This Commission on Judicial Conduct might appreciate that I have exposed this monumental wrong that needs correction. I have done a good job. Nevertheless, I asked several attorneys to review this work, and to express in writing that this material was both accurate and worthy of action. All the attorneys expressed respect for this presentation. One even said it would cost over $200,000 for his firm to assemble these briefs. Many also expressed their own crushing losses of "air tight" cases that got misjudged – to no avail – but none were willing to sign anything, because they were all active lawyers who did not want to potentially antagonize the [ ] Court [ ] against themselves or their firms.

RESPECTFULLY SUBMITTED, this 2nd day of March, 2006

[ ]