State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-135 (Amended)

Complainant: Mike Palmer

Judge: Lawrence King

ORDER

The complainant alleged that a pro tem municipal court judge was biased, engaged in improper ex parte communications, improperly failed to disqualify himself, exhibited an improper demeanor, engaged in a pattern of legal error, and treated pro se litigants unfairly.

After reviewing the allegations, the relevant recordings and legal documents, and the judge's response, the Commission finds that Judge King violated the Code of Judicial Conduct as to one allegation, warranting an informal sanction. Specifically, during a hearing in the injunction against harassment case of *Florian v. Jones*, Judge King displayed an improper demeanor in violation of Rule 2.8(B) of the Code.

Accordingly, Judge Lawrence King is hereby 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 dismissed the remaining allegations against the judge pursuant to Rule 16(b), with a private warning letter limited to the issues of evidentiary rulings and ex parte communications.

Dated: February 21, 2013.

FOR THE COMMISSION

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed
to the complainant and the judges
on February 21, 2013.

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

Case No. 12-135 - EXPEDITED CONSIDERATION REQUESTED

This is a first amended complaint of judicial misconduct against Judge Lawrence C. King of the Quartzsite Municipal Court (formerly the Quartzsite Magistrate Court).

> COMMENT: This original complaint was file on May 21, 2012. Since the time of that filing, Judge King has committed even more egregious acts than originally cited. And continues to do so, even as this is written. These new acts are cited herein, and the previously cited acts have been distributed among six Supplements.

In light of the gross, egregious, blatant, willful misconduct by Judge King detailed below along with the fact that Quartzsite has been in the public eye for some time now, the Arizona Supreme Court should immediately suspend Judge King for at least 30 days. Such a suspension will be in the interest of justice and will prevent Judge King from further damaging the integrity, independence and impartiality of the judiciary in Quartzsite. A suspension will stop Judge King from making the Arizona judiciary a laughingstock before the Nation and will prevent him from further eroding public confidence in the judiciary as his violations are reported over the Internet.

In general, Judge King has violated Canon 1 of the Code of Judicial Conduct ("A judge shall uphold and promote independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety") and Canon 2. ("A judge shall perform the duties of judicial office impartially . . .")

Specifically, Judge King has, at a minimum, violated Rules 1.1, 1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10 and 2.11 of the Code of Judicial Conduct in three incidents below.

The three main incidents cited below are not isolated incidents. They highlight a worsening pattern and practice of misconduct by Judge King in the short eight months he's been judge in Quartzsite. This "emergency" complaint lists the most egregious violations known to date. Numerous supplement are filed this same day documenting his pattern and practices of other violations.

BACKGROUND

To highlight the urgent need for an independent and impartial judiciary in Quartzsite, and to make this a high profile case for the Court, please note that the little Town of Quartzsite has been in the public eye for about a year now, making national (and sometimes international) news as the Town retaliates against the same few citizens for speaking out.

Judge King was hand-picked by Town officials to be judge in Quartzsite.[1]

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[1] The previous judge was a local, Terry Frausto, whose husband is a local police officer. As a result, she had little choice than to recuse herself from the many retaliatory arrests to which her husband was a party. So other judges stepped in and adjudicated fairly, usually dismissing the cases. Therefore,

At issue is a battle between incumbent Town officials in power and a few citizens who speak out against the incumbents and their perceived corruption. In fact, the Town even named five of the citizens "self-styled activists" in a Press Release. (See Exhibit 1, Quartzsite Press Release by Martin Brannan, Town Attorney/Prosecutor/Parliamentarian.) In fact, all the violations herein involve these "activists." The five "activists" are former Mayor (and now Mayor-elect still-in-waiting) Ed Foster, newspaper publisher Jennifer Jones, former Republican precinct chair Michael Roth, disabled veteran Dana Stadler and citizen-journalist Doug Gilford.

All five have been arrested numerous times, and Judge King has been their judge for the past eight months.

Per a February 15, 2012 report in *The Arizona Republic* newspaper (Exhibit 2):

> In August, then-Mayor Ed Foster was arrested on orders of the police chief on suspicion of criminal malfeasance because he allegedly failed to adjourn a meeting after the majority of Town Council members walked out in protest.[2]
>
> Jennifer "Jade" Jones, a local news publisher and outspoken critic of Quartzsite leadership, has been arrested at least five times in the past two years. In one case, she was hauled from a council meeting in handcuffs at the police chief's direction after speaking with the mayor's approval -- an arrest that the attorney general said violated Arizona's Open-Meetings Law. All the charges were subsequently dismissed, according to municipal court records.[3]
>
> Another dissident was arrested in April 2010 and accused of disrupting a meeting because he spoke disparagingly of the police chief, according to a Court of Appeals panel that threw out the conviction for lack of evidence.

Judge Frausto's conflicts rendered her ineffective for the Town's sinister purposes. She could not be an effective shill for the Town. So the Town Manager fired Frausto from her judgeship, made her the Town Clerk, and hired Judge King instead.

[2] Per Exhibit 1, the Town's attorney/prosecutor/parliamentarian, Martin Brannan, voluntarily stepped down after brining this charge after he was accused of ethics violations in this action against the then-Mayor. This charge was so ridiculous that a Special Prosecutor moved to dismiss the case before trial. (As will be developed later, the Town tried to fire the Special Prosecutor when it learned his intentions to dismiss. See Supplement 1, Exhibit 1-2, p4, lines 14-17) And, indeed, the charges were dismissed before trial. Mr. Brannan is currently under investigation by the State Bar for numerous ethics violations related to Quartzsite in at least four complaints.

[3] The arrest of Jones went viral on YouTube, amassing 1,000,000 hits, and put Quartzsite in the public eye.

So pervasive and obvious is the retaliation against these five named individuals that the La Paz County Attorney, Mr. Sam Vederman, asked the FBI to investigate "systemic public corruption" by the Town. (Exhibit 3, Sam Vederman's letter to the FBI.) Consistent with this, Judge King was hired, and is paid, by the Town. And three of the five so-called "activists" are the victims in the three incidents cited below.

While being hired and paid by a Town is not an unusual, nor automatically prejudicial arrangement for a judge, the highly publicized contention in Quartzsite demands a judge there be especially circumspect when it comes to the independence and impartiality of the judiciary. In fact, Judge King, who commutes from the Phoenix metro area, in his first ever appearance in Quartzsite (before a packed courtroom) in November acknowledged this, announcing to the gallery (off-the-record, as he is wont to do) that he was aware of the politics in town but that "he wore the robe." (Implying he would be independent and impartial.)

> NOTE: Even if his statement were on the record, the court's hard drive containing court audio from that time period crashed. (See Incident 1.) However, the self-styled activists can attest to the Commission what they heard Judge King say, for they were all there that first day.

Since the time this original complaint was filed, the Town of Quartzsite continues to draw public scrutiny. The incumbents in power, who were voted out of office in May, refuse to leave. As a result, there is currently a federal lawsuit seeking to force them from office and a state Quo Warranto action seeking same. And an action in the Arizona Court of Appeals similarly challenging an incumbent. Likewise, this complaint alleging corruption in the Quartzsite judiciary is also under public scrutiny.

With this background in mind, please consider these three major incidents in this request for suspension of Judge King.

INCIDENT 1 -
KNOWINGLY LYING TO A LITIGANT (AND THE PUBLIC) IN OPEN COURT
ABOUT THE EXISTENCE OF COURT RECORDS & COURT HARD DRIVE CRASH

This incident concerns the crash of the court's hard drive sometime in late February, which contained court audio records dating back to at least November 2011.

> NOTE: Due to complainant's limited financial resources, complainant is unable to supply the Commission with audio which would substantiate one of the allegations below. However, if the Commission obtains the audio of May 31, 2012 for *State v. Jones*, PZ-2011-0019, complainant is willing to travel to the Commission's office and designate the record in the Commission's presence to save the staff time and resources.

According to the testimony of Douglas Gilford in Jennifer Jones' May 31, 2012 evidentiary hearing for a change of judge (away from Judge King, case # PZ-2011-0019), Judge King's clerk

told Mr. Gilford in late February that the court's hard drive had "burned." Mr. Gilford, a citizen-journalist, dutifully reported the scoop. (See news report by citizen-journalist Gilford, Exhibit 4.)

But contrary to what Mr. Gilford was told by the clerk, when defendant Jennifer Jones asked Judge King in open court on March 14 (PZ-2011-0019) whether the hard drive had crashed (as she was seeking exculpatory evidence from that record to defend herself), Judge King told Jones—and the public—that the court's hard drive was "quite good." In fact, he said it twice. (Audio clip on enclosed CD titled "Quite good.")

That was an outright lie by Judge King. Which does not promote public confidence in the judiciary. Further, Judge King knows, because Mrs. Jones has told him repeatedly in open court, that she is the publisher of the Desert Freedom Press, a local newspaper in Quartzsite. As such, she dutifully published Judge King's statement in her March 15 newspaper. (See "Rumor Mill," Exhibit 5.)

But contrary to Judge King's assurance in March that the old hard drive was "quite good," in her May 31 evidentiary hearing Jones entered a letter into evidence from Judge King, where he had written someone reporting the hard drive had, in fact, crashed and that certain records were not available. (Exhibit 6.)

Lying to a litigant and, by extension, the public about the integrity and availability of court records does not promote public confidence in the judiciary. Judge King cannot be trusted anymore and should be summarily suspended.

[As an aside, isn't Judge King obligated by the Code of Conduct (fair trial and all) to declare mistrials (or at least continuances—until such time the data is recovered) in all the pending cases where the court record had been lost? Or isn't he, at the very least, obligated to tell defendants that their records had been lost?]

INCIDENT 2:
GROSS EX PARTE COMMUNICATION WITH CRIMINAL DEFENDANT

This incident occurred on Thursday, May 3, 2012. Please see the Affidavit of Dana Stadler, Exhibit 7.

Per the affidavit, Mr. Stadler reports a highly unethical conversation solicited by Judge King. Judge King solicited a wholly ex parte conversation with a Mr. Stadler, a litigant in Judge King's Court. Worse, Mr. Stadler was being represented at bar by an attorney, but his attorney was not present for this conversation. During the conversation, Judge King solicited testimony from Mr. Stadler. Potentially incriminating testimony. Judge King knew the contact was wrong. See line 14 where Mr. Stadler attests that "Judge King said not to tell anyone [except my attorney] we had this conversation."

Mr. Stadler is one of the five named "activists" by the Town of Quartzsite. As a result, he has been arrested numerous times and spent quite a lot of time in jail and house arrest. Most all of the

charges against him have been dismissed. (Although he was recently convicted by Judge King for chalking under the guise of "criminal damage.")

While some in Quartzsite think this incident was a set up by Judge King (it turned out that Mr. Stadler was arrested when he attempted to carry out Judge King's "order"[4]), even if Judge King meant well, trying to get some justice for Mr. Stadler—as Mr. Stadler believes is the case—the ends do not justify the means.[5]

Whatever his motives, Judge King asked Mr. Stadler "What's the deal about your truck and title?" (Line 6 & 7)

This shows Judge King is not independent and has been tainted. For the issue of Mr. Stadler's truck & title were never mentioned in any of the pre-trial conferences or court paperwork. Only the locals in Quartzsite or those who follow them on the Internet know that the Quartzsite police told a local citizen to "appropriate" (steal) Mr. Stadler's truck. (See the statement of Mr. Dennis Hegeman, as cited in Mr. Stadler's affidavit, at youtu.be/nNVG3SWX9A4 ("Hegeman interview re: Stadler false arrest")) Even if Judge King has not been on the Internet reading about Quartzsite, it's obvious from his question that he has heard some things and knows the scuttlebutt.

[As an aside, the Court should take notice that Quartzsite is a very small town. Word travels fast and loud. Social media has allowed word to travel even faster and louder, and the "self-styled activists" and the Town incumbents post their musings on Facebook, YouTube, Twitter, etc. Even if Judge King doesn't visit (or says he doesn't visit) these Internet sites, it's reasonable to believe he is aware of what's going on in town, as this incident demonstrates. Even if Judge King, an outsider, had not known about the websites before, he was told about them earlier in his tenure (late December) in a Motion to Disqualify the Town Prosecutor from several cases of the "activists."[6]]

What's more, Judge King violated the Fifth Amendment right of a litigant - and a litigant represented by an attorney! For part of this "deal about your truck and title" is that Mr. Hegeman had told the Quartzsite police that Mr. Stadler had fraudulently obtained the title to his truck. Based on Mr. Hegeman's story alone, the Quartzsite police were "investigating" the matter. Thus, Judge King is essentially interrogating a suspect in a felony crime. Police officers aren't allowed to interrogate someone without their lawyer present. That's a civil right violation. How much more a judge?

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[4] The La Paz County attorney declined to bring charges.

[5] Robin Hood stole from the rich to give to the poor. While some might argue he meant well, it's still stealing. And still wrong.

[6] One allegation for disqualification was that the Town Prosecutor (or his wife) is the "Quartzsite bagger" on the Internet. (Apparently a pun on "Carpet bagger.")

This single incident alone violates all the elements of Canon 1, independence, integrity, and impartiality of the judiciary and all the Rules that relate (Rules 1.1, 1.2, 2.2, 2.3, 2.9, 2.10 & 2.11 as a minimum). As such, Judge King should be summarily suspended to ensure like situations don't occur in the next 30 days.[7]

Per line 5 of the affidavit, Mr. Stadler reports Judge King's clerks were stepping in and out of the courtroom during their "talk." As such, this is not a "he said, he said" unverifiable situation. Furthermore, after this first contact with Judge King, Mr. Stadler called his attorney, Mr. Michael Frame, and spoke with both Mr. Frame's staff and Mr. Frame about the ex parte meeting and instructions to Mr. Frame to prepare a plea deal. (Line 12, 15 & 17) Thus there are independent witnesses who can corroborate Mr. Stadler's statement if Judge King denies it.

INCIDENT 3A:
JUDGE KING A PARTY TO A PROCEEDING AT BAR

> NOTE: In the following, complainant is not challenging the legal sufficiencies of Judge King's rulings, per se. So please don't automatically dismiss this count on that basis. Complaint cites Judge King's rulings only to prove black letter violations of the Code of Conduct. (Not to challenge or change a ruling.) Since judges manifest much of their misconduct via their rulings, and since the Commission is primarily comprised of judges, it knows de facto Code violations in rulings when it sees it.

On July 3, 2012, Douglas Gilford, one of the "self-styled activists" named by the Town, was acquitted by a visiting judge of all (frivolous) criminal charges brought against him by the Town.[8] *(State v. Gilford*, CR-2011-0097 & 0103.)

Before his trial, Mr. Gilford had fought hard to force Judge King off his case for cause. (See Supplement 1, Incident 1-3 documenting Judge King's refusal to comply with Rule 2.11.) At issue was the appearance of partiality by Judge King toward the Town and against Mr. Gilford. And Judge King's lack of independence from the Executive of the Town. Two independent judges recommended and ordered a change of judge. Judge King eventually disqualified himself,[9] but not without a fight, as documented in Supplement 1, Incident 1-3.

Nevertheless, immediately after the Town's star witness, Quartzsite Assistant Town Manager Al

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[7] After quizzing Mr. Stadler about his truck and title, Judge King apparently cancelled some pre-existing commitments with other litigants and directed his staff to arrange an impromptu meeting with the attorneys at 2 pm to accommodate Mr. Stadler. If Judge King did cancel pre-existing court business as a favor to Mr. Stadler, while perhaps a nice gesture, that gesture is prejudicial against other litigants awaiting their turn at court.

[8] Sixteen charges originally.

[9] He "transferred the matter."

Johnson, lost his criminal cases against Mr. Gilford, he ran to Judge King seeking an ex parte Injunction Against Workplace Harassment for the Town against Mr. Gilford. Which Judge King granted. (HR-2012-0014. See Exhibit 8.)

But Judge King is paid by the Town. The Town is the plaintiff. Therefore, Judge King is a party to the procedure! He was plainly prohibited from hearing this matter. This is a direct, blatant violation of Rule 2.11(A)(2)(a). (And perhaps his continuing pattern of intentional disregard of the law, Rule 2.2, Comment 3, as developed in Supplement 1 & 2.) See Mr. Gilford's Amended Emergency Ex Parte Motion to Quash, and his Emergency Ex Parte Notice of Change of Judge for Cause (and accompanying affidavit), Exhibits 9 & 10, respectively.

Per Mr. Gilford's Motion, there was no Rule of Necessity in place, making it necessary for Judge King to sit. Any judicial officer in Arizona can issue injunctions. The La Paz Justice Court is across the street from the Quartzsite Magistrate court. And the various courts in Parker, Arizona are only 45 minutes away by car. Thus, Mr. Johnson could have gone to any of these courts to seek his Injunction against Mr. Gilford.

Even if Judge King were not a party to this matter, considering that Judge King was forced to recuse only weeks before from Mr. Gilford's criminal matter involving the same plaintiffs, Judge King was still required to recuse in this matter, per Rule 2.11. (See Exhibit 9, p4, line 22 ff.)

While only God knows the heart, it is reasonable to believe that Judge King is angry at Mr. Gilford for forcing him (Judge King) to recuse. (See Exhibit 10, Affidavit, para 32.) It is reasonable to believe then that Judge King is acting here with malice toward defendant Gilford. At least, given such blatant violations of Rule 2.11, there's the appearance. Which, in itself is misconduct. (Especially considering that Judge King has been warned by his peers about this before. See Supplement 1, Exhibits 1-3 & 1-4.)

INCIDENT 3B:
JUDGE KING VIOLATES A.R.S. § 12-409 BY RULING ON A RULE 42(f)(2) NOTICE

As Providence would have it, just in time for this amended complaint, Judge King unlawfully ruled on Mr. Gilford's Rule 42(f)(2) Notice for change of judge for cause. (Exhibit 11.)

[That he denied it is not the issue. For the purposes of misconduct, the issue is that Judge King is prohibited by statute from ruling, period Therefore, Judge King broke the law here. A patent violation of the Code of Conduct.]

Mr. Gilford, now acting as a pro se, had filed an Emergency Rule 42(f)(2) Notice of change of judge for cause. (Exhibit 10.)

But it appears Judge King did not hear Mr. Gilford, as has happened before. (See Supplement 1, Incident 1-2.) For Judge King, in his Minute Entry order denying a change of judge, is incorrectly treating Mr. Gilford's Notice as a Rule 42(f)(1) change as a matter of right. (Exhibit 11.)

[Judge King started out by correctly quoting Mr. Gilford's caption, that Mr. Gilford filed a Notice of Change of Judge for Cause. But then Judg King quicky gets off the rails and switches over to Rule 42(f)(1), change of judge as a matter of right. It's obvious from Supplement 1, Exhibit 1-11 that Judge King is using boilerplate here and not paying attention to Mr. Gilford. One wonders if Judge King even read Mr. Gilford's motion?]

However, Mr. Gilford filed a Rule 42(f)(2) Notice for a change for cause. That Rule is governed by statute, namely A.R.S. § 12-409 which plainly says, "A. If either party to a civil action in a superior court files an affidavit alleging any of the grounds specified in subsection B, **the judge shall at once transfer the action to another division of the court** if there is more than one division, **or shall request a judge of the superior court of another county to preside at the trial of the action**."

Moreover, Rule of Civil Procedure 42(f)(3), titled "Duty of Judge After Filing of Notice or Affidavit" says,

"(A) When a notice or an affidavit for change of judge is timely filed, **the judge named in the notice or affidavit shall proceed no further in the action**. . . "

However, despite the statute and the Rule, mandating a stay, Judge King proceeded to act. This is intolerable in itself. But it is more so since this is the second time Judge King has done this exact same thing with this exact same defendant. Judge King is incorrigible. He needs to be suspended immediately.

CONCLUSION

These incidents represent the most egregious misconduct by Judge King as of this writing. Quite simply, Judge King is a bad judge.

His conduct does not reflect well on the Judiciary as a whole and, if unchecked, will continue to do more damage. He will prove to be an embarrassment for the Judiciary as his story is told.

Mr. Stadler's affidavit, cited in Incident 2, is already posted on the website http://aview.info, which has about 130,000 hits in its short ninth-month existence, documenting the corruption in Quartzsite.

If not immediately and summarily disciplined, Judge King will singlehandedly undermine the public's confidence in the courts in Arizona. Not only because of his acts, but because the Supreme Court did not act. There must be immediate oversight here.

Therefore, to restore the judiciary's reputation as well as the public's confidence in the courts, the Court should suspend Judge Lawrence C. King immediately for his gross violations of the Code of Conduct documented above.

If that's not enough, six Supplements to this amended complaint are filed this same day.

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In the Matter of Judge **LAWRENCE KING,** Judge, Municipal Court, Town of Quartzsite La Paz County, State of Arizona *Respondent.*	Case No. 12-135 **RESPONSE TO COMPLAINT**

Respondent Lawrence King, acting through counsel undersigned, hereby submits his Response to the Complaint as follows:

BACKGROUND

Quartzsite, Arizona is a small incorporated town of less than 4,000 year-round residents, straddling I-10 near the California border. Approximately one half-mile north of one of the off-ramps, the Town maintains its municipal buildings, including its Town Hall. The building entrance opens into a large room that serves as the meeting room for the Town Council. To the left is an entrance to the Municipal Court. To the right is the entrance into the Town Administration portion of the building, where municipal

services, such as Planning and Zoning and the offices of the Town Manager and Clerk, are located.

The Quartzsite Justice Court is located across the street, northwest of the Town Hall. The Quartzsite Justice Court is one of three justice courts in La Paz County, whose county seat is Parker, Arizona. The county's one superior court judge is located in the La Paz County Courthouse in Parker.

Article III of the Constitution of Arizona provides that, "The powers of the government of the State of Arizona shall be divided into three separate departments, the Legislative, the Executive, and the Judicial; and, except as provided in this Constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others."

In *Winter v. Coor*, 144 Ariz. 56, 695 P.2d 1094 (1985), The Arizona Supreme Court decided that municipal courts, while they might be departments of municipal government, are part of an integrated judicial department created by the Arizona Constitution, citing Art. VI, § 1 thereof. As such they must be administered as a **separate** branch of municipal government, subject to the administrative authority of the Supreme Court, **not the governing body of the municipality.**

The *Winter v. Coor* case established that judges are judicial officers, not officers or agents of the Town. The Court recognized the importance of maintaining municipal courts as fair, independent, and impartial tribunals and maintaining the public's perception that they are unbiased, and free from political allegiance to the mayor and council. Interference from political forces within the municipality have to be viewed in the context of whether the conduct violates the separation of powers constitutional doctrine.

Thus, the municipal court remains independent of the executive and legislative branches of the Town government, consistent with the Arizona Constitution. While it is

expected that the branches of government cooperate with one another to the extent necessary to carry out the people's business, the municipal court and its judge or judges owe their courtroom allegiance to the law, the applicable rules and the judicial system, not the town administrators. For the benefit of the many cities and towns who have municipal courts, the Arizona Supreme Court Administrative Office of the Courts provides a "Municipal Court Q&A" explaining the proper relationship between municipal administration and its courts. (Respondent's Exhibit 1 (hereafter "King Exhibit ___")).

Judge Lawrence King has a contract to provide magistrate and judicial services to the Town of Quartzsite three days a week. He does not reside in Quartzsite and drives to the Court from the Phoenix area. He is the presiding judge of the Town, in that he has administrative duties over visiting judges and pro tem judges who sit on matters involving Quartzsite. His duties as Presiding Judge are delegated to him by the presiding judge of the county—the superior court judge in Parker. Presiding Judge duties are promulgated and directed in accordance with AOC Administrative Order on Presiding Judges. (King Exhibit 2)

Judge King became the municipal judge in late 2011, after the previous magistrate had been required to recuse herself from any cases that involved her husband, who was a Sergeant in the Police Department. Since most of the cases involved charges being brought by one or more members of the ten man police force, she had to be replaced.

Over the years Quartzsite has been the scene of hotly contested political battles. The one most relevant to this judicial complaint involved tensions among certain residents, the former Mayor, the Town Council Members and the Police Chief. Complainant Exhibit 2 is an Arizona Republic news article written by Dennis Wagner, dated February 15, 2012. The article is objectionable as hearsay and may or may not

express the precise views of the persons to whom the out-of-court unsworn statements are attributed. However it does express at least a public overview of the political issues which have festered in Quartzsite, and the general landscape in which Judge King found himself in late 2011 when he accepted the position.

In late June, 2011, one citizen, Jennifer "Jade" Jones was arrested as she spoke to the Town Council with the consent of Mayor Ed Foster. Mayor Foster was arrested in August at the direction of Police Chief Jeff Gilbert for failing to adjourn a meeting after several of the council members walked out in protest. A number of people were arrested in connection with criminal mischief for chalking derogatory slogans, including swastikas at the entrance to the Town Hall. The Mayor was recalled in a recall election.

While all of this made grist for the Internet mill and doughnut shop conversations, the criminal charges which had not been dismissed by prosecutors had to be adjudicated eventually. That task fell to Judge King after he accepted the appointment as judge. In the meantime, other disputes among the townspeople and or the police occurred and were filed in the Municipal Court. These, too, came to Judge King for adjudication.

The complainant, who was not involved as a participant in any of the cases, has drawn from several of these cases to present his complaint. However, for various legal and factual reasons, none of the incidents he describes could justify judicial discipline. Most of the complaints are based on the suspicion of misconduct or bad faith because Judge King was "employed" by the Town. While he is indeed "employed," as is clear from Arizona law, he is obliged to make legal and factual decisions fairly and impartially, whether or not they go against the Town.

While the complaint accuses Judge King of numerous instances of legal error, the Commission should dismiss any such claim. As the Commission is aware, our judicial

system has a highly structured appellate system to review trial court rulings and decide whether (a) error was committed; (b) whether it was harmless or prejudicial; and (c) whether a remand for further consideration is required. The Rules of the Commission preclude consideration of matters which are "solely appellate" in nature.

In addition, misstatements by the parties or the court, or erroneous rulings then set aside by the same judge, can afford no basis for collateral scrutiny before the Commission. While all court proceedings can bring forth strong emotions, it is the city and justice courts where most disputes end up and where personal feelings run the highest. Arguments on behalf of disputing parties do not always make sense. A judicial officer's efforts to narrow the areas of dispute or decide what law or rule may apply to a disputed situation may take very little time or a lot of time depending on the participants. The most able of advocates and the most careful of judges will find themselves grasping for the right words or the right rule in the courtroom, and sometime seizing on the wrong one.

The Commission is tasked to pursue cases where there is bad faith, incompetence, intemperance or incapacity on the part of a judge. Judge King has not crossed any of those lines in carrying out a reasonable and impartial case management and decision-making process in a very difficult setting.

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JUDGE KING'S RESPONSES

For simplicity's sake, we will use the Complainant's headlining of "Incidents" to provide the commission with responses.

INCIDENT 1: Knowingly lying to a litigant (and the public) in open court about the existence of court records & court hard drive crash.

The Court has several computers that allow for the management of cases. The computer in the courtroom is also used to digitally record hearings. The hard drive on the computer in question failed to boot up the computer. The technical support people from the Administrative Office of the Courts (AOC) were called. They determined that they would have to replace the existing hard drive. Judge King was given the old hard drive and Judge King was told by the tech people that the data on the drive was good.

The AOC technicians did not reconnect the drive or "slave" it to the original computer. Understanding the need to preserve the recording, this hard drive was forwarded by Judge King to the Arizona Department of Public Safety Crime Lab to retrieve the data, with AOC assisting. To date, Judge King has been told that the I/O portion of the hard drive is corrupted; however, the platters are still good and contain the data.

At the time Judge King told persons in the courtroom that the data was "good," he believed the statement to be true. There is nothing that could possibly be gained by Judge King in misleading persons who publish newspapers and blogs about Quartzsite on a matter as important as the court record. Neither Complainant's Exhibit 4 or Exhibit 5 is an admissible court document, as they are hearsay. Complainant Exhibit 6 is a letter sent by Judge King to the Complainant, Mr. Palmer, explaining that the hard drive was in the hands of DPS in May. Mr. Palmer made a request and that request had been honored after he completed the proper court approved form and provided the proper

remittance. Mr. Palmer then claimed that he never received the flash drive that had been sent to him.

INCIDENT 2: Gross *ex parte* communication with criminal defendant.

Mr. Dana Stadler had three matters pending before the Court. Some of the matters were decided during a trial to the Bench at which Judge King presided. The Stadler bench trials were held concurrently with the bench trials of Michael Roth. At the conclusion of the bench trials, Mr. Roth entered into a plea agreement on the remaining charges. Mr. Stadler was also offered a plea agreement. Mr. Stadler stated **in open court** that he would not enter into the plea agreement unless a truck he claimed had been improperly seized by the Police Department was returned to him. The prosecutor would not agree to that as a term of the plea agreement. Judge King told Mr. Stadler to obtain a new court date for the next trial.

The Complainant suggests that Judge King must have done something improper by learning about Mr. Stadler having his truck impounded by the police. As complainant points out, it is a "small town." And furthermore, Mr. Stadler stated in his Affidavit, Complainant Exhibit 7 at paragraph 2, he had been in court **"charged with criminal trespass and false reporting when I called the Quartzsite police for a civil standby when I tried to get my stolen truck back from a private individual."**

On May 3, 2012, before his scheduled trial, Mr. Stadler came to court and stated that he had signed his plea agreement that he wanted to leave to return to Wisconsin. Judge King asked Mr. Stadler to have a seat while the Court contacted the prosecutor and Mr. Stadler's attorney to determine their availability for a change of plea hearing. Judge King directed Mr. Stadler to the Courtroom.

Judge King explained to Mr. Stadler that the Court could not accept his signed plea agreement without going on the record and having the attorneys present or at least appear telephonically for the change of plea proceeding. The attorneys were contacted and a time was set for 2:00 p.m. for the change of plea. This was part of scheduling and involved no inquiry into the case before him.

While he was in the courtroom, Judge King asked Mr. Stadler about the status of the truck at that time, knowing that getting the truck had been the problem with the plea agreement before. Judge King made the inquiry to determine the need to prepare a property release order prior to the change of plea hearing. Mr. Stadler was not charged with any complaint then or later in connection with his rights to have the truck.

Mr. Stadler further inquired as to what he should do at that point. Judge King directed him to speak with the investigating officer regarding his truck. Mr. Stadler left the court building and returned at 2:00 p.m. for the change of plea hearing.

At the change of plea hearing Judge King inquired again if the truck was involved in the plea agreement. He was informed that it was not. Mr. Stadler changed his plea pursuant to the plea agreement.

RULE 2.9. Ex Parte Communication reads as follows:

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for ***scheduling, administrative, or emergency purposes, which does not address substantive matters,*** *is permitted, provided:*

(a) the judge reasonably believes that no party will gain a ***procedural, substantive, or tactical***

> ***advantage*** *as a result of the ex parte communication; and*
>
> *(b) the judge makes provision to promptly notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.*
>
> Emphasis added.

Judge King is permitted to speak with Mr. Stadler for scheduling and administrative purposes pursuant to the rules. Judge King's interaction with Mr. Stadler did not provide a procedural, substantive, or tactical advantage to either party in the action. In fact, Judge King informed Mr. Stadler's attorney that he was in the Court with a signed plea agreement and then caused the Prosecutor to be notified.

Judge King did not act improperly. He apparently thought he might be able to expedite the release if that was part of the agreement. He was not acting as an "interrogator" in a police setting. Mr. Stadler's affidavit does not accurately reflect the conversation that occurred. More importantly, however, it does not state an act of bad faith, incompetence, intemperance or incapacity.

INCIDENT 3A: Judge King a party to the proceeding at Bar

Mr. Gilford waived his right to a change of judge when he filed the Emergency *Ex-Parte* Motion to Quash Unlawful Injunction Against Workplace Harassment. Thereafter, he had no right to move for a change of judge for cause.

On July 3, 2012 at 4:45 p.m., Albert Johnson, the Deputy Town Manager, presented himself as a representative of the Town of Quartzsite requesting an Injunction Against Workplace Harassment. The Court hours are 8:00 a.m. to 5:00 p.m.

Judge King processed the paperwork and an *Ex-Parte* Hearing was held pursuant to the *Rules of Procedure for Issuing Protective Orders* (King Exhibit 3). Judge King

found reasonable cause and ordered No Contact with protected persons except through attorneys, legal process, court hearings as email/fax and mail. Judge King further ordered the Defendant could not go into the lobby of Town Hall Administration, the offices to the right of the auditorium containing the customer service windows for Planning and Zoning, the Town and the Public Utilities. Judge King also ordered that the Defendant may attend the Town Hall meetings, and enter Town Hall to conduct business in the Town court. The paperwork was completed and the police department was notified to provide service of the IAWH.

The Defendant asserted that there was no rule of necessity for Judge King to hear the request and that Judge King is somehow a party to the proceedings.

First, the Quartzsite Municipal Court has an agreement with the Quartzsite Justice Court pursuant to the Rules for Protective Orders, that the Municipal Court will handle all protective order requests on the days of Tuesday, Wednesday, and Thursday; and the Justice Court will handle all protective order requests on Monday and Friday. Such an agreement is specifically permitted in counties with less than 150,000 population, as is the case for La Paz County.

Judge King was simply following the law. All limited and general jurisdiction courts shall be available during normal operating hours to issue and enforce protective orders, regardless of the residence of the parties. *See* A.R.S. §§ 13-3602, 12-1809 and 12-1810. The Rules governing Protective Orders provides that "[n]o limited or general jurisdiction court shall refuse a person's request to file a petition for a protective order even if that particular court does not normally issue protective orders." *Rules Protect. Ord. Proc.*, Rule 1(C) (4).

Second, *Winter v. Coor, supra,* answers the question as to whether a municipal court judge is an officer or agent of the town in his capacity as a magistrate. He is not.

He is not *per se* disqualified from ruling on an Injunction against Harassment in the Workplace because the Workplace is the Town Administration offices, particularly when **the Court** is not part of the prohibited area.

INCIDENT 3B: Judge King violates A.R.S. § 12-409 by ruling on a Rule 42(f)(2) Notice.

The grounds for change of judge are set forth in A.R.S. § 12-409. In Mr. Gilford's case, he filed an Emergency *Ex Parte* Motion to Quash Unlawful Injunction Against Workplace Harassment. The judge considered it and denied it. King Exhibit 4. It should be noted that the Motion to Quash raised, among other things, that Judge King was an employee of the Town and had to recuse himself. Mr. Gilford then filed his "Emergency Rule 42(f) Notice of Change of Judge for Cause." Judge King denied it per a minute entry attached as Complainant Exhibit 11.

Complainant claims that Judge King committed misconduct by ruling on the Motion for Change of Judge for Cause, even though A.R.S. § 12-409 required him to "... proceed no further in the action...." However, the case of *Guberman v. Chatwin*, 19 Ariz. App. 590, 509 P2.d 721 (1973) specifically permits the judge who is to be changed to rule on the issues of timeliness and waiver:

> We observe, who is better qualified to render the initial determination as whether the judge in question has ruled 'on the merits of the action' than the judge before whom it is pending?
>
> *Id.* at 593.

The Court in an authorized *ex parte* setting, found that "a single threat or act of physical harm or damage or a series of acts over a period of time that would cause a reasonable person to be seriously alarmed or annoyed" had occurred.

This is consistent with "[t]he judicial officer shall issue an Injunction Against Workplace Harassment upon finding: 1) reasonable evidence of workplace harassment by the defendant during the year preceding the filing; or 2) good cause to believe that great or irreparable harm would result to the employer or other person who enters the employer's property or who is performing official work duties, if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition." Rule 6 (F) (4) (a), *Rules Protect. Ord. Proc.*

Thus, the judicial officer hearing an *ex parte* petition considers the "merits of the action." Certainly, if he is properly disqualified for cause, he has to recuse himself or herself. But there was no basis for a "for cause" disqualification. Furthermore, Gilford challenged the "merits" in filing his Motion to Quash before Judge King.

There was no misconduct here. Furthermore, seeking relief in this forum through a surrogate is "appellate in nature." Mr. Gilford has not filed a special action petition to challenge this ruling, as the law requires.

INCIDENT 1-1A: Judge King treats *pro se* defendant differently than the State, instructs *pro se* Defendant to Tamper with Evidence, and Blows up at *pro se* Defendant targeted by Town (Judge King's Employer).

In *Florian v. Jones*, HR2011-0014, Judge King issued an injunction against harassment (IAH) in an *ex parte* setting. Ms. Jones requested a hearing and a hearing was set and held. Both parties appeared *pro se*. Judge King gave both parties wide latitude in presenting their respective side of the case understanding that they were both *pro se* and probably were not conversant in the rules of evidence. During the hearing Ms. Jones represented to the Court that she had evidence that she wanted to present to impeach Ms. Florian. Ms. Jones also represented that she had heard the evidence and knew its contents. Upon playing the CD, the "evidence" was a string of

profanity-laced messages, in an apparent effort to introduce inadmissible character evidence that was not relevant to the underlying harassment claim.

The Arizona Supreme Court states in its guide for self-represented litigants that "[p]ersons who represent themselves in legal matters, also referred to as "*Pro Se*" or "*Pro Per*" litigants, are expected to know and follow the same rules as attorneys. Accordingly, the dignity of the Court is to be respected and maintained at all times.

Free speech and courtroom decorum are two values that our legal system deems extremely important. Obviously, free speech is one of the basic liberties that our legal system was set up to protect. On the other hand, in order for a legal system to be effective, the general public must respect it, and a large part of that is courtroom decorum – observing appropriate standards of etiquette and humility while before a court, either as an attorney or a party. Rule 2.8 of the Arizona Code of Judicial Conduct states: "A judge shall require order and decorum in proceedings before the court."
If there had been any information on the tape that affected whether there was or was not a need for an IAH, it is not tampering with evidence to request that the tape be moved to the relevant portion, rather than having obviously improper and irrelevant information before the court. Judge King acted properly in challenging Ms. Jones on this matter and threatening a contempt citation when what appeared to be disruptive behavior was presented in his court. His actions were proper.

Judge King had no reason to be upset about the vulgar language presented in the *State v. Stadler* and *State v. Roth* matters. First, the parties had briefed the court in advance as to what to expect. But secondly, and far more importantly, it was offered to show the identity of the speaker as well as the content of the speech, which was directly relevant to the criminal case.

INCIDENT 1-1B:

Editing a tape or winnowing down the recorded material to the information that is relevant is not tampering with evidence. As is pointed out, there was no offensive or irrelevant material on the recording involving this incident. There is no basis for a complaint.

INCIDENTS 1-2 and 1-3:

These two "incidents" should be considered together. Douglas Gilford had three cases pending before the Court — CR 2011-093, -097, and -103. These matters were charged in August of 2011. Mr. Gilford was initially assigned Michael Frame to represent him in these matters. Mr. Frame filed a Motion to Withdraw as Counsel on October 6, 2011.

Judge Slaughter granted Attorney Frame leave to withdraw and assigned Fred Welch to represent Mr. Gilford. On October 6, 2011, the State filed a Notice of Intent Not to Seek Incarceration in the three matters. On December 28, 2011, Mr. Gilford filed a Motion to Replace Fred Welch as Counsel and Fred Welch filed a Motion to be relieved as Counsel of Record. Judge King granted the Motion of Mr. Welch and informed Mr. Gilford that since the State will not seek any jail time in the matters that the Court could not provide counsel but he was free to secure counsel at his own expense.

Mr. Gilford then proceeded to file motion to join a motion to remove the prosecutor from all three matters. Judge King denied the motion.

Mr. Gilford filed a Motion to Dismiss, asserting that he could admit to the factual allegations charged in the complaint and still not have violated the law and citing conspiracies theories to why people associated with the Town were bias. The Town obtained a special prosecutor, Thomas Jones. On March 2, 2012, the State moved to

Dismiss CR 2011-093, Judge King granted that motion on March 8, 2012. The remaining matters were set for Trial.

Mr. Gilford then filed a Motion to Dismiss per Rule 8.2, a Motion to Compel Disclosure, and a Rule 10.1 Motion for Change of Judge for Cause. These Motions were put in different files as Mr. Gilford only filed one copy for both cases.

At the Pre-Trial Conference on March 28, 2012, Judge King handled the Motions as they appeared in the file CR 2011-097. He took up the Rule 8.2, then the Motion to Compel Disclosure. Judge King asked about disclosure and was informed that Mr. Gilford wanted FBI interviews and other things that the State did not have in its possession or had no control over.

Mr. Gilford asked about the 10.1 Motion. Because Mr. Stadler had only filed one motion for several matters, the 10.1 Motion was not in the -097 file. When Judge King then realized there was a 10.1 Motion, Judge King immediately referred the matter to Judge Michael Burke, the La Paz Superior Court Presiding Judge.

Judge Burke informed Judge King that he could not hear the matter as he could be the appeals judge in the matter and sent it back to Judge King. Judge King next sent the matter to Judge Williams, the Justice of the Peace for Quartzsite. Judge Williams recused herself and instead of returning the matter to Judge King, as would have been the proper procedure since he was the Presiding Judge for Quartzsite, she assigned the matter to Judge Weis, the Justice of the Peace for Parker, to hear.

Judge Weis heard the matter on April 20, 2012. Judge King was not asked to appear and answer any allegation of any wrong doing that could give rise to a presumption of bias. Mr. Jones and Mr. Gilford participated in the 10.1 Hearing. Mr. Gilford filed a supplemental affidavit at the time of the hearing.

In Judge Weis' initial recommendation on April 30, 2012, she found that "[i]t is therefore the conclusion that upon the preponderance of the evidence that there could

be a presumption of impartiality by the Court. Therefore it is my recommendation that a new Judge be appointed. A Judge must act at all times in a manner that promotes public confidence and to avoid even the appearance of impropriety."

Judge Weis found that **"upon the preponderance of the evidence that there could be a presumption of impartiality by the Court."** This meant Mr. Gilford did not meet his burden of proving by a preponderance of the evidence that Judge King is biased or prejudiced. Judge King then set the matter for a Trial.

Mr. Gilford retained Scott Campbell to represent him. Mr. Campbell filed a Motion for Clarification directly with Judge Weis. Judge Weis filed an Amended Recommendation on May 31, 2012. In the amended recommendation, Judge Weis stated, "[i]t is therefore the conclusion that upon the preponderance of the evidence that there could be a presumption of **partiality** by the court. Therefore, it is my recommendation that a new judge be appointed. A Judge must act at all times in a manner that promotes public confidence and to avoid even the appearance of impropriety."

When he was informed of the clarification, Judge King then secured a Pro Tempore Judge, Judge Sherwood Johnston, III, for trial on June 19, 2012. Judge King had no further contact with the case.

The facts are that Judge King properly handled a confusing set of circumstances and a confusing set of orders. When Judge Weis' order was clarified as having been a typographical mistake, the matter was promptly transferred. There was no bad faith conduct on Judge King's part.

INCIDENT 1-4: Failure to grant a change of judge and disregard for the law.

Hygeia Halfmoon petitioned the Court for an Injunction Against Harassment against Michael Roth on May 10, 2012. Judge King called the case, swore in Ms. Halfmoon, and heard testimony from Ms. Halfmoon in an authorized *ex parte* setting regarding the petition. Judge King at the conclusion of the hearing decided not to issue the IAH but to have the parties come in for a full blown hearing. The Parties were served notice of the hearing set for May 22, 2012. Mr. Roth then filed with the Court, a Motion of Change of Judge and Motion for Continuance on May 17, 2012

Judge King issued a minute entry on May 17, 2012. In it he stated that:

* * *

> In the instant matter, there has been an *ex-parte* hearing on May 10, 2012 at which the Petition was denied and a hearing set. Judge King presided at that hearing. Pursuant to the Arizona Rules of Protective Order Procedure, Rule 6 (E) (5), "[i]f after the ex parte hearing the judicial officer does not have sufficient information to grant the Order of Protection, the judicial officer may deny the request or set a hearing within 10 days with reasonable notice to the defendant. " **The "set a hearing" acts as a continuance of the original hearing. Accordingly, for the reasons explained above the Notice of Change of Judge is untimely**."

On May 21, 2012, Mr. Roth then filed a Request for Finding of Facts and Conclusion of Law with the Court, prior to the hearing. Also on the 21st of May, Mr. Roth filed a Motion for Court Ordered Mental Exam of Hygeia Halfmoon and Motion for Continuance. The hearing proceeded on May 22, 2012. **After the hearing, Judge King ruled in favor of Mr. Roth and denied Ms. Halfmoon's Injunction Against Harassment.**

This is another example of Judge King having made a legal determination that there was no right to a change of judge once the hearing has commenced. Protective Orders have their own rules of procedure because they are unusual. Here, the first encounter is almost always an authorized *ex parte* hearing. These hearings are intended to be done on an emergency basis. There is only a further hearing if one is ordered by the court or the respondent requests one. There is no legitimate basis to allow a change of judge as a matter of right and, if there was a basis for a notice of change of judge for cause that did not exist, there is a basis for special action relief. That did not happen in this case, because the judge ruled in Mr. Roth's favor, apparently establishing that he could be "fair" despite the fact he had had an *ex parte* hearing with the other side.

INCIDENTS 2-1, 2-2, and 2-3:

These alleged incidents contain no information upon which the Commission can conclude a possible violation of the Code of Judicial Conduct occurred. Once again, even if one were to assume a legal error being committed by the judge, which we do not concede, there is no actionable violation of the Code. These incidents should be summarily dismissed.

INCIDENTS 3-1, 3-2, 3-3, 3-4, "MISCELLANY":

There is no basis for the allegations that the staff of the Municipal Court is not properly supervised. Judge King works with his staff and makes every effort to assure that minute entries and other correspondence will be sent out in a timely fashion. When Judge King arrived he instituted the use of a Court form for Court Records that was different from the Town's Public Record Request Form.

Although access to most public records in Arizona is governed by state statute, the Supreme Court has chosen to exercise its administrative authority over all court records by the adoption of Rule 123, Rules of the Supreme Court. Access to records held by any court, including municipal courts, is governed exclusively by Rule 123.

Rule 123 provides that any member of the public may request to examine any court record during regular office hours. However, the custodian may deny or restrict access when the interests of confidentiality, privacy, or the best interests of the state outweigh the general policy of open access. The public has the right to know who is being charged with a crime and with what they are being charged. Therefore, it is clear that dockets should be made available to the public because they serve as an index of all cases filed in the court.

No individual has the right to rummage through case files indiscriminately. Cases should be individually requested and individually reviewed.

The presiding judge of the municipal court has discretion, within limits, to determine what court records are available for inspection by the public, including city or town officials, and should establish procedures for the inspection of records to ensure their preservation. Court files and pleadings should at all times remain in the care and custody of the judge and designated court staff unless a written order from the judge authorizes otherwise. Likewise, all mail addressed to the court should only be opened and read by court staff.

Security measures should be implemented to secure court records in the municipal court during the hours the court is not open or in situations where court staff are out of the office. For example, court files should be locked at night and at any time when the file room is left unattended. The only individuals that should have keys to the court facility are the judge, court personnel so designated by the judge, and individuals responsible for building maintenance and security.

INCIDENTS 4-1, 4-2, 4-3:

This set of allegations deals with whether Town officials have access to the "Clerk's office" and the court records in the Court. There are no claims that any of the "town officials" actually examined any court files while in the area of the clerk's office.

The Commission will need to visualize the space that has been allocated for this municipal court. The entrance to the court is a standard width glass door, opening into a counter area, with a swinging door on the far left. The swinging door is the only entrance into the rest of the court space.

To the left, through the swinging door, is the courtroom. It has no other entrance, so everyone who is there for court has to go through the swinging door.

To the right, through the swinging door, are the clerk's offices, the court records and the judge's "chamber." The clerks are expected to answer questions and provide access to records of the court over the counter.

Judge King may be a judicial officer, but he is also a department head for the Town as presiding judge. His department provides income to the Town and constitutes an expense to the Town.

His administrative duties are separate from his judicial duties. He is expected to "cooperate" with the other department heads in respect to sharing revenue information and other information about the uses of the court. These conversations do not involve individual cases.

Judge King has promoted the concept of security for court records during his tenure in Quartzsite. There is no evidence that establishes he does not. The interaction with other Town officials, in the context of court administration is expected, is reasonable and is not an issue that the Commission would ordinarily review. These "incidents" do not state a violation of the Code of Judicial Conduct.

INCIDENT 5-1: Failure To Report Attorney Martin Brannan For Misconduct

This is simply a specious claim. According to Complainant's Exhibit 5-1, there had already been a report made to the Bar regarding the alleged misconduct of Mr. Brannon by the La Paz County Attorney. The alleged proof of Mr. Brannan's misconduct might have been presented in a courtroom setting, which may have provided greater force than the unsworn statement of Mr. Gilford. But the case was dismissed without a trial. Judge King considered the motion to remove Mr. Brannan but pointed out the following: "The prosecutor is given generally wide latitude as long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute. The standard is a very low huddle (sic) to overcome.... The charges that have been made appear to be valid and not based upon arbitrary classification." King Exhibit 5. The complaint fails to establish "knowledge" or "substantial likelihood" of misconduct on Judge King's part.

INCIDENTS 5-2 AND 5-3 VIOLATION OF RULE 123:

The complainant needs to read the forms that are provided for "Request for Court Records" (Exhibit 5-2). There are no fees for viewing only, in accordance with Rule 123. There are fees for copying, for audio CD's and Certification as is permitted by Rule 123.

SUPPLEMENT #6: "LARRYKING06" Website:

Judge King does not have any control of this website or of its contents. Judge King will do what he can to have the website removed because he did not authorize it and he does not own it. Judge King was not a candidate for office in 2006, although he

was in 2002. A search with WHOIS domain registration information from Network Solutions reveals that larryking06.com is registered to Galina Panteleyeva, Moscow, Russian Federation.

CONCLUSION

A defendant's right to a fair trial includes the right to a judicial officer who is fair and impartial. *State v. Ellison*, 213 Ariz. 116, 128, ¶ 35, 140 P.3d 899, 911 (2006). Judicial officers are presumed to be free from bias or prejudice, however. *State v. Rossi*, 154 Ariz. 245, 247, 741 P.2d 1223, 1225 (1987). Thus, a defendant moving for a change of judge for cause based on bias or prejudice has the burden of proving those facts by a preponderance of evidence. *Ellison*, 213 Ariz. at 128, ¶ 37, 140 P.3d at 911 (citation omitted). A change of judge for cause is not warranted if based merely on "speculation, suspicion, apprehension, or imagination." *Id.* (citation omitted). The decision whether to disqualify a judge for cause must be based on an objective standard, rather than upon the subjective beliefs of the party who makes the challenge. Rule 42(f)(2)(D), *Ariz.R.Civ.P.*; Daniel J. McAuliffe, *Arizona Civil Rules Handbook*, at 542 (2010).

It is well settled in Arizona that a judge's ruling in a case, without more, cannot be the basis for disqualification. *Smith v. Mitchell*, 148 P.3d 1151 (Ariz. 2006). The bias and prejudice necessary to disqualify a judge must arise from an extrajudicial source and not from what the judge has done in his participation in the case. *Smith v. Smith*, 115 Ariz. 299 (1977). A judge should not be removed absent a showing of actions or comments that demonstrated bias, prejudice or a conflict of interest. *State v. Greenway*, 170 Ariz. 155 (1991); *State v. Eastlack*, 180 Ariz. 243 (1994).

The complainant and the persons whose cases he brings to the Commission may fervently believe that a judge who sits in the Quartzsite Municipal Court must be beholden to the Town and cannot be fair and impartial. They are mistaken. Many of

the persons who appear to be "aggrieved" by his actions in this complaint were acquitted by Judge King, had charges dismissed by Judge King and sentences suspended by Judge King. He dismissed protective orders that he did not feel were substantial. He has instituted a professional process for court record security, review and processing. He has rebuffed the efforts of at least one Town official to present him with *ex parte* material in the course of a judicial proceeding.

There is no reasonable basis for any of the "incidents" provided to the Court by this complainant to proceed to investigation or complaint. While the townspeople will continue to have a right to question through free speech whether their Court is run fairly and impartially, the objective evidence demonstrates that it is.

The complainant is no stranger to litigation. In CV 10-8013-PCT-DGC, he attempted to disqualify a federal district judge on the grounds of bias, because of "plaintiff's religious beliefs and activities." *See* King Exhibit 4. In CV 11-1896-PHX-GMS, he sought a federal court temporary restraining order without notice in order to vacate an injunction against him issued by a Yavapai County Superior Court Judge. He was not successful. *See* King Exhibits 6 and 7, respectively.

The complaint must be dismissed in its entirety. Should the Commission have any questions or require further information, we will not hesitate to cooperate.

RESPECTFULLY SUBMITTED this 21st day of September, 2012.

RIDENOUR, HIENTON & LEWIS, P.L.L.C.

By _____

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SCANNED ORIGINAL filed this 21st
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KING EXHIBIT 1

Municipal Court Q & A

Contents

A. Supervision and Management

1. Q: *Does a city or town have to maintain a municipal court?*

A: Yes, with qualifications. A.R.S. § 22-402 gives municipalities the option of maintaining a court to handle municipal cases or entering an intergovernmental agreement to have either a justice court with jurisdiction within the municipality or another municipal court within the same county handle those cases. This statute requires municipalities to maintain a judicial function using one of these options.

2. Q: *Are municipal courts part of the state judicial department or the municipal government?*

A: In Winter v. Coor, 144 Ariz. 56, 695 P.2d 1094 (1985), the Arizona Supreme Court held that magistrate (municipal) courts are part of the integrated judicial department of this state, citing Article VI, § 1 of the Arizona Constitution. Therefore, it is clear that municipal courts are not just a department of municipal government but are also part of the state judicial department and therefore must be administered as a separate branch of municipal government and be subject to the administrative authority of the Supreme Court pursuant to Article 3, § 1.

3. Q: *What is the proper relationship between the municipal court and city or town?*

A: In Winter v. Coor, the Supreme Court held that municipal judges are judicial officers, not officers or agents of the town. The Court further acknowledged the necessity of maintaining municipal courts as fair, independent, and impartial tribunals and the importance of preserving the public's perception of these courts as impartial and unbiased. So, while the judge is selected in the manner set forth in the local charter or ordinances, and the judge's compensation is set by the governing body of the city or town, any other authority over the municipal court is limited by the need for the courts to operate in a fair, independent and impartial manner. Interference that impedes the court from carrying out the impartial administration of justice violates the separation of powers provision of the Constitution of the State of Arizona and the fundamental principals of our constitutional form of government. The municipal court, consistent with relevant constitutional provisions, statutes, and case law, should maintain its independence from the executive and legislative branches, while recognizing that this should be accomplished in a cooperative manner.

4. Q: *Does a city or town have the authority to audit the court?*

A: Yes, with qualifications. The chief executives of the judicial branch of city or town government and of the county (the presiding municipal judge and the presiding superior court judge respectively), should be advised in advance of any proposed audit or review. If a municipal judge is suspected of misconduct or illegality, the presiding superior court judge and Supreme Court should be immediately notified. Fiscal or management audits or an organizational review of a municipal court can proceed with the agreement of the presiding judge as to the timing, scope and nature of the audit in order to minimize the disruption of judicial proceedings. This agreement should not be unreasonably withheld. However, no judicial decision of a court should be included as the subject of an audit or review.

The presiding superior court judge and the presiding municipal judge should be given the results of any such audit or review so these judges may determine what responsive action is warranted. Of course the results of these audits and reviews may be considered in the court budget process and the judge's contract renewal process. The local government should defer to the judge's determination of the financial needs of the court and the advisability of implementing any recommendations unless the judge's determination is arbitrary, capricious or unreasonable.

5. Q: *Can a city or town council set the hours that a municipal court is open?*

A: Yes, with qualifications. The city or town legislative body may set the hours of the municipal court in the same manner as the hours of other municipal offices are established to the extent the hours of the municipal court are not set by other authority such as the Arizona Rules of Court or by the presiding judge of the county. The hours may not be set in such a manner as to unreasonably impede the public's access to justice or impair the court's ability to conduct its business. The presiding judge's recommendation regarding the optimal hours of court operation should be sought and given great deference.

6. Q: *Can a city or town require the court to provide night sessions?*

A: Yes, with qualifications. Whether municipal judges are required to hold night sessions, in addition to regular day time hours, is a contract matter between the judge and the city or town. However, support staff for such sessions must be provided so as not to affect the regular operation of the court during the other hours it is open.

7. Q: *Can a city or town require the judge to hold court every business day? Can compliance with the ordinance be used as a criterion for evaluating the judge's performance?*

A. No. Such an ordinance would be unreasonably intrusive upon the administration of the municipal court and is, therefore, inconsistent with separation of powers principles.

Due to illness and other necessary absence for personal reasons, no officer or employee can perform or reasonably be expected to perform assigned duties every day of the year except holidays. Leave policies are established for employees to provide for absence for personal reasons. Of course, a leave policy for judges could be adopted as well. Leave policies and practices are matters of internal court administration appropriately within the authority of the presiding municipal judge to operate the court in a manner that best serves the administration of justice.

The ordinance may also interfere with the requirement that a judge attend mandatory training, such as new judge orientation and the annual judicial conference, and perform special duties as assigned that require a judge to be away from the judge's regular judicial duties. As provided in Article 6, § 1 of the Arizona Constitution, the municipal court is part of the integrated judicial department of the state. All Arizona courts and the judges of these courts are subject to the Article 6, § 3 administrative supervisory authority of the chief justice. The chief justice has exercised this authority to require all judges to obtain a minimum of 16 hours of judicial education each year and any additional judicial education required to maintain competence in the law. The chief justice also issues an administrative order each year requiring every judge to attend the state judicial

conference unless there is a need to be excused. Requiring all judges to meet minimum judicial education requirements and to attend the annual judicial conference clearly fosters the integration of the judicial department contemplated in § 1 by allowing consistent administrative direction and judicial education of all judges. Article 6, § 3 also authorizes the chief justice to make special assignments of judges that may occasionally remove a judge from regular judicial duties at the local court.

Consistent with separation of powers, an ordinance could require that the municipal court be open and appropriately staffed to conduct court business as provided in the referenced ordinance. This is also consistent with the approach to court hours taken in Article 6, § 17 which requires that the superior court be open except on non-judicial days, and the requirement in A.R.S. § 38-401 which requires that all state offices be open at specified times. But requiring that each judge be present at all times that the court is open goes far beyond what is reasonably needed to assure that the court be open and operating effectively and, instead, intrudes upon the presiding municipal judge's discretion to manage the court in a manner that achieves this legitimate objective of local government.

The city or town council clearly has responsibility and authority to evaluate judges in order to determine whether a judge should be appointed for an additional term. However, judges cannot be evaluated based upon compliance with such an ordinance. A judge cannot be negatively evaluated for not being present at the judge's court due to absence for legitimate personal reasons or to perform other professional duties as discussed above. While a judge's unscheduled absence or poor attendance at court could be an issue for evaluation, any real problem with court operations would be manifested by complaints from attorneys or parties, failure to meet deadlines and/or failure to carry a reasonable case load. For the reasons stated above, these are legitimate bases for evaluating judges rather than the number of days the judge sits in court.

8. Q: *May a city close a court during the work week, one or more days per month?*

A: Yes, if it is permitted by the city charter and ordinances and arrangements are made for coverage on that day of orders of protection, initial appearances and any other matters required to be addressed over a weekend.

B. Budget and Finances

1. Q: *Is the presiding municipal judge required to follow the city or town budget procedures, including the purchase of equipment and supplies by the court?*

A: Yes. The presiding judge of the municipal court must follow the budgeting procedures established by the city or town. However, the budget process must yield funding necessary for the proper operation of the court. The municipal court must follow city or town expenditure procedures unless the municipal court has adopted the Judicial Branch Procurement Code. Every court is required to adhere to some procurement procedure. The authority of the municipal judge to make individual expenditures within the court's budget should be equivalent to the authority of the manager to make expenditures within executive department budgets.

2. Q: *What authority does the municipal judge have to move funds between budget line items?*

A: The authority of the presiding municipal judge over the court's budget is as provided by the city or town council. In order to avoid separation of powers conflicts between the presiding judge, the manager, and the council, the council should provide funding for the court in a manner that allows the presiding judge some flexibility regarding how the monies are allocated. For example, the state judicial department budget is appropriated

as a "lump sum." A lump sum budget permits the presiding judge to administer the court within reasonable overall budget limitations. It also avoids placing the manager in the role of having to monitor court expenditures in a manner that intrudes upon the authority of the presiding judge or interferes with court operations. As noted above, the presiding judge already has independent authority under state statutes to manage and expend monies collected or granted pursuant to statute.

3. Q: *Does the city or town manager have the authority to dictate how funds appropriated to the court should be spent?*

A: No. If the monies at issue are state funds, such as judicial collection enhancement monies granted to the court under A.R.S. § 12-113 or time payment fees authorized to be expended under A.R.S. § 12-116, these monies may be spent only for the purposes stated in such grant or authorization. These funds are expressly provided for use "by the court" which means the presiding judge rather than the manager. Additionally, state statutes and the terms of grants typically prohibit use of state funds to supplant local funds otherwise supporting court operations. If the monies at issue are generated pursuant to a local ordinance, the ordinance should provide how expenditure of the monies is authorized. Such ordinances should respect separation of powers principles by providing the presiding judge discretion over expenditure of monies dedicated to funding court operations. The court is simply not part of the city or town administration subject to the supervision of the manager. Rather the court is part of the judicial branch of municipal and state government subject only to the judicial appointments, reasonable policy-making and appropriations authority of the council.

4. Q: *Can the city or town require other municipal officers to collect fine, sanction, restitution and bond payments?*

A: No. Under the direction of the presiding judge, the court should collect all fine, sanction, restitution and bond payments imposed by the court and deposit them with the city or town treasurer as required by A.R.S. §§ 22-407 and 41-2401.

Rule 26.12(b), Rule of Criminal Procedure, provides that payment of a fine, restitution, or both, shall be made to the clerk of the superior court unless the court expressly directs otherwise. A.R.S. § 22-423 extends this rule to municipal courts. Although A.R.S. § 22-404 provides for ultimate payment to the city or town treasurer of all fines and forfeitures collected, the statute clearly implies that the municipal court should collect the payments. Other statutes also require or imply that procedure. With regard to bail and civil sanction deposits, A.R.S. § 22-424 requires the judge to designate a deputy other than a law enforcement officer to accept bail bonds on behalf of the court during hours when the court is not open. The judge must also designate a person to accept deposits for civil traffic violations on behalf of the court.

Further, A.R.S. § 28-1559 requires every judge, magistrate or hearings officer to, "keep a record of each official action by the court...and the amount of civil penalty, fine or

forfeiture resulting from every traffic complaint deposited with or presented to the court..." Pursuant to the requirements of this section, it appears that fines and forfeitures should be collected by the court in order to ensure the accuracy of the records that the court is required to maintain. The authority to determine who receives such payments and deposits clearly rests with the municipal court judge, not the local financial officer. Consistent with judicial department Minimum Accounting Standards, the disposition of the funds received may be provided by ordinance or city policy to the extent it is not otherwise provided by law.

5. Q: *Can the city or town require the court to collect fees in addition to those provided in A.R.S. § 22-404?*

A. Yes. A.R.S. § 22-404(E) provides that any city or town may establish and assess fees for court programs and services. In addition, the attorney general has determined that a local ordinance may authorize fees for other municipal services to be collected by the courts. If the particular fee is subject to deferral, reduction or waiver, then the judge has discretion as to the amount imposed. Cities or towns may not establish fees where the fee setting authority has been specifically pre-empted by the state legislature.

6. Q: *Can the city or town authorize the "writing-off" of fines and civil sanctions that are determined to be uncollectible?*

A. Yes, with qualifications. There is currently no statutory authority that would allow courts to forgive outstanding obligations in total. While the city or town may adopt procedures to "write-off" court obligations owed to the city or town, amounts to be transmitted to the state general fund or other state agencies can only be written off by the state or those agencies pursuant to state law.

C. Personnel

1. Q: *Can a city or town council refuse to renew a judge's contract without cause?*

A: Yes. The Winter case provides for at least a two-year term for municipal judges in which the judge could only be removed for cause while Jett v. City of Tucson 180 Ariz. 115, 882 P.2d 426 (1994) recently suggested "Under contemporary standards, a 4-year term seems appropriate." These cases imply that at the end of the term the judge can be removed without cause. However, as with any "at will" employment situation, a judge cannot be removed for any reason which violates state or federal law or is contrary to public policy.

2. Q: *Is the city required to pay the judge for the days that the court is closed during the week due to budget reductions?*

A: Yes, municipal judge salaries may not be reduced during the term of office though they are not established by statute as are superior court and JP salaries and even if they are not set by charter or ordinance. In the case of Smith v. Phoenix, 175 Ariz. 509,858 P. 2d 654 (App. 1992) the court had no doubt that Ariz. Const. art. VI, §33 applies to municipal judges in prohibiting the reduction of the salary of any judge during the term to which the judge was elected or appointed, though the particular change by the Phoenix City Council was held not to be a salary reduction.

3. Q: *May a judge refuse/waive payment of the judge's salary?*

A: No, since the constitution prohibits reduction of the current salary, however established, during a municipal judge's term, a judge cannot effectively waive part of the judge's salary. However, a municipal judge may donate back to the city or town any part of the salary the judge has been paid.

4. Q: *Who has authority to hire, supervise, discipline and terminate court employees, the municipal judge or the local government?*

A: The appellate courts of this state have consistently held that the employees of courts within the state must be under the direct control and supervision of the presiding officer of each court. While there are no cases that specifically address the issue of control over municipal court employees, Winter v. Coor made it clear that municipal courts are a part of the state's integrated judiciary. Court personnel who are directly connected with the operation of the court should be controlled by the court. Therefore, municipal court should have exclusive authority to hire, supervise, discipline, and fire its employees unless the court elects to receive assistance from another department of the local government such as the human resources office.

5. Q: *What authority does the city or town manager have concerning hiring personnel and the need for a position?*

A: The manager should have a limited role or no role in court personnel matters depending upon the duties assigned to the manager. In order to function as a separate branch of municipal and state government the personnel of the court must be subject to the exclusive control of the presiding judge. This includes employee hiring, supervision, dismissal and compensation consistent with reasonable personnel, job classification and budget policies. The manager should have a role in these matters only if the manager also serves as the human resources director. Otherwise, the presiding judge should look to the human resources director for advice on these matters concerning court employees just as the manager should look to the human resources director for advice concerning other municipal employees. Consistent with separation of powers principles, the presiding judge should have the opportunity to make recommendations to the city or town council concerning the need for court positions. The budgeting policies or ordinances adopted by the council should state what, if any, role the manager has in evaluating the need for court positions. Budget related decisions such as this must be made ultimately by the council.

6. Q: *Do the city or town manager and finance department have veto power on travel arrangements regarding mandatory judges' meetings or seminars?*

A: No. As provided in Article 6, § 1 of the Arizona Constitution, the municipal court is part of the integrated judicial department of the state. All Arizona courts and the judges of these courts are subject to the Article 6, § 3 administrative supervisory authority of the chief justice. All judges are required to obtain a minimum of 16 hours of judicial education each year and any additional judicial education required to maintain competence in the law. The chief justice also issues an administrative order each year requiring every judge to attend the state judicial conference unless there is a need to be excused. Requiring all judges to meet minimum judicial education requirements and to attend the annual judicial conference clearly fosters the integration of the judicial department contemplated in § 1 by allowing consistent administrative direction and judicial education of all judges. This conference and seminars designed for judges

typically include hotel arrangements that place the judge in close proximity to education programs, meetings and the other judges as part of the conference or seminar. Attendance at the judicial conference and seminars is a necessary cost of operating the municipal court and should be accommodated in the local travel policies and budget. Therefore, there should be no basis for the manager or the finance department to veto attendance at these events. Of course, the court must operate within reasonable budgetary limitations and reimbursement for travel should be governed by reasonable travel policies which apply equally to travel by council members, administrative employees and municipal judges.

7. Q: *Are the personnel rules adopted by a city or town also applicable to employees of the court?*

A: Yes. City or town personnel rules apply to municipal court employees unless these rules interfere with the independent operation of the court. Accordingly, presiding judges may adopt reasonable judicial personnel rules in order to operate independently and effectively as a court. Separate judicial personnel rules which are inconsistent with city or town rules concerning some matters such as hiring, supervision and dismissal of employees may be reasonable. On the other hand, separate rules concerning matters

such as employee benefits may be unreasonable. The effect of rules on the ability of the court to operate independently must be considered. The Supreme Court has adopted administrative orders which set reasonable minimum standards for courts addressing sexual harassment allegations and the needs of persons with disabilities and for judges involved in appointing special judicial officers.

As the chief executives of co-equal branches of government, the presiding municipal judge and the city or town manager should make every effort to reach agreement regarding which local personnel rules apply to court personnel, which rules need to be modified to recognize the independence of the court and which personnel matters should be governed by separate rules covering court employees. Rules which make the manager the ultimate authority over other local employees should not be applied to court employees. Instead, the presiding municipal judge stands in the place of the manager with respect to court employees. Where agreement cannot be reached, the reasonable judgment of the presiding municipal judge should prevail.

8. Q: *When hiring additional court employees, do the existing personnel procedures apply?*

A: Yes. The same response which applies to personnel matters addressed above applies to personnel rules concerning hiring.

9. Q: *If court employees are not covered by city or town personnel regulations, is the local government liable for discrimination suits?*

A: Yes. Municipal judges are statutorily officials of municipal government just as Supreme Court justices are statutorily officials of state government. Any liability resulting from the official acts of these judges are liabilities of the municipalities and state respectively. The degree of executive control over these acts does not affect this liability.

10. Q: *Who has authority over employees assigned to the court on a part-time basis?*

A: The presiding municipal judge should have full authority over all court employees during the time they are performing judicial duties including part-time employees who perform other duties for the city or town. For the portion of their employment during which part-time employees perform judicial duties, they should be governed by personnel policies established by the court. The court should not be required to hire and retain a part-time employee simply because that employee is performing other duties for the city or town. The principles of separation of powers and conflict of interest preclude assigning an employee court duties and duties related to the administration of justice in the executive branch of municipal government such as the police department or the prosecutor's office.

11. Q: *Can the city or town conduct performance reviews of the presiding municipal judge?*

A: Another implication of the Winter and Jett cases is that since councils have discretion regarding renewal of a municipal judge's contract, they must have the discretion to review the performance of that judge prior to renewal. Of course, the review should be

performed in a manner which does not interfere with the judge's duties and should carefully avoid criteria for non-renewal that are contrary to federal or state law or public policy. Municipalities may use the results of audits and reviews conducted by the city or town and any review conducted by judiciary.

12. Q: *What is the proper method of evaluating a municipal judge's performance?*

A: The city or town council with the assistance of the presiding judge of the county and the Administrative Office of the Courts should develop and implement a system for evaluating the performance of the municipal judge. This system should consist of regular annual or biennial evaluations based upon established criteria that include input from all constituencies of the court including the prosecutor and staff, the public defender and other defense counsel, the police, the general public, court employees and other judges familiar with the municipal judge's work. A judicial performance review system would avoid the appearance of ad hoc attacks on the independence of the court by particular constituencies and allow the city or town council to carry out its responsibility of appointing and reappointing the municipal judge based upon a thorough assessment of the performance of the judge using accepted criteria for assessing judicial performance.

13. Q: *What are the requirements for appointing a part-time municipal judge?*

A. There is no statutory authority for appointment of a pro tem judge in a municipal court as there is in justice court. Therefore, only a city whose charter authorizes pro tems may appoint them. Additionally, the recently adopted constitutional change that permits non-lawyer pro tems in justice courts does not cover municipal courts. A pro tem municipal court judge would need to be an attorney.

A municipality needing the services of a part-time judge may want to consider appointment of an "associate" or "special" magistrate. Under Winter v. Coor a magistrate must have at least a two year term. Therefore, an associate or special magistrate must be appointed for a two year term, rather than at the pleasure of the council or the judge, but could serve part time or "on call" as would a pro tem. The local ordinance would

need to establish the qualifications and how the appointment is made. If it provides for the municipal court judge to make or recommend the appointment, § 1-305 of the Arizona Code of Judicial Administration would apply.

An elected JP whose precinct is located in a city or town is authorized by A.R.S. § 22-403(B) to serve as a municipal court judge for that city or town.

14. Q: *What are the procedures for appointing "special judicial officers"?*

A: A municipality has the initial responsibility to establish methods of selection of judges. If the municipality gives the presiding judge responsibility to appoint or recommend appointment of special judicial officers, then the requirements of ACJA § 1-305 of the Arizona Code of Judicial Administration must be followed by the presiding judge in carrying out this responsibility. The presiding judge must establish a selection process consistent with § 1-305 and with municipal charter and ordinance provisions. If the city or town council selects special judicial officers without the presiding judge's official involvement, ACJA § 1-305 does not apply.

D. Facilities

1. Q: *What is the city or town's responsibility for providing facilities, staff and other resources to ensure the effective operation of the court?*

A: In Mann v. County of Maricopa 104 Ariz. 561, 456 P.2d (1969), the Arizona Supreme Court held that courts of general jurisdiction have the right to quarters appropriate to the office and personnel adequate to perform their functions. The same court in Maricopa County v. Dann 758 P.2d 1298 (Ariz. 1988), held that courts have a right to necessary personnel to carry out the court's constitutional and statutory duties, and that legislative bodies have the duty of approving personnel requests unless there is a clear showing that the judges acted unreasonably, arbitrarily, or capriciously in making the request. Although the case law does not specifically relate to municipal courts, the case law is clear that municipal courts are part of the state's integrated judiciary, and therefore the same, or at least similar, standards would apply to municipal courts as to other courts.

The municipal court can only engender proper respect for the law and provide justice in the individual case if the court is provided with sufficient judges, supporting staff and physical facilities to assure prompt, fair and dignified administration of justice. The municipal court judge responsible for the administration of the municipal court should be mindful of the needs of the court, and seek the cooperation of the funding authority to provide the funds required to meet those needs. If the court follows the funding authority's policies and is still denied adequate staff or facilities, then the court may, through its inherent powers, order the funding authority to provide for adequate staff or facilities.

2. Q: *Can the court deny use of the courtroom for non-judicial use by the city or town?*

A: No. While the courtroom must be available as needed for court business and should not be used in a manner which conflicts or has the appearance of conflicting with the judicial function of the court, it is both a court and local facility. When there is no conflict with court operations, there is no reason why these facilities cannot be made available for

other governmental purposes. The court should ensure that any court records maintained in the area are secure.

E. Records

1. Q: *Is the local government or the court responsible for maintaining municipal court records?*

A. The court. A.R.S. § 39-121.01(B) provides that, "All officers and public bodies shall maintain all records reasonably necessary or appropriate to maintain an accurate knowledge of their official activities which are supported by funds from the state or any political subdivision thereof." As the officer in charge of the court, the presiding judge is charged with the responsibility of maintaining the records of the court. A.R.S. § 39-121.01(C) further provides that the officer responsible for maintaining records is also responsible for the "preservation, maintenance and care of that officer's public records" and must "secure, protect and preserve public records from deterioration, mutilation, loss or destruction..." Therefore, it appears to be clear that the presiding judge of the municipal court is the sole and proper custodian of all records relating to the court and its operations.

2. Q: *Under what circumstances should records of the court be available to the public and city or town officials?*

A: Although access to most public records in Arizona is governed by state statute, the Supreme Court has chosen to exercise its administrative authority over all court records by the adoption of Rule 123, Rules of the Supreme Court. Access to records held by any court, including municipal courts, is governed exclusively by Rule 123.

Rule 123 provides that any member of the public may request to examine any court record during regular office hours. However, the custodian may deny or restrict access when the interests of confidentiality, privacy, or the best interests of the state outweigh the general policy of open access. The public has the right to know who is being charged with a crime and with what they are being charged. Therefore, it is clear that dockets should be made available to the public because they serve as an index of all cases filed in the court. No individual has the right to rummage through case files indiscriminately. Cases should be individually requested and individually reviewed.

The presiding judge of the municipal court has discretion, within limits, to determine what court records are available for inspection by the public, including city or town officials, and should establish procedures for the inspection of records to ensure their preservation. Court files and pleadings should at all times remain in the care and custody of the judge and designated court staff unless a written order from the judge authorizes otherwise. Likewise, all mail addressed to the court should only be opened and read by court staff.

Security measures should be implemented to secure court records in the municipal court during the hours the court is not open or in situations where court staff are out of the office. For example, court files should be locked at night and at any time when the file room is left unattended. The only individuals that should have keys to the court facility are the judge, court personnel so designated by the judge, and individuals responsible for building maintenance and security.

KING EXHIBIT 2

PRESIDING JUDGE OF THE COUNTY

A. Appointment. In each county with two or more superior court judges, the Supreme Court shall appoint one of such judges presiding judge. The presiding judge shall serve as the presiding judge of the county. Presiding judges may be reappointed.

B. Term of Office - The presiding judge of the superior court in each county shall serve a term of five (5) years. The term of the presiding judge may be extended as determined by the Supreme Court.

C. Duties

1. Presiding judges shall be the Chief Judicial Executive Officers of their respective counties and shall exercise administrative supervision over the superior court including all of its divisions and judges thereof in their counties. As a division of the superior court, the juvenile court is subject to this authority. Presiding judges shall also exercise administrative supervision over the clerk of the superior court; give direction to the court administrator; exercise administrative supervision over the justice of the peace courts in their counties; and exercise administrative supervision over the municipal courts in their counties. In counties with an associate presiding judge, and when so designated by the presiding judge, the associate presiding judge shall perform the duties of presiding judge of the superior court.

2. Administrative supervision of the superior court shall include authority to:

   a. Determine the administrative structure of the superior court and all of its divisions and make regular and special assignments of all superior court judges and, unless otherwise directed by the Chief Justice and in cooperation with other presiding judges, assign judges within the county to other counties.

   b. Exercise general supervision over the personnel of all divisions of the superior court.

   c. Prescribe the powers and duties of the clerk of the court, in addition to those prescribed by law and the Supreme Court.

   d. Appoint with the approval of the Supreme Court an associate presiding judge to act during the absence or unavailability of the presiding judge or as defined above. The presiding judges may delegate any and all of their powers to the associate presiding judge. The associate presiding judge shall serve at the pleasure of the presiding judge and shall exercise and discharge all powers and duties of the presiding judge, except appointing court commissioners or appointing judges permanently to special assignments. In order to facilitate the business of the court the presiding judges or associate presiding judge may delegate their duties to other judges.

e. Appoint a presiding judge of the juvenile court to perform under the administrative supervision of the presiding judge administrative duties as provided by statutes, rules, and administrative code provisions.

f. Promulgate such local rules as a majority of the judges of the county may approve or as the Supreme Court shall direct.

g. Identify and develop programs that provide alternative methods for the resolution of civil disputes to which actions may be referred pursuant to the authority conferred by Rule 16(g) of the Arizona Rules of Civil Procedure, and promulgate such local rules as a majority of judges of the county may approve establishing and governing such alternative-dispute resolution programs.

h. Appoint a chief adult probation officer and provide advice and consent to the presiding judge of the juvenile court concerning the appointment of the juvenile court director.

i. Appoint a law library director.

j. Establish court security policies and procedures to provide a safe work environment for judicial employees, litigants and users of the court. Court security may include procedures, technology, security personnel or architectural features needed to provide a safe work environment. The presiding judge may also prohibit or regulate the possession of weapons or potential weapons in an area assigned to or controlled by the court.

3. Presiding judges may develop and implement judicial branch personnel systems for the courts in their counties.

4. Presiding judges shall determine the need for, and approve, the allocation of space and furnishings in the court building; the construction of new court buildings, courtrooms and related physical facilities; and the modification of existing court buildings, courtrooms and related physical facilities. This authority extends, but is not limited to, superior court and all of its divisions, clerk of the superior court, adult probation, justice courts and municipal courts.

5. Presiding judges shall meet on a regular basis with the presiding justices of the peace, presiding judges in the municipal courts, and justice court and municipal court administrators to discuss separation of powers, resources, use of technology and legal, administrative and other relevant issues to ensure proper functions and independence of the courts in the county.

6. In counties with four or more justices of the peace, a presiding justice of the peace will be chosen by vote of the justices of the peace in the particular county, with the advice and consent of the presiding judge of the county. In case of a tie vote of the justices of the peace, the presiding judge of the county shall make the selection.

7. Presiding judges shall appoint a superior court administrator and establish and maintain an administrative structure for the superior court and all of its divisions that provides administrative support, as the presiding judge deems necessary, in the areas of human resources, finance, technology, training and whatever other services are required for the administration of justice.

8. Presiding judges shall submit to the Board of Supervisors a coordinated budget for the superior court, clerk of the superior court, adult probation, juvenile court, juvenile probation and justice of the peace courts in their counties.

9. Presiding judges shall assist the presiding justice of the peace and presiding municipal court judges in coordinating uniform bond schedules.

10. Presiding judges shall obtain compliance with statistical reporting requirements from superior court, adult probation, juvenile court, justice courts and magistrate courts.

11. Presiding judges shall coordinate and implement compatible information systems and technology at the local level for all jurisdictions within the county, improve information sharing, and encourage projects which utilize technology to increase accessibility and improve efficiency and court management within their jurisdictions.

12. Presiding judges shall submit a written report, not less than every 18 months, to the Supreme Court and Arizona Judicial Council concerning plans made and progress achieved toward implementation of Admin Order 91-40, Access to Court Services.

13. Presiding judges shall approve and coordinate applications for grant funds from all courts in their respective counties.

14. Presiding judges shall, yearly, certify compliance, non-compliance and exemptions with Educational Policies and Standards.

15. Presiding judges shall approve procedures for implementing sexual harassment policies in the courts in their counties.

16. Presiding judges shall approve plans to implement the policy on access to court services by persons with disabilities, for the courts in their respective counties and report such plans to the Supreme Court.

17. Presiding judges may delegate any part of this order, as appropriate, to the presiding justice of the peace and presiding municipal court judges.

PRESIDING JUDGE - MUNICIPAL COURT

A. Appointment. Presiding municipal court judges shall be selected in a manner provided by the charter or ordinances of the city or town, except in cities and towns which transfer that responsibility to the presiding judge of the county.

B. Term of Office. The presiding municipal court judge shall serve a term as established by the appointing authority.

C. Duties:

1. Presiding municipal court judges shall perform administrative duties delegated to them by the presiding judge of the county. Such duties as are appropriate, may be delegated to a municipal court administrator.

2. Presiding municipal court judges may appoint a court administrator according to local charter or ordinance provisions.

3. Presiding municipal court judges shall supervise the administration of the judicial and internal administrative functions of the municipal court including:

   a. Determining judicial assignments for each judge and, within guidelines established by city or town council, establishing and maintaining standard working hours and times to effectively discharge those assignments;

   b. Being responsible for the supervision of judges and judicial and nonjudicial staff who directly affect the operation of the court; and

   c. Delegating duties and responsibilities to judges, judicial and nonjudicial personnel as necessary.

4. Presiding municipal court judges shall work with the presiding judge of the county to assure selection of judges pro tempore in the municipal court is consistent with Administrative Order No. 93-17.

5. In cities without a court administrator or where the duty is not delegated to one:

   a. Presiding judges of the municipal court shall prepare the annual budget request for the court,

   b. Presiding municipal court judges shall supervise the administration of the judicial and internal administrative functions of the municipal courts in a professional manner, using appropriate management techniques to organize and direct the efficient operation of the court in the following areas:

(1) Personnel
(2) Training
(3) Facilities
(4) Procurement
(5) Finance

That supervision includes supervision of the judges and judicial staff, and non-judicial staff, while they are performing work for the court.

c. Presiding municipal court judges shall establish docketing, calendaring and case management policies and procedures.

d. Presiding municipal court judges shall establish automation systems with the assistance and concurrence of the presiding judge of the county.

e. With the assistance of the presiding judge of the county, presiding municipal court judges shall establish bond schedules in coordination with the justices of the peace in the county.

f. Presiding municipal court judges shall comply with statistical reporting, jury management and records management policies and procedures established by the Supreme Court.

g. Presiding municipal court judges may establish court security policies and procedures to provide a safe work environment for judicial employees, litigants and users of the court. Court security may include procedures, technology, security personnel or architectural features needed to provide a safe work environment. The presiding judge may also prohibit or regulate the possession of weapons or potential weapons in an area assigned to or controlled by the court.

In 1991, the Arizona Judicial Council recommended that court security standards developed by the Committee on Risk Management/Court Security be used as guidelines to implement court security policies and procedures. These standards are found in the Final Report, AJC Committee on Risk Management/Court Security, Appendix G, 1991.

KING EXHIBIT 3

Arizona Revised Statutes Annotated Currentness
Arizona Rules of Protective Order Procedure
→→ Rule 6. Rules of Procedure for Issuing Protective Orders

A. Commencement of Proceedings. A party shall commence an action for a protective order by filing a verified petition with the clerk of the court.

B. Priority for Protective Orders. A judicial officer shall expeditiously schedule an *ex parte* hearing for a protective order involving a threat to personal safety even if previously scheduled matters are interrupted.

C. Order of Protection. The judicial officer shall conduct a separate hearing with each plaintiff who requests an Order of Protection.

1. *Contents of Petition.* The petition shall allege specific acts of domestic violence and name each individual the plaintiff believes should be included as a protected person.

2. *Petition Verification.* A plaintiff must sign and swear or affirm to the truth of the petition before a judicial officer or other person authorized to administer an oath.

3. Petition Review. A judicial officer shall review the petition, any other pleadings on file, and any evidence offered by the plaintiff, including any evidence of harassment by electronic contact or communication, to determine whether there is reasonable cause to believe that the defendant may commit an act of domestic violence or has committed such an act, and whether the order requested shall be issued *ex parte*. *See*A.R.S. § 13-3602(E).

a. Reasonable cause determination.

1) In determining reasonable cause, the judicial officer shall consider specific acts of domestic violence alleged within the past year, or within a longer period of time if the court finds good cause. Periods of the defendant's absence from the state or incarceration shall not be included in calculating the one year. *See*A.R.S. § 13-3602(C)(3), (E)(2) & (F).

2) A separate reasonable cause determination shall be made as to the plaintiff individually, any children with whom the defendant has a legal relationship and any other person listed in the petition. If a reasonable cause determination is made for the plaintiff, a separate reasonable cause determination is not required for the children with whom the defendant has no legal relationship.

b. Relationship Test.

1) The judicial officer must find that a specific relationship exists, either by statute, blood or marriage, between the plaintiff and the defendant. *See* A.R.S. § 13-3601(A).

2) Statutory relationships include:

a) persons who are residing or who have resided in the same household;

b) victim and defendant who have a child in common;

c) victim or defendant who is pregnant by the other party;

d) victim is a child who resides or has resided in the same household as the defendant, and

i) is related by blood to a former spouse of the defendant, or

ii) is related by blood to a person who resides, or who has resided in the same household as the defendant , or

e) victim and defendant who currently share or previously shared a romantic or sexual relationship. In determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship, the court may consider the following factors:

i) the type of relationship.

ii) the length of the relationship.

iii) the frequency of the interaction between the victim and the defendant.

iv) if the relationship has terminated, the length of time since the termination.

3) Blood relationships include victim related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister.

4) Marriage relationships include:

a) victim and defendant who are either married or who have been previously married; and

b) victim who is related to the defendant or the defendant's spouse by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law, or sister-in-law. *See*A.R.S. § 13-3601(A).

5) The relationship test is also met when a plaintiff acts on behalf of a victim if any of the following apply:

a) the plaintiff is the parent, legal guardian or person who has legal custody of a minor or incapacitated person who is a victim, unless the court determines otherwise; or

b) the victim is either temporarily or permanently unable to request an order. *See*A.R.S. § 13-3602(A).

4. *Additional Review for Limited Jurisdiction Courts.* The court shall inquire of the plaintiff whether a family law action is pending in the superior court and determine whether the court has jurisdiction pursuant to Rule 4(A).

5. *Issuance of Order of Protection.* An Order of Protection shall be issued *ex parte* if the judicial officer finds reasonable cause to do so as set forth in paragraph 3 above. At the initial *ex parte* hearing, the plaintiff or appropriate third party shall be provided with a copy of the Order of Protection, which may include any of the following provisions:

a. *No Contact Orders.* The judicial officer may prohibit all contact with the plaintiff or other protected parties, except as otherwise specifically ordered in writing by the court. *See*A.R.S. § 12-1809(F)(2).

b. *Exclusive Use of Residence.* The judicial officer may grant plaintiff exclusive use of the parties' residence, if there is reasonable cause to believe that physical harm otherwise may result. *See*A.R.S. § 13-3602 (G)(2). If the plaintiff is not the owner of the residence, the judicial officer may grant exclusive use for a limited period of time. At a contested hearing, the judicial officer may consider ownership of the parties' residence as a factor in continuing the order of exclusive use. The judicial officer may allow the defendant to return one time, accompanied by a law enforcement officer, to pick up personal belongings.

c. *Prohibited Locations.* The judicial officer may also order that the defendant not go near the residence, place of employment or school of the plaintiff or other protected parties. The judicial officer may include other specifically designated location(s) in the Order. If the defendant does not know the address of these additional places, the judicial officer may, upon request of the plaintiff, leave the addresses protected. *See* A.R.S. § 13-3602(G)(3).

d. *Firearms and Ammunition.*

1) The judicial officer shall ask the plaintiff about the defendant's use of or access to weapons or firearms. This inquiry shall be made to determine if the defendant poses a credible threat to the physical safety of the plaintiff or other protected persons. The judicial officer may, for the duration of the Order of Protec- tion:

a) prohibit the defendant from possessing, purchasing or receiving firearms and ammunition; and

b) order the defendant, immediately after service of the Order of Protection, to transfer any firearm or ammunition, owned or possessed, to the appropriate law enforcement agency. *See*A.R.S. § 13-3602(G)(4).

2) The plaintiff reporting violations of the order to transfer firearms and ammunition shall be referred to the appropriate law enforcement agency.

e. *Other relief.* The judicial officer may grant relief that is necessary for the protection of the plaintiff and other specifically designated persons and that is proper under the circumstances.

f. *Animals.* The judicial officer may also grant the plaintiff the exclusive care, custody, or control of any animal that is owned, possessed, leased, kept, or held by the plaintiff, the defendant, or a minor child residing in the residence or household of the plaintiff or the defendant, and order the defendant to stay away from the animal and forbid the defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect in violation of Section 13-2910, or otherwise disposing of the animal.

6. *Effectiveness of an Order of Protection.* An Order of Protection is not in effect until it is served pursuant to Rule 1(L). *See*A.R.S. § 13-3602(D).

7. *Denial of an Order of Protection.* If after the *ex parte* hearing the judicial officer does not have sufficient information to grant the Order of Protection, the judicial officer may deny the request or set a hearing within 10 days with reasonable notice to the defendant. The judicial officer shall document any denial of an Order of Protection. *See*A.R.S. § 13-3602(F).

D. Emergency Orders of Protection

1. *Authority to Issue an Emergency Order of Protection*

a. In counties with a population of 150,000 or more, the presiding judge of the superior court in that county shall make available on a rotating basis a judge, justice of the peace, magistrate or commissioner to issue an Emergency Order of Protection by telephone during hours that the courts are closed. *See*A.R.S. § 13-3624 (A).

b. In counties with a population of less than 150,000, a judge, justice of the peace, magistrate or commis-

sioner may issue an Emergency Order of Protection by telephone. *See*A.R.S. § 13-3624(B).

c. The availability of an Emergency Order of Protection is not affected by either party leaving the residence. *See*A.R.S. § 13-3624(G).

2. *Emergency Orders of Protection Issued Ex Parte*

a. A judicial officer may issue a written or oral order if a law enforcement officer has reasonable grounds to believe that a person is in immediate and present danger of domestic violence based on an allegation of a recent incident of actual domestic violence. *See*A.R.S. § 13-3624(C).

b. A judicial officer may issue a written or oral order upon the request of the alleged victim if there is a finding that a person's life or health is in imminent danger. *See*A.R.S. § 13-3624(F).

c. A third party may request an emergency order on behalf of a plaintiff who is either temporarily or permanently unable to make the request. The judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. *See*A.R.S. § 13-3624(F).

3. *Issuance of an Emergency Order of Protection.* An Emergency Order of Protection is issued for the protection of a person in immediate and present danger of domestic violence. *See*A.R.S. § 13-3624. An Emergency Order of Protection may:

a. Enjoin the defendant from committing an act of domestic violence.

b. Grant one party exclusive use and possession of the parties' residence if there is reasonable cause to believe physical harm may otherwise result.

c. Restrain the defendant from contacting the plaintiff or other specifically designated persons and coming near the residence, place of employment or school of the plaintiff or other designated persons, if there is reasonable cause to believe physical harm may otherwise result.

d. Prohibit the defendant from possessing or purchasing a firearm and ammunition for the duration of the order, upon a finding that the defendant may inflict bodily injury or death on the plaintiff. *See*A.R.S. § 13-3624(D).

4. *Service of an Emergency Order of Protection.*

a. The law enforcement officer who receives verbal authorization for an Emergency Order of Protection shall complete and sign the emergency order as instructed by the judicial officer. The law enforcement of-

ficer shall then give a copy of the Emergency Order of Protection to the plaintiff or appropriate third party.

b. The law enforcement officer shall arrange for service upon the defendant. After service of the Emergency Order of Protection on the defendant, the law enforcement officer shall file a certificate of service with the court and verbally notify the sheriff's office that a judicial officer has issued an Emergency Order of Protection. *See*A.R.S. § 13-3624(F).

5. *Duration.* An emergency order expires at the close of the next day of judicial business following the day of issuance, unless otherwise continued by the court. *See*A.R.S. § 13-3624(E). A petition for an Order of Protection may be filed the following business day.

E. Injunction Against Harassment. The judicial officer shall conduct an individual hearing with each plaintiff who requests an Injunction Against Harassment.

1. *Contents of Petition.* The petition shall allege a series of specific acts of harassment and the dates of occurrence. A series of acts means at least two events. *See*A.R.S. § 12-1809(C).

2. *Petition Verification.* A plaintiff must sign and swear or affirm to the truth of the petition before a judicial officer or other person authorized to administer an oath.

3. *Petition Review.* A judicial officer shall review the petition, any other pleadings on file and any evidence offered by the plaintiff, including any evidence of harassment by electronic contact or communication, to determine whether the order requested shall be issued *ex parte*.

4. *Issuance of Injunction Against Harassment*

a. *Findings Required.* The judicial officer shall issue an Injunction Against Harassment if there is a finding of reasonable evidence of harassment of the plaintiff by the defendant during the year preceding the filing or that good cause exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition. *See*A.R.S. § 12-1809(E).

1) If the judicial officer is going to issue the Injunction Against Harassment at the *ex parte* hearing, the judicial officer must find specific facts attesting to the plaintiff's efforts to give notice to the defendant or reasons supporting the plaintiff's claim that notice should not be given.

2) If the judicial officer denies issuing an Injunction Against Harassment at an *ex parte* hearing, the judicial officer may set a hearing within 10 days with reasonable notice to the defendant.

b. *No Contact Orders.* The judicial officer may prohibit all contact with the plaintiff or other protected parties, except as otherwise specifically ordered in writing by the court. *See*A.R.S. § 12-1809(F)(2).

c. *Prohibited Locations.* The judicial officer may also order that the defendant shall not go near the residence, place of employment or school of the plaintiff or other protected parties. The judicial officer may include other specifically designated location(s) in the Injunction Against Harassment. *See*A.R.S. § 12-1809 (F)(2).

d. *Protected Persons.* The judicial officer may grant relief that is necessary for the protection of the plaintiff and other specifically designated persons and that is proper under the circumstances. *See*A.R.S. § 12-1809 (F)(3).

e. *Other Relief:*

1. The judicial officer may grant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances. A.R.S. § 12-1809(F)(3).

2. The judicial officer shall ask the plaintiff about the defendant's use of or access to weapons or firearms. The judicial officer may prohibit the defendant from possessing, purchasing or receiving firearms and ammunition for the duration of the Injunction Against Harassment.

5. *Denial of an Injunction Against Harassment.* If after the *ex parte* hearing the judicial officer does not have sufficient information to grant the Order of Protection, the judicial officer may deny the request or set a hearing within 10 days with reasonable notice to the defendant. The judicial officer shall document any denial of an Order of Protection. *See*A.R.S. § 13-3602(F).

F. Injunction Against Workplace Harassment. The judicial officer shall hold a hearing with each plaintiff/ employer or authorized agent of the employer who requests an Injunction Against Workplace Harassment.

1. *Contents of Petition.* The petition shall allege at least one act of harassment and the dates of occurrence. *See* A.R.S. § 12-1810(C)(3).

2. *Petition Verification.* An employer or authorized agent must sign and swear or affirm to the truth of the petition before a judicial officer or other person authorized to administer an oath.

3. *Petition Review.* A judicial officer shall review the petition, any other pleadings on file and any evidence offered by the employer or authorized agent to determine whether the Injunction requested shall be issued *ex parte. See*A.R.S. § 12-1810(E).

4. *Issuance of Injunction Against Workplace Harassment*

a. The judicial officer shall issue an Injunction Against Workplace Harassment upon finding: 1) reasonable evidence of workplace harassment by the defendant during the year preceding the filing; or 2) good cause to believe that great or irreparable harm would result to the employer or other person who enters the employer's property or who is performing official work duties, if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition.

b. The court must find specific facts attesting to the employer's efforts to give notice to the defendant or reasons supporting the employer's claim that notice should not be given.

c. The judicial officer may prohibit all contact with the plaintiff or other protected parties, except as otherwise specifically ordered in writing by the court. *See*A.R.S. § 12-1809(F)(2).

d. The judicial officer may grant relief that is necessary for the protection of the employer, employees or other persons who enter the employer's property and that is proper under the circumstances.

e. If an Injunction Against Workplace Harassment is granted, the employer or authorized agent shall be provided with a conformed copy of the Injunction Against Workplace Harassment at the initial *ex parte* hearing.

5. *Denial of an Injunction Against Workplace Harassment.* If after the *ex parte* hearing the judicial officer does not have sufficient information to grant the order, the judicial officer may deny the request or set a hearing within 10 days with reasonable notice to the defendant. The judicial officer shall document any denial of an order.

CREDIT(S)

Added Sept. 5, 2007, effective Jan. 1, 2008. Amended Sept. 16, 2008, effective Sept. 26, 2008. Adopted on a permanent basis effective Sept. 3, 2009. Amended on an emergency basis effective Sept. 30, 2009. Amended June 30, 2010, effective on an emergency basis July 29, 2010, adopted on a permanent basis Sept. 1, 2011. Amended on a permanent basis effective Sept. 2, 2010.

COMMITTEE COMMENTS

Rule 6(C)(3)(a). Significant or repetitive acts of domestic violence by the defendant that posed a grave danger to the plaintiff or protected persons may present good cause to consider time periods beyond the one year.

Rule 6(C)(5)(a)-(c). If the residence is included in the no contact provision of an Order of Protection, an apartment number shall not be listed. By listing the address and location without the apartment num-

ber, the defendant is prohibited from being on the premises, including the parking lot.

Rule 6(C)(5)(d). The appropriate law enforcement agency referenced in subdivision (5) is generally the police department or sheriff's office with jurisdiction over the location of the defendant or firearm.

Rule 6(D). Regardless of the jurisdiction of the authorizing judicial officer, the court may issue an Emergency Order of Protection using the superior court name and case number. The law enforcement agency shall file the Emergency Order of Protection with certification of service in superior court.

Rules 6(E)(1); 6(F)(1). There is no statutory provision regarding Injunction Against Harassment or Injunction Against Workplace Harassment that would prohibit issuance by a limited jurisdiction court when a family law action is pending in superior court.

LIBRARY REFERENCES

Breach of the Peace 17, 20.
Divorce 87.
Infants 191.
Westlaw Topic Nos. 62, 134, 211.
C.J.S. Breach of the Peace §§ 14 to 15, 18 to 19, 21, 25.
C.J.S. Divorce § 138.
C.J.S. Domestic Abuse and Violence §§ 2 to 3, 5 to 14, 18 to 21, 23.
C.J.S. Infants §§ 24 to 25, 41, 46 to 48.

17B A. R. S. Rules Protective Order Proc., Rule 6, AZ ST RPOP Rule 6

Current with amendments received through 6/1/12

END OF DOCUMENT

Westlaw Delivery Summary Report for DERICKSON,DAVID

Date/Time of Request:	Friday, September 21, 2012 11:21 Central
Client Identifier:	KING
Database:	AZ-ST-ANN
Citation Text:	AZ ST RPOP Rule 6
Lines:	359
Documents:	1
Images:	0

KING EXHIBIT 4

IN THE MUNICIPAL COURT OF

THE TOWN OF QUARTZSITE, STATE OF ARIZONA

HR2012-0014 7/5/2012

TOWN OF QUARTZSITE

v.

DOUGLAS CLYDE GILFORD

MINUTE ENTRY

The Court has received and considered Defendant's Emergency Ex-Parte Motion to Quash Unlawful Injunction Against Workplace Harassment.

All limited and general jurisdiction courts shall be available during normal operating hours to issue and enforce protective orders, regardless of the residence of the parties. See A.R.S. §§ 13-3602, 12-1809 and 12-1810. The Rules governing Protective Orders provides that "[n]o limited or general jurisdiction court shall refuse a person's request to file a petition for a protective order even if that particular court does not normally issue protective orders." Rules Protect. Ord. Proc., Rule 1(C) (4).

Furthermore, in *Winter v. Coor*, 144 Ariz. 56, 695 P.2d 1094 (1985), the Arizona Supreme Court held that magistrate (municipal) courts are part of the integrated judicial department of this state, citing Article VI, § 1 of the Arizona Constitution. Therefore, it is clear that municipal courts are not just a department of municipal government but are also part of the state judicial department and therefore must be administered as a separate branch of municipal government and be subject to the administrative authority of the Supreme Court pursuant to Article 3, § 1.

Additionally, the Supreme Court in *Winter v. Coor*, held that municipal judges are judicial officers, not officers or agents of the town. The Court further acknowledged the necessity of maintaining municipal courts as fair, independent, and impartial tribunals and the importance of preserving the public's perception of these courts as impartial and unbiased. So, while the judge is selected in the manner set forth in the local charter or ordinances, and the judge's compensation is set by the governing body of the city or town, any other authority over the municipal court is limited by the need for the courts to operate in a fair, independent and impartial manner.

The grounds for change of judge are set forth in A.R.S. § 12-409, Ariz. R. Civ. P. Rule 42(f)(2)(A). The ground cited most frequently is that the party "has cause to believe and does

believe that on account of bias, prejudice, or the interest of the judge he cannot obtain a fair and impartial trial." The decision whether to disqualify a judge must be based on an objective standard, however, rather than upon the subjective beliefs of the party who makes the challenge. Ariz. R. Civ. P. Rule 42(f)(2)(D); Daniel J. McAuliffe, *Arizona Civil Rules Handbook*, at 542 (2010).

An Order of Protection shall be issued ex parte if the judicial officer finds reasonable cause to do so. The Injunction Against Workplace Harassment allows an employer or an agent of an employer to file for relief on behalf of all employees at the workplace, any person who enters the employer's property and any person who is performing official work duties. The Court in an Ex-Parte setting, found that "a single threat or act of physical harm or damage or a series of acts over a period of time that would cause a reasonable person to be seriously alarmed or annoyed" have occurred.

This is consistent with "[t]he judicial officer shall issue an Injunction Against Workplace Harassment upon finding: 1) reasonable evidence of workplace harassment by the defendant during the year preceding the filing; or 2) good cause to believe that great or irreparable harm would result to the employer or other person who enters the employer's property or who is performing official work duties, if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition." Rules Protect. Ord. Proc., Rule 6 (F) (4) (a).

The Court did take into account that the Plaintiff was a government and tailored the Injunction Against Workplace Harassment. There is a qualification which ensures that the employer may not seek an injunction primarily to accomplish a purpose for which it was not designed (i.e. prohibit free speech or other activities that are constitutionally protected or otherwise protected by law.) As such, the Court in its Order, ordered "No Contact. Defendant shall have no contact except through attorneys, legal process, court hearings. The defendant may contact the Town via email/fax and/or mail. The Court further ordered that the defendant could not go into the lobby of Town Hall. However, the defendant was told that he may attend Town Hall Meetings, and enter Town Hall to conduct business in the Municipal Court. The Order does not prevent the Defendant from video recording in Town Hall or exercising his redress of grievances to the government. The Order at this time prohibits the Defendant from interacting with town employees that staff counters in the Town Hall Lobby.

At any time while a protective order or modified protective order is in effect, a defendant may request one hearing in writing. See A.R.S. § 13-3602(I). For the reasons cited above the Defendant's Emergency Ex-Parte Motion to Quash Unlawful Injunction Against Workplace Harassment is denied.

IT IS ORDERED DENYING the motion.

Dated this 5th Day of July 2012.

_____

Hon. Lawrence C. King

Copies to:

Town of Quartzsite

Defendant

_____

Deputy Clerk

Date:

KING EXHIBIT 5

IN THE MUNICIPAL COURT OF
THE TOWN OF QUARTZSITE, STATE OF ARIZONA

CR2011-0116
CR2011-0121
CR2011-0124

1/24/2012

STATE OF ARIZONA

v.

DANA STADLER

MINUTE ENTRY

The Court has received and considered Defendant's Motion to Remove Martin Brannan as Prosecutor. The American Bar Association and Justice Department do have general standards to guide prosecutors in choosing which cases to pursue, including quality of evidence, extent of harm caused by the offense, motives of the complainant, community standards and cooperation of the accused in the apprehension of others.

It appears that the Court is being asked to remove the prosecutor under a theory of alleged ethical violation, vindictive prosecution, selective prosecution, and under the 14th Amendment Equal Protection Clause and fundamental fairness.

First, prosecutorial discretion is the authority of an agency charged with enforcing a law to decide whether to enforce, or not to enforce, the law against someone. The prosecutor must be able to determine that there is probable cause before he decides if charges will be filed against the criminal. In *Bordenkircher v. Hayes,* 434 U.S. 357 (1978), the United States Supreme Court opined that, "so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statue, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."

The Supreme Court decision *Illinois v. Gates,* 462 U.S. 213 (1983), lowered the threshold of probable cause by ruling that a "substantial chance" or "fair probability" of criminal activity could establish probable cause. A better-than-even chance is not required. Thus, the prosecutor is given generally wide latitude as long as the prosecutor has probable cause to believe that the accused committed an offense defined by statue. The standard is a very low huddle to overcome.

Vindictive prosecution occurs when government penalizes a person merely because he has exercised a protected statutory or constitutional right. *U.S. v. Paguio*, 114 F.3d 928, appeal after remand 168 F.3d 503. The claim of vindictive or selective prosecution requires showing that defendant (1) was singled out for prosecution while other violators similarly situated were not prosecuted; and (2) decision to prosecute was based on arbitrary classification such as race, religion, or exercise of protected rights. *U.S. v. Monsoor*, 77 F.3d 1031.

The Court chooses not to rule on the Defendant's claim that other individuals are being targeted are politically opposed to the current Town of Quartzsite's administration. Suffice to say, the charges that have been made appear to be valid and not based upon arbitrary classification. As for the exercise of protected rights, that would be an issue for a higher court to decide.

The State has filed a Notice of Substitution of Counsel on January 20, 2012. It appears that Thomas W. Jones will not be representing the State in this matter. As such, the Court finds that it does not have to rule on the Defendant's Motion and considers it moot.

Dated this 24th Day of January 2012.

Hon. Lawrence C. King

Copies to:

Town of Quartzsite Prosecutor
Special Prosecutor Jones

Defense Counsel

_____
Deputy Clerk

Date:

KING EXHIBIT 6

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Peter Michael Palmer, an individual, Plaintiff, vs. City of Prescott, et al., Defendants.	No. CV-10-8013-PCT-DGC **ORDER**

On August 6, 2010, Plaintiff filed a motion to disqualify the undersigned judge pursuant to 28 U.S.C. § 455 on the ground that the undersigned is biased against Plaintiff because of Plaintiff's religious beliefs and activities. Doc. 31. The Court denied the motion because "[t]he undersigned judge holds no bias against Plaintiff, and the facts set forth in Plaintiff's motion provide no basis upon which the undersigned's impartiality might reasonably be questioned." Doc. 32 at 3. Plaintiff has filed a second motion to disqualify the undersigned judge, this time pursuant to 28 U.S.C. § 144. Doc. 34. Defendants have stated that they will not respond to the motion. Doc. 35. For reasons that follow, the Court will deny the motion.

I. Legal Standard.

Under 28 U.S.C. § 144, "[w]henever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice . . . against him . . . , such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." Before another

judge is to be assigned to hear the proceeding, however, the "judge against whom [the] affidavit of bias is filed" may determine its legal sufficiency. *United States v. Azhocar*, 581 F.2d 735, 738 (9th Cir. 1978). "Only after the legal sufficiency of the affidavit is determined does it become the duty of the judge to 'proceed no further' in the case." *Id.* at 738; *see Toth v. Trans World Airlines, Inc.*, 862 F.2d 1381, 1388 (9th Cir. 1988) (A district judge need only assign the motion to another judge for a hearing "after the legal sufficiency of the affidavit is determined[.]").

"The standard for recusal under 28 U.S.C. § 144 . . . is whether a reasonable person with knowledge of all the facts would conclude the judge's impartiality might reasonably be questioned." *Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 712 (9th Cir. 1993). "[M]ere conclusory allegations . . . are insufficient to support a claim of bias or prejudice such that recusal is required." *United States v. $292,888.04 in U.S. Currency*, 54 F.3d 564, 566 (9th Cir. 1995) (citing *United States v. Sibla*, 624 F.2d 864, 868-69 (9th Cir. 1980)).

II. Analysis.

Plaintiff seeks disqualification of the undersigned judge for reasons unrelated to the claims and issues in this case. Plaintiff alleges that disqualification is required because the undersigned is a member of The Church of Jesus Christ of Latter-day Saints (the Mormons), Plaintiff is an Evangelical Christian to the Mormons (a fact unknown to the undersigned until Plaintiff disclosed it in his previous motion to disqualify), and the undersigned's religious beliefs therefore will make him biased against Plaintiff. Doc. 34. Plaintiff has provided an affidavit in which he makes various assertions about beliefs and commitments of practicing Mormons, concludes (correctly) that the undersigned is a practicing Mormon, and therefore asserts that the undersigned necessarily will be biased against him because he actively opposes Mormon beliefs and practices. Doc. 334 at 19-22.

Plaintiff's complaint in this case asserts claims against the City of Prescott and some of its police officers and city attorneys for violation of his Fourth and Fifth Amendment rights, negligent supervision, conspiracy, and conspiracy to obstruct justice. Doc. 30. Plaintiff's claims arise out of an encounter he had with police on January 23, 2009, and

subsequent events. *Id.* The claims do not relate to Plaintiff's activities with respect to Mormons; The Church of Jesus Christ of Latter-day Saints is not a party to this litigation; and, as the Court noted in its previous order, the undersigned is not biased against Plaintiff individually or Evangelical Christians generally. Plaintiff's activities with respect to Mormons have nothing to do with this case and will have no effect on the Court's rulings.[1]

As Plaintiff's motion correctly acknowledges, federal courts and judges consistently hold that membership in a church does not create a sufficient appearance of bias to require disqualification. Doc. 34 at 5; *see Feminist Women's Health Center v. Codispoti*, 69 F.3d 399, 400-401 (9th Cir. 1995); *Singer v. Wadman*, 745 F.2d 606, 608 (10th Cir. 1984); *Menora v. Illinois High School Ass'n*, 527 F.Supp. 632, 634 (N.D. Ill. 1981); *State of Idaho v. Freeman*, 507 F.Supp. 706, 729 (D. Idaho 1981); *see also Commonwealth of Pennsylvania v. Local Union 542, International Union of Operating Engineers*, 388 F.Supp. 155 (E.D.Pa. 1974).

As the Tenth Circuit has explained:

> [M]erely because Judge Stewart belongs to and contributes to the Mormon Church would never be enough to disqualify him. . . . Religious freedom is one of the Constitution's most closely guarded values. The First Amendment prohibits congressional action respecting an establishment of religion, or prohibiting its free exercise. Article VI, clause 3, provides that all governmental officers be bound by an oath to support the Constitution, and that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." Should we require federal judges to disclose the firmness of their beliefs in religious doctrine, it is a very fine line before we enter the business of evaluating the relative merits of differing religious claims.

In re McCarthey, 368 F.3d 1266, 1270 (10th Cir. 2004) (quotation marks and citations omitted).

Given this well established law and the conclusory nature of Plaintiff's affidavit regarding the undersigned's alleged bias, the Court concludes that Plaintiff's affidavit is legally insufficient to require disqualification under 28 U.S.C. § 144. No reasonable person

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[1] Plaintiff asserts that police reports in this case "tangentially show that plaintiff is a so-called 'Anti-Mormon,'" Doc. 34 at 4, but any such reference in the reports will reveal nothing more than Plaintiff already has disclosed in his motions to disqualify.

with knowledge of all the facts would conclude that the undersigned's impartiality might reasonably be questioned. *Taylor*, 993 F.2d at 712. As Judge Higginbotham noted in denying a similar motion to disqualify under § 144: "If the facts pleaded do not warrant my disqualification, I am not only permitted to continue to preside over the case, I have an affirmative duty not to withdraw." *Commonwealth of Pennsylvania*, 388 F.Supp. at 159 (citations omitted).

IT IS ORDERED that Plaintiff's motion to disqualify (Doc. 34) is **denied**.

DATED this 7th day of September, 2010.

David G. Campbell
United States District Judge

KING EXHIBIT 7

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Peter Michael Palmer, an individual, Plaintiff, vs. City of Prescott, et al., Defendants.	No. CV-10-8013-PCT-DGC **ORDER**

Defendants have filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and an alternative motion for a more definite statement pursuant to Rule 12(e). Dkt. #26. Plaintiff has filed a motion seeking an extension of time to respond or leave to amend the complaint to cure the purported defects. Dkt. #27.

Pursuant to Rule 15(a)(2), and in the interest of justice, the Court will grant Plaintiff leave to file a second amended complaint. Plaintiff shall file the second amended complaint by **July 30, 2010**. Defendants' motion to dismiss the first amended complaint and alternative motion for a more definite statement will be denied as moot.

Plaintiff is advised that he must become familiar with, and follow, the Federal Rules of Civil Procedure and the Court's Local Rules of Civil Procedure. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986) ("Pro se litigants must follow the same rules of procedure that govern other litigants."); *Carter v. Comm'r of Internal Revenue*, 784 F.2d 1006, 1008 (9th Cir. 1986) ("Although pro se, [plaintiff] is expected to abide by the rules of the court in which he litigates."). The Federal Rules of Civil Procedure are available at the following

Internet website: www. law.cornell.edu/rules/frcp/. A copy of the Court's Local Rules of Civil Procedure may be obtained in the Clerk's Office and are available online at the Court's Internet website: www.azd.uscourts.gov (follow hyperlink titled "Opinions /Orders/Rules").

For purposes of the second amended complaint, Plaintiff is directed to Rule 8 of the Federal Rules of Civil Procedure. Rule 8(a) provides that a complaint shall contain a short and plain statement of the grounds upon which the court's jurisdiction depends, a short and plain statement of the claim showing that the plaintiff is entitled to relief, and a demand for the relief sought. Fed. R. Civ. P. 8(a)(1)-(3). These pleading requirements shall be set forth in separate and discrete numbered paragraphs. Each paragraph "must be simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). Plaintiff must set forth each discrete legal claim for relief in a separate count (i.e., count one, count two, etc.).

The second amended complaint must give Defendant fair notice of Plaintiff's claim and must plead "enough facts to state a claim to relief that is plausible on its face.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully," demanding instead sufficient factual allegations to allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" *Id.* at 1950 (citing Fed. R. Civ. P. 8(a)(2)).

Plaintiff is warned that if he fails to prosecute this action or comply with the rules or any Court order, the Court may dismiss the action with prejudice. Fed. R. Civ. P. 41(b); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir.1992); *see Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (district court did not err in dismissing pro se civil rights action for failure to comply with a local rule); *Pagtalunan v. Galaza*, 291 F.3d 639, 640-43 (9th Cir. 2002) (district court did not err in dismissing pro se action for failure to comply with a court order).

IT IS ORDERED:

1. Plaintiff's motion for leave to amend (Dkt. #27) is **granted**.

2. Plaintiff shall have until **July 30, 2010** to file his second amended complaint. **No further extensions will be granted absent truly extraordinary circumstances.**

3. Defendants' motion to dismiss and alternative motion for a more definite statement (Dkt. #26) is **denied** as moot.

4. Plaintiff's amended motion for leave to amend (Dkt. #28) is **denied** as moot.

DATED this 14th day of July, 2010.

David G. Campbell
United States District Judge

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Peter Michael Palmer, Plaintiff, vs. Kenton D. Jones, in his official capacity as Yavapai County Superior Court Judge; Robert M. Brutinel, in his official capacity of Arizona Supreme Court Justice; John Pelander, in his official capacity of Arizona Supreme Court Justice; W. Scott Bales, in his official capacity of Arizona Supreme Court Justice; Andrew D. Hurwitz, in his official capacity of Arizona Supreme Court Justice; Rebecca White Berch, in his official capacity of Arizona Supreme Court Justice; Unknown Parties, John or Jane Does I-M, in their official capacity of judicial officer in and for the State of Arizona, Defendants.	No. CV-11-1896-PHX-GMS **ORDER**

Pending before the Court are Plaintiff's Petition for Emergency Temporary Restraining Order (without notice), Motion for Preliminary Injunction, and Verified Complaint for Injunctive & Declaratory Relief (Doc. 1); and Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2). The Court will grant the application to proceed in forma pauperis. The Court will, however, deny Defendant's requested Temporary Restraining Order without notice.

Analysis

Plaintiff asks this Court to issue a temporary restraining order without notice. Fed. R. Civ. P. 65(b) permits the Court to do so only if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.' Plaintiff has not met that burden.

According to the allegations of Plaintiff's Petition for Emergency Temporary Restraining Order, Motion For Preliminary Injunction and Verified Complaint for Injunctive & Declaratory Relief (Doc. 1), Plaintiff was served, on Friday, September 16, with a Civil Injunction Against Harassment which restrains him from taking specified actions with respect to Melody Thomas-Morgan. Plaintiff argues that Judge Jones's determination that he has threatened Ms. Thomas-Morgan violates or chills his First Amendment Rights to speak on his internet blog. Plaintiff further argues that the injunction, as issued, unconstitutionally prohibits him from possessing firearms during the term of the injunction.

Plaintiff thus asks this Court to take jurisdiction over this matter and without notice order Judge Jones, the Yavapai County Superior Court Judge issuing the injunction, to vacate the injunction immediately because it chills Plaintiff's right to freedom of speech and deprives him of his right to bear arms. Plaintiff further requests the Court to: (1) declare Arizona Rules of Procedure on Orders of Protection 6(E)(4)(e)(2) unconstitutional; (2) order the Justices of the Supreme Court to repeal it; and (3) enjoin the Arizona Supreme Court, and by extension, all judicial officers from issuing said injunctions. He further requests that the Court order that Plaintiff's name be removed from the NCIC database on which he alleges he will be placed due to the issuance of the injunction and that we further allow him to audit that database to confirm his removal from it.

Of course, pursuant to Arizona law, in those cases in which an injunction is issued without notice, which this one apparently was, Plaintiff is entitled to an expedited hearing if he wishes, to challenge the injunction at the earliest possible date and not later than ten

days after Plaintiff's request. A.R.S. § 12-1809(H) (Supp. 2010). Plaintiff alleges that even if he brings such a challenge, ten days would not be a sufficient time in which to prepare his case, and, on the other hand, if he lost, appellate relief would take too long. This argument is belied by the extensive arguments he has set forth in his motion. Plaintiff is currently aware of the legitimate bases on which to challenge the injunction if he wishes to do so in state court.

Injunctions against harassment are generally the province of state courts. This Court, does not necessarily know all the facts under which the state court determined that the injunction without notice should issue to the Plaintiff in this matter. Thus, it cannot determine the extent, if any, to which Plaintiff is suffering immediate and irreparable injury by virtue of the injunction without giving Defendants the opportunity to be heard. At any rate "adequate state court review"of Judge Jones' order is available on an expedited basis before Judge Jones himself, and, if necessary the Arizona appellate courts. Further, as Plaintiff's Complaint ably sets forth, the appropriate interpretation of the scope of the injunction is subject to arguments under both state and federal law, and Plaintiff asserts could be invalidated under either or both. This, thus appears to be a case in which it may be appropriate for this Court to abstain from exercising its jurisdiction under *Railroad Comm'n of Texas v. Pullman Co.,* 312 U.S. 496 (1941). In such cases, it is appropriate for a federal court to abstain from exercising its jurisdiction until the state courts have had the opportunity to decide the question to determine whether an appropriate application of state law avoids any federal questions.

Given the circumstances present here, Plaintiff is not eligible for the entry of a TRO without notice.

IT IS THEREFORE ORDERED that Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2) is granted. Plaintiff shall be responsible for service by waiver or of the summons and complaint

IT IS FURTHER ORDERED that Plaintiff's Application for Emergency Temporary Restraining Order (Doc. 1) is denied.

DATED this 3rd day of October, 2011.

/G. Murray Snow
United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETER MICHAEL PALMER, Plaintiff - Appellant, v. COUNTY OF YAVAPAI, a political subdivision of the State of Arizona; et al., Defendants - Appellees.	No. 10-17690 D.C. No. 3:10-cv-08049-JWS MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John W. Sedwick, District Judge, Presiding**

Submitted March 6, 2012***

Before: B. FLETCHER, REINHARDT, and TASHIMA, Circuit Judges.

Peter Michael Palmer appeals pro se from the district court's judgment in his

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable John W. Sedgwick, United States District Judge for the District of Alaska, sitting by designation.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

42 U.S.C. § 1983 action alleging constitutional violations by public officials in Arizona. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the denial of leave to amend, *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011), and the denial of a motion for disqualification, *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 714 (9th Cir. 1990). We affirm.

The district court did not abuse its discretion in denying leave to amend the complaint on the grounds of futility and for failure to comply with the local rules. *See Cervantes*, 656 F.3d at 1043 (upholding denial of leave to amend where motion was "procedurally improper and substantively unsupported," and noting that plaintiffs had failed to comply with local rules).

The district court did not abuse its discretion in denying Palmer's motion for disqualification because all of the incidents complained about in Palmer's motion "occurred in the course of judicial proceedings, *and* neither (1) relied upon knowledge acquired outside such proceedings nor (2) displayed deep-seated and unequivocal antagonism that would render fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 556 (1994).

Although Palmer's notice of appeal indicated that he was also appealing the denial of his motion for reconsideration and the entry of summary judgment,

Palmer did not brief these issues on appeal and they are accordingly deemed waived. *See Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1033 (9th Cir. 2008).

AFFIRMED.