



MARICOPA COUNTY SHERIFF'S OFFICE

JOSEPH M. ARPAIO
SHERIFF



November 30, 2009

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

**Re: Judicial Complaint Regarding Maricopa County Superior Court Judge
Gary Donahoe**

Dear Commissioners:

Please accept this letter as a formal complaint against Gary Donahoe for violating of the judicial canons, failing to uphold the integrity and independence of the judiciary, failing to perform the duties of his office impartially, and displaying conduct that brings the judiciary into disrepute.

My name is David Hendershott and I am the Chief Deputy of the Maricopa County Sheriff's Office, 100 West Washington Suite 1900 Phoenix, Arizona 85003. My telephone number is: 602.876.1801.

I respectfully request that the Commission investigate Judge Donahoe for conduct that may violate the Judicial Code of Conduct. The incidents that may violate the Judicial Code are specifically alleged below as follows:

I. Judge Donahoe's Misconduct During Criminal Court Tower Grand Jury Proceedings.

First, Judge Donahoe failed to disclose his attorney-client relationship with attorneys appearing before him on a grand jury investigation into Maricopa County's new criminal court tower. The Maricopa County Board of Supervisors hired Attorneys Thomas Irvine and Edward Novak to quash a grand jury subpoena related to the criminal court tower investigation. The investigative subpoenas targeted Mr. Irvine, Mr. Novak, the court, and the Board, as all were under investigation for potential wrongdoing. However, Judge Donahoe refused to send the case to another county and also refused to remove Messrs. Irvine and Novak from the case. Instead, Judge Donahoe removed the Maricopa County Attorney's Office, finding a conflict existed because MCAO had assisted the Sheriff's Office the criminal investigation. Judge Donahoe never addressed the fact that the court itself had entered into a contract with

Messrs. Irvine and Novak so that Mr. Irvine could serve as the "Space Planner" for the Superior Court's new criminal court tower. To make matters worse, Judge Donahoe failed to see that a conflict existed or that allowing Messrs. Irvine and Novak to appear before him could raise an appearance of impropriety. The MCAO appealed Judge Donahoe's disqualification decision. The Arizona Court of Appeals refused to exercise jurisdiction over that Special Action (See 1 CA-SA 09-0056). After the Court of Appeals refused to hear the Special Action, the Sheriff's Office and the MCAO discovered the true relationship between the Court and Messrs. Irvine and Novak. A local news media investigation revealed that the Court hired Mr. Irvine to serve as more than a Space Planner. Instead, the Court hired Messrs. Irvine and Novak as attorneys for the court on the project under a contract approved by the Arizona Attorney General, who was also under investigation by the Sheriff's office. As the criminal presiding judge, Judge Donahoe surely knew what attorneys represented the Court in the criminal court tower project. Given this knowledge, Judge Donahoe acted improperly by quashing a subpoena at the request of his counsel on a matter involving their contractual, attorney-client relationship and never disclosing that attorney-client relationship to either the opposing party or the appellate courts. Prosecuting authorities appealed Judge Donahoe's astonishing decision to the Arizona Supreme Court, and that matter is currently pending (CV-09-0165-PR).

Similarly, Judge Donahoe failed to hold County Supervisor Donald Stapley in contempt for disclosing grand jury information to his personal criminal attorney. Mr. Stapley learned the grand jury information in his professional capacity as a County Supervisor, yet he disclosed this confidential information to his personal defense attorney for use in his personal criminal case. Mr. Stapley's disclosure stymied the investigation and clearly raised serious ethical and obstruction of justice concerns, yet Judge Donahoe took no action against Mr. Stapley.

II. Misconduct Related to the Stapley Prosecution.

Earlier this year, County Supervisor Stapley faced pending criminal charges. After a Search Warrant was executed on the premises of one of his associates, Attorney Grant Woods filed a motion to controvert. Despite the clear statutory scheme requiring that the motion to controvert be filed in the court where the search warrant was obtained (here, the Justice Court), presiding criminal court Judge Donahoe picked up the case one day after Mr. Woods filed the motion and set the matter for a hearing. (See CV2009-005990). The prosecuting authorities presented Judge Donahoe with the law, and Judge Donahoe even acknowledged that the Mr. Woods' motion should have been filed in the justice court. However, Judge Donahoe did not end his involvement in the Stapley matter. When Mr. Woods later appealed the justice court decision, Judge Donahoe, who is not the assigned lower court appeals judge, somehow assigned himself to the Stapley case and ruled against the Sheriff's Office. (See LC2009-000701).

III. Misconduct Related to Alleged Criminal Defendant Transport/Attendance Problems.

On or about April 24 , 2009 , Judge Jonathan Schwartz wrote an e-mail to Judges Mundell, Judge Donahoe and Judge Ryan complaining that the Sheriff's Office and the Court Security Division failed to transport criminal defendants to court in a timely manner. Judge Schwartz indicated that the late arrivals might be due to "budget crisis." That same day, Judge Donahoe e-mailed Captain Bill Van Ausdale of the Sheriff's Office Court Security Division. Judge Donahoe informed Captain Van Ausdale that he had concluded defendants were more

likely to arrive to court on time if they were not in the Sheriff's custody. Judge Donahoe further stated that according to that morning's newspaper, the "sheriff" had committed over 200 deputies to an operation. Judge Donahoe therefore concluded that the late arrival issue "doesn't appear to be a staff shortage issue but rather a 'staff allocation' issue." Judge Donahoe closed this e-mail by stating that he was inclined to begin reviewing release conditions and "getting the number of defendants under the control of the sheriff down."

Several days later, on or about April 28, 2009, Judge Donahoe e-mailed to Captain Van Ausdale noting that "things haven't improved." Judge Donahoe stated that the Sheriff's Office used "200 deputies and posse for a crime sweep [immigration detail] but insufficient deputies to carry out the mandated function of transporting defendants to court - something just isn't right here." Judge Donahoe told Captain Van Ausdale that his next step would be to advise defense agencies that due to MCSO's inability to transfer inmates, the court would review defendants' release conditions in an effort to "reduce" the number of inmates needing transport. Judge Donahoe concluded by asking Captain Van Ausdale to advise him (Judge Donahoe) if the Captain would get "permanent and sufficient staffing" in the "next few days." That same day, Deputy Chief David Trombi met with Judge Donahoe in an effort to clarify that the Sheriff's Office would do the best it could given the circumstances. Judge Donahoe, quickly and sharply stated that he would inform criminal defense counsel to file motions to release their in-custody clients and would then "blame the Sheriff [Arpaio]" for this to the media and citizens. Captain Van Ausdale, Sergeant Glenn Chapski, and Lieutenant Ken Colbert from the Sheriff's Office and Bob James, Marcus Reinkensmeyer, and Phil Knox from the Superior Court all witnessed Judge Donahoe's threat. Judge Donahoe's unprofessional threat to use both the Court's power and the media to embarrass Sheriff Arpaio clearly violates canons of judicial ethics.

IV. Judge Donahoe's Recent Conduat Shows His Bias Against the Sheriff's Office.

On information and belief, on July 17, 2009, Deputy Chief Trombi sent a letter to Chief Judge Mundell in which he complained about Judge Donahoe 's April 2009 conduct, discussed above. Deput Chief Trombi also complained about several statements that Judge Mundell made to the media and pointed out statistical figures compiled by the Sheriff's Office showing that the Court and other judicial office personnel - not the Sheriff's Office - caused late starts for court appointments roughly 65% of the time.

On information and belief, Judge Donahoe is biased against the Sheriff and Sheriff's office and working in concert with Chief Judge Mundell to publicly attack the Sheriff's Office for its role in pending investigation in Maricopa county. Several recent rulings demonstrate Judge Donahoe's bias. First, after the July 17 letter, Judge Donahoe charged Deputy Chief Trombi with contempt and fined him for his conduct. Second, Judge Donahoe held a detention officer in contempt over a security matter. Judge Donahoe also issued a bizarre and inappropriate ruling in the detenion office matter requiring the detention officer to call a **public** press conference and apologize to the citizens or face jail. These issues place a serious cloud over the ethics and tactics currently employed in the Maricopa County Courts.

V. Additional Concerns and Conclusion.

The Commission should note that when Judge Donahoe worked in private law practice, his partner from 1979-1989 was Attorney Joel Robbins. For the last seventeen years, Mr. Robbins has used his law practice to sue and publicly criticize the Sheriff and to participate actively in an election campaign to unseat Sheriff Arpaio. The Sheriff's Office has filed a number of State Bar complaints against Mr. Robbins for his unethical conduct in court. On information and belief, based on the long relationship and communications history between Judge Donahoe and Mr. Robbins, I believe Mr. Robbins and Judge Donahoe share a mutual dislike of Sheriff Arpaio. Moreover, given the lifelong personal and business relationships generally between law firm partners, Judge Donahoe must, at a minimum, disclose his bias and remove himself from all matters involving the Sheriff's Office.

Finally, on information and belief Bob James, Judicial Services Administrator - Trial Courts of Arizona for Maricopa County Superior Court, spoke in person with MCSO Court Security Division Sergeant Chapski in the Superior Court hallways. Because of his position within the Court system, Mr. James would have personal knowledge of the Court's strategy on various issues. During his conversation with Sergeant Chapski, Mr. James told Sergeant Chapski that "they" (referring to Judge Mundell and other judges) felt that they only going to get one shot at Sheriff Arpaio. I believe that this reference led to numerous Order to Show Cause filings, which in turn led to the contempt holding against Deputy Chief Trombi.

I affirm, under penalty of perjury, that the foregoing information and the allegations contained in the attached complaint are true to the best of my knowledge and belief.

Signature *[Handwritten Signature]* Date: 11/30/09

Sworn before me this 30th day of November, 2009

[Handwritten Signature]
(Signature of Notary Public)

My Commission Expires:

