



# 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 Barbara Mundell**

Dear Commissioners:

Please accept this letter as a formal complaint against Judge Barbara Mundell for violating the judicial canons, failing to uphold the integrity and independence of the judiciary, failing to perform the duties of her 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 Mundell 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 Mundell's Misconduct in the Stapley Criminal Investigation.

Judge Mundell played a major role in selecting Retired Judge Kenneth Fields to preside over a criminal matter involving County Supervisor Donald T. Stapley, Jr (Case No. CR2008-009242) even though Judge Mundell and others knew that Judge Fields was openly hostile toward the Sheriff's Office and other prosecuting agencies. Then-criminal presiding Judge Anna Baca gave Judge Mundell notice of Judge Fields' open hostility towards prosecuting agencies after a court employee, Robin Hoskins, told Judge Baca that she heard Judge Fields make openly critical and hostile statements about the Maricopa County Attorney's Office (MCAO). However, instead of allowing the randomly assigned judge to preside over the Stapley investigation, Judge Mundell failed to acknowledge a clear appearance of impropriety and allowed Judge Fields to handle the Stapley matter. Indeed, on information and belief, Judge Mundell likely hand-selected Judge Fields. In fact, the Arizona Republic reported that Judge Fields admitted to receiving a telephone call from Judge Mundell that same day asking him to preside over the case. Based on these facts, we believe that Judge Mundell made it possible for Judge Fields to remain on the Stapley case. Judge Mundell then refused to answer questions about the Stapley assignment. Specifically, after the State attempted to ascertain why Judge Mundell assigned Judge Fields to the Stapley matter, Judge Mundell sent a letter to the prosecutor chastising her for questioning the assignment. She never explained why a retired judge was assigned to the case.

Judge Mundell's assignment in the Stapley matter fits with her pattern of working with Judge Fields against prosecuting agencies. Judge Mundell knew that Judge Fields had made public statements criticizing the MCAO and submitted information to the Arizona State Bar that resulted in a bar complaint against Maricopa County Attorney Andrew Thomas. Indeed, on information and belief, Judge Mundell maintains a close and friendly professional relationship with Judge Fields. Given their relationship, it is highly likely that Judge Mundell reached out to her close, trusted friend and asked Judge Fields to file the bar complaint against County Attorney Thomas to aid Judge Mundell in her political struggles against the County Attorney.

After a hearing in February 2009, the state learned that Judge Fields received the case because the Superior Court declared that it had a conflict. In fact, at a hearing requesting that the defendant, Mr. Stapley, be arraigned, Judge Baca refused to preside over the hearing and instead brought in another retired judge, Jonathan Schwartz. However, even after deciding that a conflict existed, Judge Baca continued to consider the State's motion to remove Judge Fields and the subsequent defense motion to disqualify the MCAO from the prosecution. Ultimately, Judge Baca refused to hear the motion to remove Judge Fields, focusing instead on the motion to disqualify the MCAO. Judge Baca even suggested that Mr. Stapley's defense file a motion claiming MCAO was biased. As the Stapley prosecution continued, Judge Baca also failed to sanction Mr. Stapley's counsel for filing a travel request document that misled the Court. Indeed, within a few minutes of denying the State's request for sanctions on the misleading travel request, Judge Baca told the MCAO prosecutor she would take up the State's failure to sign the joint statement prepared by the defense at a later date, inferring some type of misconduct on the State's part while ignoring the clear-cut ethical violations caused by the defense motion. If a conflict prevented the Maricopa County Superior Court from hearing basic arraignment proceedings, then Judge Mundell should not have assigned her appointee to hear **any** matters involving the MCAO.

On an even more troubling note, on the same day that local news media reported Judge Fields' assignment to the Stapley case, I telephoned Marcus Reinkensmeyer and informed him that the local media had contacted the Sheriff's Office asking who the assigned judge was and what the process was for the assignment. Mr Reinkensmeyer informed me that no Judge had been assigned to the case and the assignment would be made through a random rotation process. He also told me that the media had contacted the Court as well. I then told Mr Reinkensmeyer to please let Judge Mundell know that she would be a witness in the Stapley criminal case. Mr. Reinkensmeyer thanked me and told me that he would advise Judge Mundell immediately. Later that evening, while watching the evening news, I learned that the Court had assigned the Stapley matter to Judge Fields. I could not see how Judge Mundell could have selected Judge Fields given the information that I provided Mr. Reinkensmeyer that same day. After further inquiries, I discovered Judge Fields' bias against the County Attorneys' Office. The evidence of Judge Fields' bias clearly demonstrates that Judge Fields had a conflict of interest and was biased against the County Attorney's Office and other prosecuting agencies. Moreover, Judge Mundell violated ethical rules by selecting him to preside over the Stapley case in spite of his well-known and often demonstrated conflicts and bias.

## II. Judge Mundell's Misconduct in the Criminal Court Tower Grand Jury Investigation.

During proceedings related to a grand jury investigation involving the new Maricopa County Criminal Court tower, Judge Gary Donahoe failed to disclose his attorney-client relationship with two attorneys appearing before him, Thomas Irvine and Edward Novak. Instead, Judge Donahoe removed the MCAO, claiming a conflict existed because the MCAO assisted the Sheriff's Office in the criminal investigation. Judge Donahoe's decision stymied the investigation and raises serious ethical concerns. As the criminal presiding judge, Judge Donahoe oversaw the construction of the criminal court tower and would have known who was serving as legal counsel for the

superior court. I am aware that, at a minimum, Judge Donahoe knew some type of contractual relationship existed between the Superior Court and Messrs. Irvine and Novak and/or their law firm. Indeed, even the MCAO knew that Messrs. Irvine and Novak and their firm served as "Space Planners" for the criminal court tower. Nevertheless, Judge Donahoe failed to advise or disclose to the litigants the superior court's relationship with Messrs. Irvine and Novak and/or Judge Donahoe failed to sufficiently inquire into the extent of the relationship before continuing to preside over the matter. 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. Prosecuting authorities appealed Judge Donahoe's astonishing decision to the Arizona Supreme Court, and that matter is currently pending (CV-09-0165-PR).

I am also aware that Judge Mundell sat on the oversight committee for the criminal court tower, and she worked on the contract negotiations with Messrs. Irvine and Novak. Judge Mundell worked with the Arizona Attorney

General, not the MCAO, during those negotiations. Judge Mundell knew that a pending case involved grand jury subpoenas related to the criminal court tower, but she never informed the MCAO or the Arizona Court of Appeals that Messrs. Irvine and Novak represented the Maricopa County Superior Court on the same issue pending before her criminal presiding judge. Judge Mundell and the Maricopa County Superior Court again failed to recognize the conflict of the court as witnesses in CV2009-013965. In fact, the Maricopa County Superior Court would not acknowledge or declare a conflict until Judge Mundell was later named as a party.

### III. Additional Abuse of Discretion in Judge Selection

In addition to selecting Retired Judge Fields to preside over the Stapley prosecution, Judge Mundell also selected another retired judge, Donald Daughton, to preside over a civil matter involving the Maricopa County Board of Supervisors, the MCAO and my office, CV2008-033194. This case involved the appointment of counsel outside the MCAO as well as public records requests. Judge Daughton dismissed the complaint brought by my office, finding no standing.

### IV. Judge Mundell's Misconduct Regarding a Criminal Matter in Which She is a Party.

On information and belief, Judge Mundell either personally contacted or directed someone else to contact, the Arizona Attorney General's Office to ask for assistance in investigating the Sheriff's Department. After Judge Mundell was named as a witness, and later as a defendant, in CV2009-013965 (currently pending before an out-of-county judge) Judge Mundell, or a third-party acting on her behalf, asked the Attorney General's Office for assistance in convincing Roger Vanderpool of the Arizona Department of Public Safety (DPS) that the Sheriff's office had acted improperly in securing a criminal history database. Upon information and belief, Judge Mundell conspired with Maricopa County officials to violate FBI and State of Arizona security protocols in violation of both Federal and State law. Information received from Mr. Steven Wetzel supports this conclusion.

Judge Mundell sought to influence and obtain the support of DPS so that DPS would side with Judge Mundell and Maricopa County co-defendants in the lawsuit filed by the Sheriff's Office to halt Maricopa

County's illegal take over of these confidential law enforcement systems. Because state and federal law require a criminal justice agency to control the database system and DPS is the entity ultimately responsible at the state level, Judge Mundell attempted to influence a witness on a matter in which she herself was a named party. As part of her plan to influence the Attorney General's Office and DPS, Judge Mundell or her agent provided false information to the Attorney General's office, stating that the Sheriff Office had improperly "seized computers, court files and records of the court" with "guns a-blazing." The "guns a-blazing" quote was passed on to Director Roger VanDerpool by Chief Deputy State Attorney General Tim Nelson and Attorney General Chief of Staff Terry Fenzel.

Shortly thereafter, the Attorney General's Office (through assistant Attorney General Richard Rice) gave direct aid to Judge Mundell and her co-defendants, the Maricopa County Board of Supervisors, by approving the illegal release of a sensitive, law enforcement document to the co-defendants and their counsel in violation of FBI and State security protocol to the defendants and co-defendants' counsel. Assistant Attorney General Rice gave Judge Mundell this assistance by intentionally bypassing the State of Arizona security officer (Sharon Wilson) responsible for the information and its security. To make matters worse, the Court had appointed Ms Wilson as a special master in the criminal history litigation. In other words, the Court had charged Ms. Wilson to make independent rulings on all matters of security. The fact that the security document was faxed within one day from when it was requested shows that the defendants used improper influence and channels to obtain the security document. Even after these events, Judge Mundell's co-defendants attempted to use the Attorney General's office as a neutral arbitrator in the ongoing litigation.

In sum, on information and belief, Judge Mundell, a co-defendant in the case, attempted to manipulate the outcome of the case and influence witnesses using her personal friendships with the Attorney General's Office. Further, Judge Mundell ordered employees under her control as Presiding Judge of Maricopa County to illegally withhold information and communications required by Federal and State law from the Maricopa County Sheriff's Office "LASO," the group responsible for maintaining and providing timely security information to the FBI and the State regarding the secured law enforcement criminal justice database. Judge Mundell also retaliated against any personnel under her control that communicated with the Sheriff's Office even though the law required these communications. At least one such retaliatory incident is now under criminal investigation. Indeed, on information and belief, Judge Mundell gave an order requiring others to assist Judge Mundell, her co-defendants (the Maricopa County Board of Supervisors), and Maricopa County Management to secretly change the Maricopa County computer networking interface and allow unauthorized access to the criminal justice network in violation of Federal and State laws and security protocols. We believe that Judge Mundell gave this order knowing that the Sheriff's Office and/or the MCAO would stop their covert actions if or when these prosecuting agencies discovered. In fact, the Sheriff's Office did discover and stop their actions. The matter is currently under investigation.

#### V . 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. In front of several other witnesses in his chambers: 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, 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.

#### VI . Judge Mundell's May 2009 Statements to the Media and Subordinate Judges.

On or about May 14, 2009, television Channel 12 (KPNX) ran a story , later reiterated in the Arizona Republic, stating that during a recent judges' meeting, Chief Judge Mundell told other judges that Sheriff's vehicles had been seen driving in her neighborhood. The Arizona Republic quoted Judge Mundell as saying, " I certainly wanted to let our judges know to what lengths intimidation will be used against our judges." Interestingly, Judge Mundell never says she saw the MCSO vehicles herself. Rather, she attributes the report to what some contractors working on her home saw.

Also on or about May 14, 2009, Deputy Chief Trombi directed Capt Van Ausdale to meet with Judge Mundell in her chambers to take a complaint or gather additional information so that the Sheriff's Office could start an internal investigation into the vehicles driving around her neighborhood. Chief Judge Mundell refused to provide any information. The Chief Judge made a very public and serious accusation, but her refusal to cooperate with the Sheriff's internal investigation is highly suspicious and casts serious doubt on Judge Mundell's veracity, her ethics, and the true intent of her statements to the other judges.

On or about July 14, 2009, Judge Mundell made false statements about the Sheriff's Office to fellow members of the Judiciary and the local media. . Upon information and belief, Judge Mundell avoided media outlets because she made false statements in a meeting with her subordinate judges. In the meeting, Judge Mundell claimed that the Sheriff's Office was watching her. We believe Judge Mundell made these unfounded allegations to gain support and influence and cause bias towards the Sheriff and Sheriff's office employees among other Maricopa County Judges. Judge Mundell made these statements knowing that many are or will be assigned to Sheriff's Office cases. Someone in attendance at the judges' meeting reported Judge Mundell's statements to reporters. The Sheriff's Office learned about the statements when the local media contacted the Sheriff's Office for a response. Judge Mundell's statements also appeared in an Arizona Republic article and on a Channel 12 news story, where Judge Mundell provided statements herself. On information and belief, Judge Mundell made these statements because she knew that the statements she made in the judges' meeting had been exposed. We believe that Judge Mundell then accused the Sheriff and/or Sheriff's Deputies of

harassing her in news reports. We also believe that Judge Mundell did this knowing that the Sheriff's Office planned to file complaints against her based on the conduct described above.

Judge Mundell's closing quote in the Arizona Republic's May 14, 2009, article (referenced above) states: " We certainly don't have the luxury of squandering resources for criminalizing disagreements. We cant take out our grudges or our issues that we might have with someone else on a personal level, we don't have the luxury to do that, of using our taxpayer resources." Based on Judge Mundell's ongoing issues with the Sheriff's Office, we believe this statement was clearly a public and political attempt to stop ongoing investigations into Judge Mundell's own ethical (and possibly criminal) violations. However, Judge Mundell's televised interview with a local reporter known for his critical, hard-hitting stories against the Sheriff's office clearly backfired when the reporter pressed her with questions. Indeed, even if Judge Mundell's comments are taken at face-value, there is nothing in her statements that supported the comments she made to her fellow judges or to the local news media. As Presiding Criminal Judge, Judge Mundell had a duty to be careful with her public commentary about a law enforcement agency. She breached that duty with her May 2009 comments.

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 and Judge Mundell's May 2009 statements to the media, both 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 sheriffs 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.

## VII. Additional Concerns and Conclusions

On information and belief Bob James, Judicial Services Administrator - Trial Courts of Arizona for Maricopa County Superior Court, spoke in person MCSO Court Security Division Sergeant Chapsky in the Superior Court hallways. During this conversation Mr. James told Sergeant Chapsky 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 ultimately led to numerous Order to Show Cause filings. 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.

Finally, on information and belief, Judge Mundell , acting with Judge Baca, induced the Maricopa County Public Defenders Office and other court agencies to file suit against the Sheriff's Office. On or about November 13,

2007, the Public Defenders' Office sued the Maricopa County Sheriff's Office because the Sheriff's Office changed visitation hours. (*State v. Ozzie Washington*). The Sheriff's Office changed visitation hours partially in response to an anticipated budget shortfall discovered at the end of the immediately preceding fiscal quarter. Immediately after the Public Defender brought suit, the Sheriff learned, and later confirmed, that other court-related agencies such as court interpreters and adult probation officers may have been induced to join in the suit. The Sheriff's Office

made a public records request to the Maricopa County Superior Court for communication records and emails belonging to Judge Mundell, Judge Baca and court administrators. The Sheriff's Office made this request in an attempt to discover and/or verify which court personnel and/or administrators had enlisted or compelled various parties to serve as plaintiffs in the Public Defenders' groundless lawsuit. The Public Defenders' suit has continued on for more than two years as Judge Baca and Judge Mundell continue to conceal the public record communications between themselves and other court personnel in the one-month period before the Public Defenders filed suit. Moreover, witnesses subordinate to Judges Mundell and Baca have refused to comment to the Sheriff's Office investigators regarding this matter. Judge Baca's conduct in this matter raises a troubling specter of impropriety. I therefore request a thorough investigation to insure that Judge Baca and other members of the Maricopa County Judiciary did not use their own subordinates and /or their personal bias to aid the Public Defenders in a meritless lawsuit.

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 30<sup>th</sup> day of November, 2009

*[Handwritten Signature]*  
(Signature of Notary Public)

My Commission Expires:

