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YUMA JUSTICE COURT
FIRST PRECINCT

1 JON R. SMITH
YUMA COUNTY ATTORNEY

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6 IN THE JUSTICE COURT -FIRST PRECINCT (THIRD PRECINCT)

7 IN AND FOR THE COUNTY OF YUMA, STATE OF ARIZONA

8 STATE OF ARIZONA,
9

No. J1403MS2009-00009

10 Plaintiff,

Motion For Change of Judge for Cause
Pursuant to Rule 10.1

11 vs.

12 STEVEN L. ANDERSON,

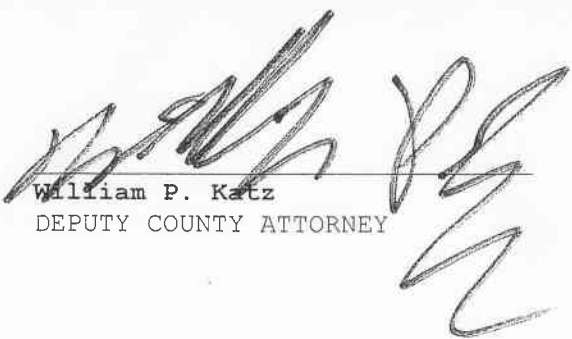
13 Defendant.

14 The State of Arizona, through the Office of the Yuma County
15 Attorney, by the undersigned deputy, hereby moves and notices this Court of
16 its request for a Change of Judge for Cause pursuant to Ariz. R. Crim. Pro.
17 10.1. The judge to be changed for cause is the Honorable Yolonda Torok. The
18 State hereby asserts a bias challenge to the Honorable Yolanda Torok based
19 upon various legal violations and examples of bias that developed at a hearing
20 held on August 5, 2009, which respectfully reflect Judge Torok's inability to
21 exercise independent judicial discretion in the determination of this case.
22 The Honorable Judge Cooper was noticed pursuant to Rule 10.2, and in form
23 subsequently transferred the case to Judge Torok on August 5, 2009 roughly
24 fifteen or twenty minutes prior to the aforementioned hearing. However, the
25 appearance of impropriety and an inability of the part of Judge Torok to
26 exercise independent judicial discretion has developed due to Judge Cooper's

1 continued participation in the proceedings while seated in the front row of
2 the gallery. This motion is pursuant to Ariz. R. Crim. Pro. 10.1 and 10.6,
3 and is made on a good-faith basis not intended to delay the present
4 proceedings. The State respectfully requests a stay in the proceedings and a
5 formal hearing to resolve this Rule 10.1 motion. This motion is supported by
6 the attached memorandum of authorities.

7 RESPECTFULLY SUBMITTED this 5th day of August, 2009.

8 JON R. SMITH
9 YUMA COUNTY ATTORNEY

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13 William P. Katz
14 DEPUTY COUNTY ATTORNEY

15 Facts

16 Judge Torok works under the direct supervision and control of Judge
17 Cooper. The State filed a Rule 10.2 notice of change of judge on July 2,
18 2009. The State renewed its objection to Judge Cooper's exercise of
19 substantive jurisdiction over this case on July 30, 2009. Judge Cooper failed
20 to issue an order reassigning this case, and until August 5, 2009
21 approximately thirty minutes before the hearing on the Defendant's Motion to
22 Dismiss exercised substantive jurisdiction over this case by maintaining the
23 aforementioned hearing date, as well as a trial date. Finally, Judge Cooper
24 reassigned this matter the day of the hearing on Defendant's Motion to Dismiss
25 approximately thirty minutes before the hearing. Judge Cooper's participation
26 did not terminate in this case however. While Judge Torok was on the bench
27 listening to the pre-hearing litigation, Judge Cooper entered the courtroom
28 and assumed a seat in the front-row of the gallery. Despite being noticed

1 pursuant to Rule 10.2, Judge Cooper while seated in the gallery, made remarks
2 and participated in the pre-hearing litigation which was being presided over
3 by Judge Torok. Judge Torok proclaimed she had not reviewed any of the briefs
4 submitted by the litigants, nor the applicable law because she was assigned to
5 this case approximately thirty minutes prior to the litigation. She thereby
6 granted a continuance requested by the State and declined to hear the merits
7 of the Defendant's motion on August 5, 2009. Despite Judge Torok's admitting
8 to being unprepared at around 11AM, Judge Cooper participated in the resetting
9 of the hearing on Defendant's motion and informed the litigants and the Court
10 that the hearing would not be rescheduled later in the month, but rather on
11 August 5, 2009 1PM (That same day). Judge Cooper directed this rescheduling
12 from the back of the courtroom on the record before the litigants and Judge
13 Torok. .

14 Analysis

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16 The State is concerned that despite being noticed pursuant to Rule 10.2,
17 Judge Cooper continues to participate in the proceedings in this case raising
18 an appearance of impropriety and an inability on the part of Judge Torok to
19 exercise independent judicial discretion. The State is concerned about the
20 bias inherent in such an appearance. The State should be afforded the same
21 right and opportunity as the Defendant to a fair and impartial judge. State
22 v. Mincey, 141 Ariz. 425 (1984); State v. Neil, 102 Ariz 110 (1967).

23 Conclusion

24 The State respectfully requests a stay in the proceedings and a formal hearing
25 to resolve this Rule 10.1 motion.
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Respectfully Submitted,

William P. [Signature]
8/5/09

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ORIGINAL FILED, and Copies Hand Delivered if Possible/Mailed/Faxed
August 5, 2009 TO:

JUSTICE COURT FIRST PRECINCT &
M. VICTOR
BY: 

1 JON R. SMITH
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2 William P. Katz Arizona State Bar No. 026286
3 DEPUTY COUNTY ATTORNEY
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6 IN THE JUSTICE COURT -FIRST PRECINCT (Third Precinct)

7 IN AND FOR THE COUNTY OF YUMA, STATE OF ARIZONA

8 STATE OF ARIZONA,

9 Plaintiff,

No. J1403MS2009-00009

10 vs.

Affidavit

11 STEVEN L. ANDERSON,

12 Defendant.


13 Comes Now Affiant to Swear and attest to the following:

- 14 1) I am William P. Katz II;
15 2) I am a deputy county attorney representing the State of Arizona in
16 this litigation;
17 3) I have prepared, reviewed, read, and signed the attached pleading,
18 and I believe each allegation of fact and law is fair, accurate and
19 complete.

20 AFFIANT FURTHER SAYETH NAUGHT

21 Dated this 5th Day of August, 2009

22 Respectfully Submitted,

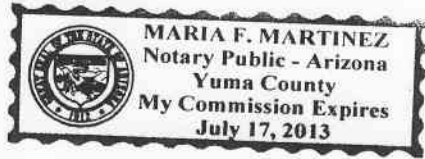
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24 
25 William P. Katz II
26 Deputy County Attorney
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Subscribed and Sworn to me this 5th of August, 2009

My Commission Expires: July 17, 2013

Maria F. Martinez
Notary Public



ORIGINAL FILED, and Copies Hand Delivered
August 5, 2009 TO:

Hon. Y. Torok; Hon. D. Cooper; JUSTICE COURT FIRST PRECINCT &
M. VICTOR
BY: KW