

FILED

2009 AUG -5 PM 12: 51

YUMA JUSTICE COURT  
FIRST PRECINCT

1 JON R. SMITH  
YUMA COUNTY ATTORNEY

2 William P. Katz Arizona State Bar No. 026286  
3 DEPUTY COUNTY ATTORNEY  
4 250 W. SECOND STREET, STE. G, YUMA, AZ 85364  
5 (928) 817-4300  
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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,

No. J1403MS2009-00009

9 Plaintiff,

Motion For Change of Judge for Cause  
Pursuant to Rule 10.1

10 vs.

11 STEVEN L. ANDERSON,

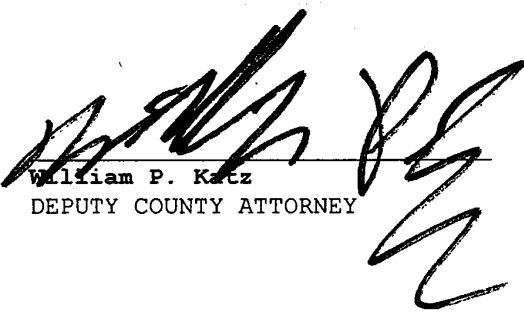
12 Defendant.

13  
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  
8 RESPECTFULLY SUBMITTED this 5th day of August, 2009.

9 JON R. SMITH  
YUMA COUNTY ATTORNEY

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12   
13 William P. Katz  
DEPUTY COUNTY ATTORNEY

14 Facts

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

15  
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).

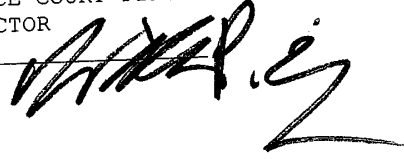
#### 23 Conclusion

24 The State respectfully requests a stay in the proceedings and a formal hearing  
25 to resolve this Rule 10.1 motion.  
26  
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Respectfully Submitted,

William P. Kutz  
8/5/09

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

JUSTICE COURT FIRST PRECINCT &  
M. VICTOR  
BY: 

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IN THE JUSTICE COURT -FIRST PRECINCT (Third Precinct)  
IN AND FOR THE COUNTY OF YUMA, STATE OF ARIZONA

STATE OF ARIZONA,  
  
Plaintiff,  
  
vs.  
STEVEN L. ANDERSON,  
  
Defendant.

No. J1403MS2009-00009  
  
Affidavit

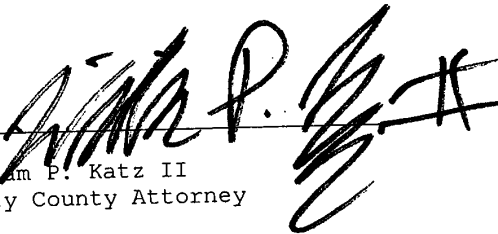
Comes Now Affiant to Swear and attest to the following:

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

AFFIANT FURTHER SAYETH NAUGHT

Dated this 5<sup>th</sup> Day of August, 2009

Respectfully Submitted,

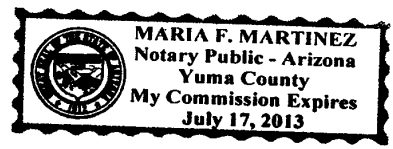
  
William P. Katz II  
Deputy County Attorney

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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: \_\_\_\_\_