

Lane Myers
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Pro-se

FILED IN COURT

5/14/25

GARY L. HARRISON

KHESSON

Deputy

Pima County Superior Court,
For the State of Arizona

State of Arizona
Plaintiff

✓
Lane Myers, Defendant

Case no: CR 2023 1060 2025 1454
Motion to change judge pursuant
to Rule 10.1

Motion to change judge Rule 10.1

Mr. Myers moves this court pursuant to Rule 10.1 to change Mr. Myers judge for cause. Mr. Myers files this motion because Judge Metcalf has shown he is not capable of guaranteeing Mr. Myers his right to a fair and impartial trial, free of bias and prejudice from the trial court.

In such a high profile case involving a journalist exposing public corruption at Pima County Superior Court, any appearance of impropriety, bias, prejudice, and lack of impartiality that erodes public trust in the Pima County Superior Court is magnified a thousand times more due to the outstanding public interest in Mr. Myers unlawful arrest, and imprisonment.

The following memorandum of points and authorities along with included affidavit will outline the concrete facts and specific allegations detailing exactly why Judge Metcalf must be removed from this case for cause.

I. Relevant Factual and Procedural history

Mr. Myers is being unlawfully prosecuted and held in jail with no bail for exposing judges and prosecutors in Pima County for their unlawful actions in their capacity as public officials. 4 of Mr. Myers felonies are for exposing Pima Superior Court judges Dawn Wyland, and Dawn Walton for their unlawful actions in ex parte injunction hearings on behalf of a State of Arizona employee married to the prosecutor.

The public's trust of Pima Superior Court is at an all time low due to the exposing by Mr. Myers investigative journalism. Judge Metcalf is continuing the very same patterns and practices that Mr. Myers has spent the last 9 months exposing, leading to these baseless charges. Now Mr. Myers is being denied a fair and impartial trial, Due Process, Speedy trial, and now has been threatened by Judge Metcalf. This court must immediately remove Judge Metcalf from this case to guarantee Mr. Myers a fair and speedy trial, free of bias and prejudice.

- March 19th - Media request hearing. Metcalf denies 122(c) and 122(h). 122(h) is not up for debate
- March 20th - Ferreta Hearing. Metcalf denies 122(h) and complains that people calling his chambers to protest his denial of 122(h) is harassment
- March 25-26 No bail hearing. Judge Miller allows 122(h) recordings.
- March 25th Metcalf issues order banning all media coverage throughout entire case no. 20051060

- April 4th A motion for bail reexamination is filed
- April 15th A pretrial is held with Judge McDonald presiding. Judge McDonald allows 122(h) recording. Court security closes court.
- April 21st Media request hearing. Metcalf denies all media coverage in case no 20251454. Metcalf says media coverage would just "cause chaos" and that the press can file a special action.
- April 28th Perjury hearing. Court Security doesn't allow media into courtroom. Bail motion is withdrawn.
- May 12th Pretrial. Metcalf sets a trial date that doesn't allow Mr. Myers time to be sentenced within 150 day speedy trial. Court Security doesn't allow media in room. Metcalf threatens Mr. Myers with retaliation if he files a judicial conduct complaint. Bail reexamination motion is retiled, Metcalf refuses to set evidentiary hearings within 10 days.

II. Argument

"A party challenging a trial judges impartiality must overcome a strong presumption that trial judges are "free of bias and prejudice" "State v Medina 193 Ariz 504, 510, 975 P.2d 94, 100 (1999)

"Overcoming this burden means proving a "hostile feeling or spirit of ill-will, or undue favoritism, towards one of the litigants." In Re Guardianship of Styer, 24 Ariz. App 148, 151, 536 P.2d 717, 720 (1975)

"The right to a fair trial is a foundation stone upon which our present judicial system rests. Necessarily included in this right is the right to have the trial presided

over by a judge who is completely impartial and free of bias or prejudice" State v Neil, 102 Ariz. 110, 112, 425 P.2d 842, 844 (1967)

Mr. Myers believes even Ray Charles can see the biased and prejudicial decisions and actions by Judge Metcalf in this case. As Mr. Myers will show below, Judge Metcalf is embarrassing himself and the entire Pima County Superior court with his intentional disregard for clearly established laws and rules of procedure. Threatening a defendant for filing a complaint with the Judicial Conduct Commission shows a clear retaliatory animus by Judge Metcalf.

1. Denial of Media Coverage

Article 2 section 1 of Ariz Constitution provides that
"Justice in all cases should be administered openly, and without unnecessary delay".

Article 2 section 24 of Arizona constitution provides that
"the accused shall have the right to appear and defend in person, to have a speedy public trial by an impartial jury"

Rule 9.3 of Arizona Rules of Procedure provides that
"All proceedings must be open to the public, including news media representatives, unless court finds on motion or its own, that open proceeding presents a clear and present danger to defendant's right to a fair trial"

By banning media coverage against the objections of Mr. Myers shows clear favoritism to the State in this proceedings. Mr. Myers is demanding the media be allowed

4.

to cover and document his Public Trial! Yet, Judge Metcalf for some unexplainable reason has decided to unilaterally ban all media coverage. This is also a violation of Article 2, Section 6 of Ariz Constitution which guarantees a right to free press. If the defendant is demanding the media be allowed to cover his case, then there is no prejudice against defendant by allowing it. The State is not facing prison time, so they have no argument against allowing media coverage. The victim is not allowed to be filmed pursuant to Rule 122(c), so there is no excuse for banning media coverage.

2. Violation of Admin Order 2024-47 and Rule 122(h) provides: "A person may use a personal audio recorder during a proceeding, but a person must notify the judge or judges staff prior to using the device. A person who uses a personal audio recorder is not required to submit a request under paragraph (c) of this rule"

Rule 122(h) is not something that can be denied unless it is disruptive. By banning it ahead of time, without any disruptive behavior is completely biased and prejudicial. If the press reads the rule and shows up and wants to follow the rules, Judge Metcalf has already taken away that right ahead of time.

More concerning is the fact that in December 2024 Presiding Judge Liwski enacted Admin Order 2024-47 in response to Mr. Myers investigative journalism at Pima Superior Court. This admin order expressly dictates that all judges at Pima Superior Court must follow Rule 122(h) to the letter of the law. This makes Judge Metcalf in violation

of both Supreme Court Rule 122(h) and this court's Admin order 2024-47 with blatant disregard for clearly established Rules and directives.

This takes away from both Mr. Myers right to a public trial, and the rights of a free press. This is clear bias against Mr. Myers. A clear example of this is the fact that several other hearings in this case with other judges, they allowed the use of 122(h).

- March 14th, 2025 Judge Hampson allowed 122(h) recording.
- March 20th, 2025 Initial Appearance was live on Court's Youtube
- March 25-26th, 2025 Judge Miller allowed 122(h) recording
- April 4th, 2025 Court broadcast arraignment on Youtube
- April 15th, 2025 Judge McDonald allowed 122(h) recording.

The fact that other judges allowed 122(h) recording in the same case, causes even more confusion for the press. Every hearing should allow 122(h) recording as long as its not disruptive. No secret courts, should be the norm.

3. Denial of Speedy Trial

Mr. Myers exercised his right to a Speedy Trial. When setting a trial date May 12th, 2025, Judge Metcalf set July 22nd, 2025 as the trial date. When told this would not allow enough time to have sentencing within the 60 days, Judge Metcalf said "sentencing is not part of a speedy trial". This is blatant disregard of Mr. Myers Due Process rights under the US and Arizona Constitution, as well as established case law. When told of this fact by Mr. Myers, Judge Metcalf said he "doesn't care, you can file a motion". A motion for what? Mr. Myers doesn't need

to "file a motion" to uphold his Due Process rights and enforce case law. This is a blatant lack of impartiality.

"In light of the foregoing authorities, we hold that the guarantees to speedy trial, found in 6th amendment of the US Constitution, and Article 2, Section 24 of the Arizona Constitution, - apply through sentencing." State v Bantlett 179 Ariz 109, 876 P.2d 1144 at 114, 1149 (4th App 1993)

4. Denial of Bail Reexamination hearing

Rule 7.4(c) provides a defendant an opportunity to have bail eligibility reexamined "upon transfer to another court". Mr. Myers case was transferred March 28th, 2025. Mr. Myers filed a motion for bail reexamination on April 4th, 2025. Judge Metcalf was supposed to order a bail reexamination hearing within 7 days. As of April 28th, 2025 Judge Metcalf still had not ordered a bail reexamination hearing, so Mr. Myers had his counsel withdraw his bail motion, and as counsel. Mr. Myers refiled a bail reexamination motion on May 12th, 2025 which required Judge Metcalf to set an evidentiary hearing within 7 days. Judge Metcalf refused to set an evidentiary hearing, and instead set a hearing for oral arguments to decide if he would grant a reexamination hearing. This is a blatant violation of the Rules of procedure and established case law, denying Mr. Myers his Due Process right to have his bail eligibility reexamined. Every other defendant in the state of Arizona gets a bond reexamination within 7 days, except Mr. Myers. This shows a complete lack of impartiality by Judge Metcalf. Mr. Myers is sitting in jail with no bail while Judge Metcalf makes up the rules as he goes, this is eroding the public's trust in the Pima County Superior Court in front of the whole world.

5. Denial of Jury Questionnaire

On May 12th, 2025 Judge Metcalf denied Mr. Myers request for a jury questionnaire because he found the possibility of the State being prejudiced! What planet are we on when the judge finds the State can be prejudiced by possible Jury Questionnaire? If the State wasn't bringing unlawful charges not supported by evidence or facts they would have nothing to worry about the Jury Questionnaire. The State doesn't claim prejudice when the local news does stories about murder suspects. The burden of pretrial publicity rests squarely on the defendant not the State. Mr. Myers wants Jury Questionnaires and does not feel prejudiced if prospective jurors watch his Youtube videos. The State is worried that they will be exposed for malicious prosecution and Judge Metcalf once again showed his favoritism and granted the States wishes.

"The Burden to show pretrial publicity is presumptively prejudicial clearly rests with the defendant and is 'extremely heavy'"
State v Bible 175 Ariz 549, 564, 858 P.2d 1152, 1167

The circumstances in this case fall short of those rare and unusual cases where the difficult showing has been made. Therefore it was extremely biased to deny Mr. Myers the opportunity to send Jury Questionnaire out.

6. Threat of retaliation

During the May 12th, 2025 hearing Judge Metcalf

openly threatened Mr. Myers with retaliation when Mr. Myers indicated he would be filing a complaint with the Judicial Conduct Commission. When Mr. Myers stated "if you don't set an evidentiary hearing within 7 days, you will be intentionally disregarding the law, which is judicial misconduct." Judge Metcalf responded by saying "that's okay, you can file a complaint if you don't like it," to which Mr. Myers responded "You will be receiving lots of complaints". In response, shockingly Judge Metcalf replied ~~"don't threaten me, or I will be getting lots of complaints"~~ "don't threaten me, it will not be good for you". This is judicial misconduct and requires the immediate removal of Judge Metcalf from this case. Threatening to retaliate for someone putting a judicial conduct complaint is conduct unbecoming of a judicial officer. This is completely against the judicial code of conduct, and shows the whole world that Mr. Myers can not get a fair trial with Judge Metcalf. If Judge Metcalf can not handle public scrutiny, he should resign.

- Rule 12(2) Code of Judicial Conduct reads: "A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed

- by the code."
- Rule 1.2 (3) Code of Judicial Conduct reads: "Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary"
 - Rule 2.4 Code of Judicial Conduct: "An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, or government officials"

Clearly the public's confidence can not be very high in Judge Metcalf when they watch him openly defy the law, rules of procedure, and code of conduct. Then when told that a defendant, and the public are going to follow the established procedures and file a complaint he threatens Mr. Myers with retaliation on the record. This Kangaroo court is embarrassing the entire Pima County Superior Court, and the entire judiciary for the state of Arizona.

Conclusion-

In the interests of justice, transparency, and to maintain the integrity of Pima Superior Court in the eyes of the public trust, Mr. Myers must be assigned a new judge who will diligently follow all the rules and laws as

they are written. What message does this court want to show the world? It's time to rebuild the public's confidence in the judges at Pima County Superior Court. That starts here and now.

5-13-2025

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Pima County Superior Court,
For the State of Arizona

State of Arizona,
Plaintiff

✓
Lane Myers, Defendant

Case no : CR 20251060, CR 20251454
Affidavit of Facts in support of
Rule 10.1 Motion

Mr. Myers files this Affidavit of Facts in support of his Rule 10.1 Motion.

- On May 12th, 2025 Judge Metcalf threatened Mr. Myers with retaliation in response to possible Judicial Conduct complaints. He stated "that won't be good for you". This is clearly impropriety, and prejudicial behavior.
- On May 12th, 2025 Judge Metcalf denied Mr. Myers a speedy trial by failing to include sentencing in the speedy trial calculations.
- On May 12th, 2025 Judge Metcalf denied Mr. Myers the chance to send out a Jury Questionnaire because the State claimed they would be prejudiced. There is no legal basis for this.
- On May 12th, 2025 Judge Metcalf denied Mr. Myers his Due Process right to a bail reexamination hearing within 7 days.
- Throughout the entire proceedings Judge Metcalf has denied media coverage in violation of Rule 9.3, against Mr. Myers wishes.

- Throughout the entire proceedings Judge Metcalf has denied the use of Supreme Court Rule 122(h). This is a violation of both Rule 122 itself, as well as Admin order 2024-47.

The foregoing facts are accurate and true to the best of my knowledge. These facts represent the specific allegations and concrete facts detailing exactly why Judge Metcalf must be removed from this case for cause.

5-13-2025

Lane Myers,
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