

David Moore
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To whom it Concerns, All Honorable Santa Cruz County Judges, California Commission on Judicial Performance,

This letter is to lodge a formal complaint against Judge Ariadne Symons, Santa Cruz County, California.

I am David Moore, the defendant in case #'s M46543, M31262, and M358495. I am currently representing myself In Propria Persona. I appeared in court on December 3, 2008 and appeared before Commissioner Segal. He read my charges to me and asked how I wanted to proceed. I told him that I wished to have a continuance to review the charges against me and to possibly seek council. On December 15, 2008 I sent a Subpoena Duces Tecum to District Attorney Bob Lee, and Assistant District Attorney Lisa Agliano to request information from them that was vital to my defense with or without an attorney. The subpoena requested (1) the toxicology report, (2) the GPS Data Log from Net Com/ (SIREN) for all the vehicles of all officers that responded to or were present and/or involved in the traffic stop of David Moore on 10/25/2008. This information was to include the date, time, speed and light status of the responding officer(s) at the time of the incident. The GPS transmitters are installed on all public safety vehicles per a 1999 Federal Mandate (CIS 2000). The GPS Data Logs for Santa Cruz County are in ASCII format and are transmitted to Net Com via a special frequency. The GPS information from the Data Logs lets the dispatchers at Net Com know the absolute location of the units. It also will show how fast the emergency vehicles are going during their response and whether or not the unit(s) have made any stops along the way. (3) A copy of Commissioner Siegel's Oath of Office showing that he is lawfully and legally able to preside as judge in trying legal cases. (4) A copy of Oaths of Office and a copy of the bonds held by all officers responding to and/or involved with all cases involving David Moore. These Oaths of Office and a Bond are required by all officers of the law in order for them to be employed as a peace officer. On December 17, 2008 I again appeared in court in front of Commissioner Segal who demanded to know why I had not brought council with me to court. I stated that I did not want to pay for a lawyer to show up to ask for a continuance since I had not yet received any information regarding my arrest, or what I was being charged with and my subpoena had not yet been answered. I could ask for a continuance myself, which I did. January 7th I appeared in front of Judge Ariadne Symons who demanded to know why I had not procured council, She berated me because I did not have council with me and told me that I had to enter a plea before they would release any information to me, so I made a plea of not guilty. I did not receive any information on my case(s) until after I had made a plea then finally, Jesus Delgadillo handed me a copy of the charges and case against me after I plead not guilty. On January 23, 2009, after not receiving any of the subpoenaed information from the District Attorney(s), I mailed a Motion to Compel to Bob Lee and Lisa Agliano. The Motion to Compel was sent by US postal service with return receipt as proof of service. On January 26, 2009 this Motion to Compel was filed with the Court Clerk. On January 29, 2009 at another court hearing, Assistant District Attorney Jesus Delgadillo verbally requested (15) fifteen more days to respond and comply with the subpoena. I gave him permission for the extended time, even though I did not have to do so. Judge Volkmann, who was presiding in the courtroom at this time, recognized that a Motion to Compel had been served and filed with the court. Jesus Delgadillo assured Judge Volkmann that he would comply with the subpoena and submit the information within 15 days of the service of the motion to compel. On February 11, 2009 I again appeared in court, this time in front of Judge Ariadne Symons. I asked for dismissal of my case as I still had not received the information that I had subpoenaed from the district attorney's office that was vital to my defense, and that because of the actions of the district attorneys office I was being denied my right to a speedy trial under Article I § 15 of

the California Constitution and the Sixth Amendment of the Constitution of the United States. Judge Symons, upon hearing that a subpoena had been issued and not responded to, and also that a Motion to Compel had also been recorded and not responded to, became very angry. She told me that she was ordering a Motion to Quash the subpoena, and made several statements during this time to indicate that she was very biased in her opinions of persons not only representing themselves, but against persons of my socioeconomic status and persons charged with similar violations. She, at this time declared "You see what happens to you when you think you can defend yourself!?" (Her comments should be a matter of court record since these mentioned court dates were all electronically recorded) By denying my request for dismissal, and entering her own motion to quash, in violation of CCP 1985-1997, CCP 7583.210-7583.250 (a)(1)(2)(b), CCP 418.10(1), which she is not authorized to do as an impartial unbiased judge, and was not done in writing with the proper filing, and was not done within the required time frame, and was done with the intent to assist the prosecution and deny me my rights, I believe that Judge Ariadne Symons is acting outside her jurisdiction as a judge and will continue to be biased against me and others similarly situated. Without the Subpoenaed information, I am unable to defend myself, with or without council as the information is vital to my defense. In *Brady V. Maryland*, 373 U.S. 83(1963) states "Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution". This ruling is an extension of *Mooney v. Holohan*, 294 U.S. 103, 112, where the Court ruled on what nondisclosure by a prosecutor violates due process: "It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation". In *Pyle v. Kansas*, 317 U.S. 213,215-216, states the same matter in broader terms: "Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and if proven, would entitle petitioner to release from his present custody". In *Napue v. Illinois*, 360 U.S. 264, 269, the test formulated in *Mooney v. Holohan* was extended when it was said: "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Alcorta v. Texas*, 355 U.S. 28; *Wilde v. Wyoming*, 362 U.S. 607. Cf. *Durley v. Mayo*, 351 U.S.277, 285 (dissenting opinion). The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts." A prosecution that withholds evidence on demand of an accused which, if made available, [373 U.S. 83, 88] would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice". I also believe that Jesus Degadillo purposely requested more time in order for my case to again be heard by Judge Symons who he is in collusion with as Judge Symons has worked as an Assistant District Attorney prior to her becoming a Judge. This shows additional proof of her partiality and bias as Judges are to excuse themselves from trying or hearing any case involving a prosecutor or an attorney for the defense that they have worked closely with in the past, as an employer an employee a partner, or other professional partnership. In normal court circumstances a motion for dismissal of the case should be granted under the circumstances otherwise

the District Attorney (or any other party) should be held in contempt of Court for refusing to provide the information. Judge Symons is not able to perform her duties impartially and should be suspended permanently and have penalties imposed. Failure to suspend and impose disciplinary procedures against her will result in a Quo Warranto filed against her.

California Code of Judicial Ethics states the following:

Canon 2(A) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3 (B)(2) A judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.(5)A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of administrative duties, engage in speech or gestures, or other conduct that would reasonably be perceived as (1)bias or prejudice, including but not limited to bias or prejudice based upon race, national origin, age, or socioeconomic status.

Misconduct That Judge Symons is guilty of in my particular case are: Abuse of Contempt/sanctions, Administrative malfeasance/improper comments(An example from the California Commission on Judicial Performance shows the following examples that required disciplinary actions against the judges: A judge made sarcastic and demeaning remarks to a pro per litigant in family court, Including mocking the litigant's use of a legal term. (Ann. Rept. (2007), A judge displayed sarcasm and derision in remarks toward a pro-per litigant in a civil harassment matter. (Ann. Rept. (2001), Advisory Letter 6, p. 20.) A judge made demeaning comments to a pro per defendant that impugned the Defendant's intelligence. (Ann. Rept. (2000), Advisory Letter 3, p. 21.) A judge's comments regarding a pending proceeding violated the prohibition on judges making public comments regarding a pending proceeding or non-public comments that might interfere with a fair trial or hearing. In other matters, the judge failed to disclose the judge's relationship with an attorney and law firm appearing before the judge.(Ann. Rept. (2007),Private Admonishment 7, p. 31.) [Comment on a pending case; disqualification/disclosure/post-disqualification conduct; improper political activities.]), Advisory Letter 3, p. 31.)), Bias/appearance of bias toward a particular class and, also, not directed toward a particular class, Demeanor/Decorum, Ex parte communications, Failure to ensure rights, Inability to perform judicial duties, On-bench abuse of authority in performance of judicial duties.

Additionally, Judge Ariadne Symons is an Officer of the Court, and a State Judicial Officer. She is paid by the state to act impartially and lawfully. A Judge is Not the Court (People v. Zajic, 88 Ill. App.3d 477, 410 N.E.2d 626 (1980)). Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". Fraud upon the court has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudicating cases that are presented for adjudication" (Kenner v. C.I.R., 387 F. 3d 689(1968) 7 Moore's Federal Practice, 2d ed., p. 512 ¶ 60.23. Fraud upon the court makes void the orders and judgments of that court. Upon information and belief, if Judge Symons prior cases were to be reviewed (even during the short time she has been acting as judge) you will see a pattern of her bias and partiality, thus rendering any of her prior decisions void. Federal law requires the automatic disqualification of a judge under certain circumstances. In 1994 the U.S Supreme court held that "Disqualification is required if an objective observer would entertain reasonable questions about the

judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified. (*Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994)) Courts have repeatedly held that **positive proof of the partiality of a judge is not a requirement, only the appearance of partiality.** (*Liljeberg v. Health Services Acquisition Corp.*, 486 U.S.847, 108 S.Ct. 2194(1988)). What matters is not the reality of bias or prejudice but the appearance of such by an officer of the court. *United States v. Balistreri*, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) is directed against the appearance of partiality, whether or not the judge is actually biased. ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process. That Court also stated that Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." *Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989). Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse him/herself sua sponte under the stated circumstances." In *Pfizer Inc. v. Lord*, 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that they believe that they have received justice." Judge Symons has been acting as prosecutor in collusion with the office of the district attorney for so long that she is unable to distance herself from the fact that persons charged with any crime, even one that she personally feels strongly about, are innocent until proven guilty. She still shows through her actions and words that persons charged with a crime are guilty unless they can pay for counsel to prove to the court otherwise. This attitude and mindset is and will continue to deny people of their civil and constitutional rights.

The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954)... "Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." *Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989). Further, the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification. The Seventh Circuit Court of Appeals further stated that "We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed." *Balistreri*, at 1202.

Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge. Should another judge not accept the disqualification of the judge, then the second judge has evidenced an "appearance of partiality" and has possibly disqualified himself/herself. None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect.

Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

Judge Symons actions were(and have been) witnessed in this case by the entire courtroom including but not limited to other officers of the court, as well as court personnel and persons awaiting their hearing expecting their legal matters to be heard impartially, impartial witness to this fact include but are not limited to Nadia Sheir and Clair Machado who were in the courtroom on different occasions observing cases that involved Judge Symons.

As a non-represented litigant, should the court not follow the law as to non-represented litigants, then the judge has expressed an "appearance of partiality" and, under the law, it would seem that Judge Symons has disqualified herself absolutely by making such negative comments regarding

persons appearing In Pro Per, as well as acting in collusion with the district attorney while sitting on the bench.

Since not all judges bother to keep up to date in the law, and since not all judges follow the law, it is possible that a judge may not know the ruling of the U.S. Supreme Court and the other courts on this subject. Notice that it states "disqualification is required" and that a judge "must be disqualified" under certain circumstances. **This language is mandatory not elective.** Ignorance of the law by someone who is required to be well versed in the law is not an excuse.

The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after she has been automatically disqualified by law(officially or unofficially), then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce are criminal acts, no judge has immunity to engage in such acts.

Notice to all Honorable Santa Cruz County Judges, and those at The California Commission on Judicial Performance; if you fail to investigate, discipline and suspend Judge Ariadne Symons, I will procure a grand Jury Indictment against her for her illegal and fraudulent actions. This letter will constitute official notification of her illegal acts. If you fail to act within your jurisdiction, this letter will provide cumulative evidence against your department(s) for not imposing disciplinary actions should Judge Symons be held accountable for her actions by any other agency, State or Federal. As this is a matter that constitutes a violation of my Constitutional, and Civil rights, as well as the Constitutional and Civil Rights of others similarly situated, I will expect a timely follow up response from you with detailed information on your investigation and prosecution of Judge Symons. Failure to do so may indicate collusion on your part with Judge Symons and may also show bias and partiality regarding other court cases in Santa Cruz County as well.

Sincerely,

David Moore