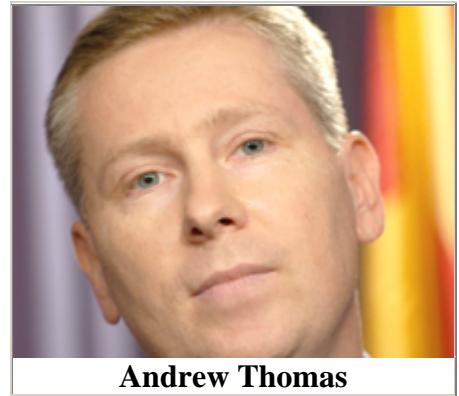


Bar complaint filed against Thomas

ARTICLE POSTED 10.11.2007 | 11:30 AM

A State Bar of Arizona complaint has been filed against **Thomas, Dan McAuliffe**, president of the State Bar of Arizona, confirmed yesterday.



Andrew Thomas

Thomas last week filed requests to remove Maricopa Superior Court Judge **Timothy Ryan** from all cases involving Thomas' office. McAuliffe said he could not comment further on the complaint, who filed it and what, if any, sanctions against Thomas could arise.

Prompted by Thomas' public criticism of Ryan, the Bar issued a press release Oct. 5 announcing that the organization "opposes attacks on the judiciary," and the notice instructs the "right way" to challenge judges' actions is "through the appellate courts or the Commission on Judicial Conduct - not through the media."

Bob McWhirter of the Legal Defender's Office said last week he would spend the weekend considering whether to file against Thomas, whom he accused of orchestrating the bias charge against Ryan for political gain. McWhirter told our reporter this morning he did not file a complaint, and the complaint was generated internally by the Bar.

Thomas spokesman: It's called freedom of speech

Thomas aide **Barnett Lotstein** said he could not comment on the complaint this morning because the office was not aware of the filing and had yet to receive a copy of it.

"In our judgment we haven't done anything at all in violation of any rules of ethical procedures," Lotstein said. "Mr. Thomas and our lawyers have the First Amendment right to express their opinion and judges aren't above criticism. When and if we receive the notice of it we'll respond."

Meanwhile, Maricopa County Superior Court Presiding **Judge Barbara Mundell** yesterday refused Thomas' request to have his motion to prevent Ryan from hearing county attorney office cases. See ruling below.

MOTION DENIED

Counsel for the State and for Elizabeth Cottor has filed a Motion for Appointment of Out-of-County Judge to decide a Rule 10.1 Motion for Change of Judge in Cause Numbers CR2007-121756-001DT and CR2007-122911-001DT. Essentially, he requests a blanket disqualification of all 93 Judges of the Superior Court in Maricopa County eligible to hear his motion.

The Code of Judicial Conduct requires an individual judge to recuse himself or herself if the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of the disputed evidentiary facts concerning a proceeding. Canon 3, Arizona Code of Judicial Conduct. Judges are presumed to be impartial and can be disqualified only if the party objecting proves bias and prejudice by a preponderance of the evidence. *State v. Smith*, 203 Ariz., 75, 79, 50 P.3d 825, 829 (2002). Each of the Judges of the Superior Court in Maricopa County was independently appointed to the bench and has a sworn duty to follow the Code of Judicial Conduct.

This Court has the option of requesting the assistance of out-of-county judges when the Code of Judicial Conduct requires a matter be heard by a judge from another county. Transferring a case to another county generally causes some delay in resolution of matters. This court has the obligation to ensure speedy resolution of matters for victims as well as defendants. See Arizona Constitution, article 2, §§ 2.1(10), 24. Before imposing on the resources of the courts, taxpayers and litigants of another county, and causing delay for the victims and defendants in the cases involved, the Court believes that such a request must be proven necessary.

Because the underlying Rule 10.1 Motion for Change of Judge actually requests a blanket disqualification of Judge Timothy Ryan in all cases assigned to him, sending the case to another county would result in unnecessary delay for the many victims, witnesses and defendants in all of those cases. The Motion for Change of Judge should be transferred out of county only when it is shown that no Judge in Maricopa County can ethically handle the matter.

Because the Motion for Appointment of Out-of-County Judge states no facts to establish bias or prejudice of *any*, and certainly not *all*, of the 93 Judges of the Superior Court of Maricopa County eligible to hear his motion,

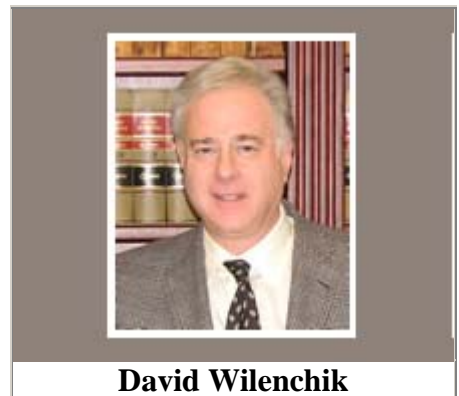
IT IS THEREFORE ORDERED denying the Motion.

Filing: New Times Grand Jury info should be unsealed

ARTICLE POSTED 10.22.2007 | 3:38 PM

Maricopa County Superior Court Judge **Anna Baca** today set oral arguments for Wednesday to help her decide if the *New Times* grand jury transcripts and court filings should be unsealed.

David Bodney, lawyer for Phoenix Newspapers, Inc. and KPNX Broadcasting, said **Thomas'** decision Friday to drop the charges against the paper would probably help the case to have the grand jury materials available for public inspection.



"There is legitimate concern about the abuse of process by the county attorney's office and a very real need to make sure if such abuses occur, that they are not repeated at the public's expense," Bodney said.

His filing ([Click here](#)) states county special prosecutor **Dennis Wilenchik's** Oct. 11 request for a private meeting with Baca and the Oct. 18 arrest of the *New Times* executive editor and CEO "involve the specter of severe prosecutorial and other misconduct ... by the Maricopa County Attorney and the Maricopa County Sheriff."

WILENCHIK UNDER INVESTIGATION

State Bar of Arizona President **Dan McAuliffe** today told our reporter both Thomas and Wilenchik are the targets of bar ethics investigations for their attempt to stop Maricopa County Superior Court Judge **Timothy Ryan** from hearing any case brought by the county attorney.

And news of Wilenchik's move for a private chat with Baca, McAuliffe said, has resulted in the filing of a formal ethics complaint against Wilenchik. McAuliffe said he could not comment on who filed the complaint, but he eliminated one possible source: "I can tell you it wasn't a judge," he said, referring to Thomas' assertions on Friday that judges lobbied the Bar to investigate him and Wilenchik. Thomas' spokesman **Barnett Lotstein** did not immediately return calls.

ATTORNEY STILL HAS COUNTY CLIENT

Dennis Wilenchik still has work to do for La Paz County. The attorney, who was canned as special prosecutor Friday by Thomas for mishandling the *New Times* case, told our reporter today he will continue in the prosecution of the DUI and other charges against **Groe**, a case that has lingered since spring.

His firm recently successfully defended **Arpaio** and others against a defamation suit filed by **Dan Saban**, a 2004 Republican primary candidate for Maricopa County sheriff. Meanwhile, Democrats and Republicans alike continue to criticize the county's actions in the *New Times* matter.

"This may be the first time I agree with a Goldwater [Institute] analysis," said **Don Bivens**, state Dem chairman, referring to a piece written by **Clint Bolick** for the institute.

"When a publication is critical of elected officials - a crucial role for the press in a free society - prosecutors should tread very carefully so as not to chill vital First Amendment protections. It is difficult to conceive any wrong that could justify such a sweeping inquiry, not only into the files of *New Times* but into the Internet browsing habits of tens of thousands of innocent readers," Bolick wrote.

Former state senator **Greg Patterson** wonders aloud on his Espresso Pundit blog site today whether Thomas and Arpaio have shot themselves in the foot or the head. "Questions about Arpaio's mental

stability have simmered in Republican circles for years, so the escalation of his feud with the *New Times* ending in the arrest of the owner isn't much of a surprise," Patterson wrote.

YS is waiting for a call-back from GOP state headquarters for a comment on Thomas and Arpaio.

WARING: NEW TIMES CASE A 'FISHING EXPEDITION'

Waring today added his voice to the number of people dismayed at the way the *New Times* case was handled. "It was totally mishandled. It was absolutely mishandled," Waring said, specifically referring to the arrest of the two *New Times* executives.

"I think Americans in general just have a reaction - I know I certainly do - to reporters being arrested in the middle of the night. I think that's something that most people, given what's going on in other places around the world, are going to look at and say, 'You better have a good reason for doing this and it better be held in exactly the right way,' particularly when you are dealing with something as delicate as free speech."

Waring told our reporter this morning he does not agree with the view that the incident would be a blow-back for the Republican Party.

"I do think that some of the scandals in Washington have hurt folks like me, and that's frustrating for someone like me because, of course, I don't know the principals involved," he said. "It might have a lasting impact on how that office conducts its business."

REPERCUSSIONS FOR THOMAS

Meanwhile, a senior Republican legislator, said what happened is likely to hurt Thomas and his future political aspirations.

"How long people remember this and everything, I don't know. But you guys (media) are going to remember it. I have no doubt that your business is going to remember it, and if he runs for something else or if he is going to run for re-election, it's going to come up," the Republican said.

"I guess each individual reporter and editorial board will have to decide how much of it is going to come up, but I'm going to make a guess ... it's going to be quite a bit."