

No. CA-07-012  
Pascua Yaqui Tribe Court of Appeals

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In re G. Micah Schmit, Chief Prosecutor.

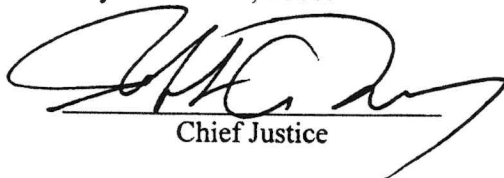
ORDER

The Honorable Melvin R. Stoof, Trial Judge, Tucson, Arizona, Complainant.

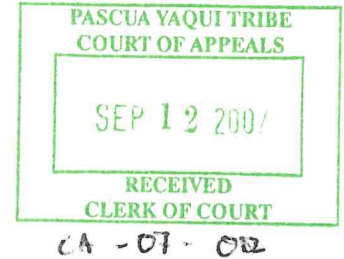
G. Micah Schmit, Esq., Pascua Yaqui Tribe Office of the Prosecutor, Tucson, Arizona,  
Respondent.

Upon motion of the complainant, the Honorable Melvin R. Stoof, to withdraw his complaint, the above captioned and numbered case is dismissed. The case shall be closed before this Court.

So ORDERED this 9th day of October, 2007.

  
Chief Justice

Melvin R. Stoof  
Associate Judge  
Pascua Yaqui Court  
7474 S. Camino de Oeste  
Tucson, AZ. 85757  
(520) 879-6289



September 12, 2007

Chief Justice and Associate Justices  
Pascua Yaqui Court of Appeals

Re: Withdrawal of Disciplinary Action Request as to Chief Prosecutor, Micah Schmit

Dear Justices Williams, Geronimo, and Derrick:

Please accept this letter as a formal request to withdraw my complaint filed against Mr. Schmit for ethics violations.

I am satisfied from Mr. Schmit's response to the complaint that he admitted to making a statement at a closed meeting before some executive directors and Council members about the court's rulings. The purpose of the complaint was to set the record straight as to what had been represented to the Council regarding the associate judge's rulings.

After consultation with the two persons who had come forward to notify the complainant that Mr. Schmit had made certain representations about the courts rulings in a drug case, but that Mr. Schmit had not given a full explanation as to the complete ruling of the court, the complainant's concern was that Mr. Schmit would continue to make statements about the complainant that failed to include the entire court ruling. In his response, Mr. Schmit indicated he was concerned that the informants who provided this complainant with information about Mr. Schmit's comments to the tribal Council members present at the meeting may have breached confidentiality by disclosing information from a closed meeting that was considered a confidential communication under Pascua Yaqui law.

Although the complainant had filed the complaint in good faith, based on two reliable informants' reports to the complainant about Mr. Schmit's statements to the Council that implied Judge Stoof made his decision against the great weight of the evidence and without a legal basis for doing so, both of those who heard Mr. Schmit's comments at the Council meeting now feel uncomfortable about testifying in this matter, out of fear they both may be subjecting themselves to a disciplinary actions for disclosure of confidential tribal information that may affect their respective positions with the Tribe. Because I would be unable to produce the witnesses to testify in any proceeding against Mr. Schmit, based on their newly found reluctance to testify, I would have only Mr. Schmit's admissions with which to proceed with any disciplinary action.

September 12, 2007

Page 2

Because the complainant believes that through his response, Mr. Schmit has admitted to making the statements as alleged in the complaint, and in effect has set the record straight, given the context in which the representations were made, and also due to the absence of willing and able witnesses, who are now unwilling to testify about Mr. Schmit's statements to the Council in a closed meeting, for what each believes may arguably have been a disclosure of confidential tribal information, the complainant would respectfully withdraw his complaint against Mr. Schmit.

Thank you for your time in reviewing this matter.

Sincerely,

A handwritten signature in cursive script that reads "Melvin R. Stoof".

Melvin R. Stoof  
Associate Judge  
Pascua Yaqui Court

Micah Schmit  
Chief Prosecutor  
Pascua Yaqui Tribe  
7474 S. Camino De Oeste  
Tucson, AZ 85757  
520-879-6253

PASCUA YAQUI TRIBAL COURT  
FILED DATE AND TIME  
07 AUG 21 PM 4:27



To: Honorable Chief Justice and Associate Justices  
Of The Pascua Yaqui Court of Appeals  
From: Chief Prosecutor Micah Schmit  
Date: August 21, 2007  
Re: Motion re: Disciplinary Action

**In re: Micah Schmit, Chief Prosecutor. No. CA-07-012  
Respondent's Request for Production/Clarification and Extension of Time As To  
Memorandum Only.**

The Respondent motions this Honorable Court for an order of clarification and/or production along with an extension of time to file a response, pursuant to 3 PYTRAP Rule 5(B). Respondent is prepared to reply to Complainant's individual allegation in full (and does so contemporaneously with this request). However, since Petitioner also attached the tribal court chief judge's Memorandum of Concern to Council (hereinafter, Memorandum), Respondent would appear to be compelled to reply to the allegations therein as if they were substantively lodged. Problematically, while the original signator of the Memorandum apparently intended that document only for Council, by attaching it to his own Petition, Complainant would appear to have obligated Respondent to formally reply to someone else's memorandum.

By way of background, Respondent first requested more detailed information from the author(s) of the Memorandum, specifically that they provide additional information that would aid the respondent in properly reviewing the accusation laid out on pages 6-13 of the Memorandum (that 196 charges over the span of two years were "knowingly filed without probable cause"). The Memorandum omits all case-identifiers that would enable any reasonable review or challenge to such a sweeping accusation. A cordial attempt to garner that information from the original signator was emphatically denied.<sup>1</sup> Exhibit A. Instead, the chief judge directed

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<sup>1</sup> Nearly an hour was spent deliberating over the words for this email to the chief judge (Exhibit A), precisely in order to formulate it as neutrally, but factually as possible. It is also important to note that I made an initial inquiry back on August 1<sup>st</sup>, directly to Ben Casey (as he has always served as the liaison for the tribal court because,

Respondent to make that request of the Complainant, since it was he that filed the Memorandum with this Appellate Court. Respondent did simultaneously make a similar request from the Complainant directly, and that was denied through an (anticipatory?) objection, filed back on August 14<sup>th</sup>, 2007. Exhibit B.<sup>2</sup> Since the rules governing tribal bar complaints are not yet prescribed and since attempts at invoking the rules of criminal procedure as an alternative were also declined, I must engage this Honorable Court for relief.

The Memorandum that Petitioner attached vaguely and broadly references a number of alleged sources, “including but not limited to, Tribal Council... Executive branch... and other members of the legal community.” Memorandum at pg 2. In addition, on page 4 of the Memorandum, last paragraph, a “disturbing statement” is alleged without specificity to context, time-frame or subject matter. Indeed, such a statement is already an inappropriately conclusory characterization and, therefore, doesn’t permit Respondent (or the trier of fact) an opportunity to independently determine what the subject or circumstances were about in order to formulate their own opinions. These significant ambiguities surrounding the substantive allegations render any meaningful reply impossible.

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as he has often said, the chief judge has requested that) regarding his role, if any, in drafting the accusations. That too was initially ignored.

Instead, Mr. Casey forwarded my August 1<sup>st</sup> inquiry to the chief judge. Again, precisely so as not to offend, I waited a good length of time (almost 2 weeks) before following up on that request with my August 13<sup>th</sup> email. In this email I felt that if I more fully and earnestly expressed the reasons for my needs, a response would more likely be forthcoming. This time a response did come from the chief judge, but it clearly triggered a defensive, if not hostile, reaction (e.g., characterizing my explanations as “.. threats to file actions”... as “clearly crossing the line...” and “[the chief judge] does not appreciate your continued attempts to attack the integrity of the court...”).

I regret that it was perceived that way. Indeed, the *only* reason for continued requests is because I had *never* received any substantive answer from the tribal court prior. Even with the benefit of hindsight now, I could not have crafted the email any differently. I can assure all that the nature and reasons for the request remain genuinely borne of a desire to (1) correct and address the accusations and (2) to comply with the many applicable rules of professional conduct that may be triggered here. I don’t think any one in my position would feel differently and, as I’ve said several times now, I regret the perceived incivility of our communications. All I can do is ask.

I firmly believe the accusations are either incorrect and/or they misapply the rules of ethics which the Memorandum (and the Petitioner) reference. I have a good-faith belief that the author(s) of the Memorandum, by invoking the rules of ethics themselves intend to lodge those violations (either now or later). This is surely reasonably inferable from the numerous citations to the ABA rules of ethics.

<sup>2</sup> Complainant clearly mischaracterizes Respondent’s email as a “demand” when the key words begin: “Could you please provide...?” Nonetheless, the total circumstances surrounding the Memorandum are confusing to say the least. Since the Memorandum wasn’t authored by the Petitioner (yet it was attached by him) but the Memorandum was originally only intended for Council (yet it was referred to this Court), the Respondent had several possible sources for clarity and, yet, apparently none. Rather than risk under inclusion or troubling this Court, Respondent simply sent notices of his dilemma (regarding the need for specificity) to basically everyone (the two tribal judges – the author of the memorandum and Petitioner – as well as the court administrator/solicitor and the Appellate Court clerk). There are no provisions guiding bar complaints, *per se*, and the closes parallel rule is, arguably under the PYTRAP rules governing trials *de novo* (which invoke the rules of criminal procedure).

By analogy, no court would tolerate civil claims or criminal charges being filed without the specific facts being sufficiently known by the respondent or defendant so as to enable a decent inquiry into, and defense of, those claims. It would only seem appropriate that, where allegations of professional ethics are involved, those same rights and that same minimal degree of specificity should be provided in order to provide any Respondent the due process to fairly marshal a reasoned response.

May it also not go without saying that I respect the chief judge's decision to deny every one of my inquiries. I did feel that I needed to at least attempt an administrative request of the Memorandum's author and of Petitioner, prior to filing a judicial request in this matter. My hope for cordiality, however, has been dashed. This effort may surely be second guessed (just as the word-choices in my email) but all I can say is that it was well-intentioned, purposely direct, and sincere in need. I respectfully disagree, however, that it is suddenly a respondent's duty to complete the accuser's own charging record.<sup>3</sup>

The Tribal Prosecutor's Office has no sophisticated defendant-tracking database. It would have to hand-review hundreds of cases to see if it was a possible match to the one referenced (and by an undescribed date only).<sup>4</sup> To address Complainant's and chief judge Cruz's replies, the Office of the prosecutor did begin tracking dismissals in late 2006 for the first time (and at my initiative), however the criteria and categorization is surely going to be different than the court's criteria. Respondent has no duty to divine or discover the context of the accuser's allegations. Moreover, the court, through their new dbase program, should already have the means to provide the very kind of information that should have been presented initially to the accused.

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<sup>3</sup> This is really almost akin to tossing a defense expert in to a gov't forensic lab and saying: somewhere here is your client's DNA profile... if you examine everything you can figure out which one belongs to him.

<sup>4</sup> On average, the Prosecutors Office handles 50-60 hearings per week. There are typically several days per week that each have 15-20 hearings. With, essentially, "196 dates" to review, the task to track down the alleged cases would be monumental. But more importantly, it is a task that should only rest upon a petitioner to complete.

**Conclusion:**

It is respectfully requested that this Court order Complainant to include, at the very least, the defendant's name(s) *or* case numbers for each of the 196 charges allegedly filed "knowingly" without any probable cause. It is further requested that the above-mentioned unidentified conversants (page 2) and "disturbing statement" (page 4) be identified with some modicum of particularity as to subject and time-frames and context so that the veracity of those claims and claimants may similarly and reasonably be explored.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of August, 2007.

PASCUA YAQUI TRIBE  
OFFICE OF THE PROSECUTOR



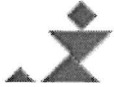
Micah Schmit, Chief Prosecutor, PYT  
Respondent

Copies mailed/delivered to:

Complainant, Judge Melvin Stoof (1 copy)  
Clerk of the Court of Appeals (1 copy)

On August 21, 2007, by JK

# **Exhibit A**



Micah Schmit  
08/13/2007 03:03 PM

To: Judge Cruz/PYT@pascuayaqui-nsn.gov  
cc: Ben Casey  
Subject: Re: Question... follow-up. 

Good afternoon Honorable Chief Judge,  
I had hoped to hear back on my query by now, but unfortunately, I have not heard or received anything from anyone.

There were two main questions and maybe it would help if they were addressed separately.

First is Mr. Casey's job position description. This is relevant to all of us as we have often heard Mr. Casey (himself) soft-shoe between describing his job responsibilities and how he actually behaves/performs -- whether as court solicitor or as court administrator. Knowing what responsibilities he has and how to address him is something we have long attempted to pinpoint. Moreover, this is probably "public information" anyway so it would be greatly appreciated if this information could simply be provided soon.

Second, I still need to know who participated in authoring the Memorandum of Concern that you sent to Council last month. This is a genuine and earnest inquiry. There are ethical allegations charged within, which Judge Stoof subsequently forwarded to the Arizona State Bar. As the respondent I should know who all participated in gathering the statistical data and/or drafted the actual allegations contained in that Memorandum. If licensed attorney Benjamin Casey partook, a particularized response as to him may be appropriate, if not necessitated. I think every licensed attorney or advocate ultimately has an independent responsibility to fully acknowledge any participation in compiling or authoring documents that are filed in court and/or with a bar. Your Memorandum has been filed in both the PYT Court of Appeals and the Arizona State Bar.

In addition, under the heading "Record of Prosecutor Performance" (pages 6-13), the Memorandum lists "196 criminal charges that were dismissed by the Court due to deficiencies in the complaints and affidavits filed by the Office of the Prosecutor" over the past 2 years. Importantly, these dismissals go on to reference a violation of Ethical Rule 3.8 (forbidding the charging of a case which a prosecutor *knows* is not supported by probable cause). This is a very serious allegation to make (and apparently is being made 196 times). For this reason too, I believe that any licensed attorney/advocate who may have contributed to the authorship and allegations in the Memorandum has a duty to identify themselves, as they have essentially vouched for the authenticity of said allegations by "ghost-writing" them for you, the signator. The exact same concern applies to the other ethical allegations made in the Memorandum as well. Mr. Casey, I would submit that this duty of candor re: authorship is even *independently* yours to honor.

Finally, with regard to the 196 dismissed criminal charges themselves, the Memorandum omits any case identifiers thereby making reviewing and responding all but impossible. Accordingly please provide both the case number and the defendant's name for each of these so that a fair and cogent examination may be made by the prosecutors/advocates who handled those cases. As the Court of Appeals awaits a response from me, please estimate how long it will take to furnish this additional data.

With utmost respect,

Micah Schmit  
Chief Prosecutor, PYT  
520-879-6253


Note: This is a confidential &/or privileged message and therefore may not be duplicated, distributed or re-disseminated, to anyone other than the originally intended conversants.

Ben Casey

**Ben Casey**

To: Micah Schmit/PYT@pascuayaqui-nsn.gov

08/01/2007 10:59 AM

cc:  
Subject: Re: Question....

I've forwarded your request to my boss...

Micah Schmit



**Micah Schmit**  
07/31/2007 12:04 PM

To: Ben Casey  
cc:  
Subject: Question....

What exactly is your title?.. court solicitor or court administrator?

Also, please tell me who all contributed to the Memorandum of Concern to council sent on behalf of Judge Cruz earlier this month.

I need to know what, if any, specific parts you and/or Judge Stoof had in compiling statistics and/or authoring that memorandum.

Your prompt response is sincerely appreciated.

Regards,  
Micah.

Micah Schmit  
Chief Prosecutor, PYT  
520-879-6253

Note: This is a confidential &/or privileged message and therefore may not be duplicated, distributed or re-disseminated, to anyone other than the originally intended conversants.

Judge Cruz

08/14/2007 01:32 PM

To: Micah Schmit/PYT@pascuayaqui-nsn.gov  
cc: Prosecutors, Ben Casey/PYT@pascuayaqui-nsn.gov  
Subject: Re: Question... follow-up.

Mr. Schmit:

Federal reporting requirements mandate that the court, and all other departments who receive 638 monies, compile statistics semi-annually and submit them in reports to the federal government. Compiling this information is time-consuming enough. Neither myself nor the staff should be required to provide case numbers or defendant's names, when you, the Chief Prosecutor, should be performing your own semi-annual reviews and audits of your office's records and files. The court should not be assisting with the prosecutor's file audits just as it would not do so for the public defender's office, or attorney general's office or any other lawyer's office.

I reviewed the court statistics and believe that they are accurate and truthful based on the court's files and documents. Those are the statistics that were included in my memorandum to Tribal Council.

The fact that Judge Stoof may have referenced his copy of my memorandum intended for the Tribal Council in subsequent filings does not change the truthfulness of the document or the information contained in the document.

I did not file a grievance with the State Bar or with the Court of Appeals, Judge Stoof did. You can address those matters by filing the appropriate requests with the Court of Appeals or with the State Bar and with the complainant, Judge Stoof.

As far as who may or may not have assisted me, that is an internal affair between me and my staff and privileged. I do not appreciate your continued attempts to attack the integrity of the court or to impugn its motives that were to provide the Tribal Council with a truthful view of its concerns regarding your performance as Chief Prosecutor. That is what the report contained, truthful information. The memorandum speaks for itself.

Now you are seeking to question the integrity of my staff who gathered the information about the court's case files and threaten action against them, rather than addressing the deficiencies raised by my memorandum to the Tribal Council. Such threats to file actions against my staff in order to gain some perceived advantage in a separate grievance matter is clearly crossing the line and only further supports the concerns expressed in my memorandum to Tribal Council.

As for your request for Mr. Casey's job description, I have been told by the Director of Human Resources that such a request is highly unusual and that the decision regarding its release lies solely with the Department Director. As is the practice of the majority of departments on the reservation, the Court does not release the job descriptions of its employees for reasons other than to post a notice for a vacant position. I see no reason to deviate from that practice at this time. Your request is denied.

# **Exhibit B**



Micah Schmit

08/13/2007 04:36 PM

To: Melvin Stoof/PYT@pascuayaqui-nsn.gov  
cc: WKniep@email.arizona.edu  
Subject: PYT bar complaint

With regard to the 196 dismissed criminal charges referenced in Judge Cruz's Memorandum of Concern to Council (which you have attached and appear to adopt and incorporate in to your bar complaint), they omit any case identifiers thereby making reviewing and responding impossible. Could you please provide both the case number and the defendant's name(s) for each of these so that a fair and cogent examination in to the accusation (that these charges were all "knowingly" made without probable cause) can be reviewed by the prosecutors/advocates who handled those cases. As the Court of Appeals awaits a response from me, please estimate how long it will take to furnish this additional data.

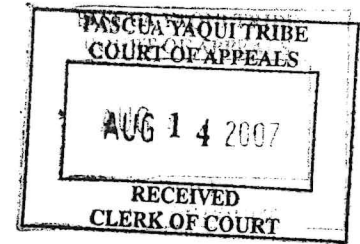
I have submitted a similar request for the case-identifiers from Judge Cruz, since the Memorandum was first delivered to Council and surely merits a reply there as well.  
I will be filing a motion for extension of time to accommodate this clarification request.

Respectfully,

Micah Schmit  
Chief Prosecutor, PYT  
520-879-6253

Note: This is a confidential &/or privileged message and therefore may not be duplicated, distributed or re-disseminated, to anyone other than the originally intended conversants.

Melvin R. Stoof  
Associate Judge  
Pascua Yaqui Court  
7474 S. Camino de Oeste  
Tucson, AZ. 85757  
(520) 879-6289



August 14, 2007

Chief Justice and Associate Justices  
Pascua Yaqui Court of Appeals

Re: Case No. CA-07-012, In the Matter of Micah Schmit; Micah Schmit's  
Demand to Complainant Melvin R. Stoof for Case File Information

Dear Chief Justices and Associate Justices:

In response to Mr. Schmit's August 13, 2007 e-mail demand to me, that I provide case identifiers, defendant's names, in order for him to respond to the grievance and investigation request I had filed with the Court of Appeals on July 6, 2007, I have attached a copy of his request and file this formal objection to his request for discovery.

On July 6, 2007, I filed a grievance against Mr. Schmit, and a copy of same was hand delivered to his office. On July 9, 2007, a date 35 days ago, Mr. Schmit was ordered to provide a response by August 6, 2007. On July 31, 2007, Mr. Schmit requested an extension to file his response with the Court of Appeals, to which I did not object. On August 3, 2007, the Court of Appeals ordered Mr. Schmit to file a response by August 21, 2007. I will be objecting to any other continuances that Mr. Schmit may make, because he has already been granted additional time to file his response, and he has had 36 working days to gather information he may need to file his response.

An audit of Mr. Schmit's own files will enable him to respond to the grievance. The case files are under his control. I should not be doing preliminary discovery and investigation for Mr. Schmit, nor will I ask the court's clerks who gathered the case file information for Judge Cruz to search for more case files and numbers to accommodate Mr. Schmit, particularly where he has not filed a response to the grievance nor made appropriate requests to the Court of Appeals. This request from Mr. Schmit for information is not only inappropriate, but also, it is merely a ploy to avoid complying with the Court of Appeals order to file his response in a timely fashion.

I shall also be sending a copy of this correspondence to Mr. Schmit, because I believe this may be an ethics violation for him to be contacting me for discovery when he has not even filed his response to the grievance complaint pending with the Court of Appeals.

Letter to Court of Appeals  
In Re Micah Schmit  
August 14, 2007  
Page 2

Sincerely,



Melvin R. Stoof

Encl: 1

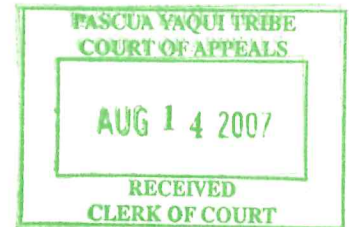
CC: Micah Schmit

I certify a copy of the foregoing was hand delivered  
To the respondent, Micah Schmit



Melvin R. Stoof

Melvin R. Stoof  
Associate Judge  
Pascua Yaqui Court  
7474 S. Camino de Oeste  
Tucson, AZ. 85757  
(520) 879-6289



August 14, 2007

Chief Justice and Associate Justices  
Pascua Yaqui Court of Appeals

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Demand to Complainant Melvin R. Stoof for Case File Information

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Letter to Court of Appeals  
In Re Micah Schmit  
August 14, 2007  
Page 2

Sincerely,



Melvin R. Stoof

Encl: 1

CC: Micah Schmit

I certify a copy of the foregoing was hand delivered  
To the respondent, Micah Schmit



Melvin R. Stoof



Micah Schmit

08/13/2007 04:36 PM

To: Melvin Stoof/PYT@pascuayaqui-nsn.gov  
cc: WKniep@email.arizona.edu  
Subject: PYT bar complaint

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I have submitted a similar request for the case-identifiers from Judge Cruz, since the Memorandum was first delivered to Council and surely merits a reply there as well.

I will be filing a motion for extension of time to accommodate this clarification request.

Respectfully,

Micah Schmit  
Chief Prosecutor, PYT  
520-879-6253

Note: This is a confidential &/or privileged message and therefore may not be duplicated, distributed or re-disseminated, to anyone other than the originally intended conversants.

No. CA-07-012

Pascua Yaqui Tribe Court of Appeals

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In the matter of Micah Schmit, Respondent

and

Judge Melvin Stoof, Petitioner

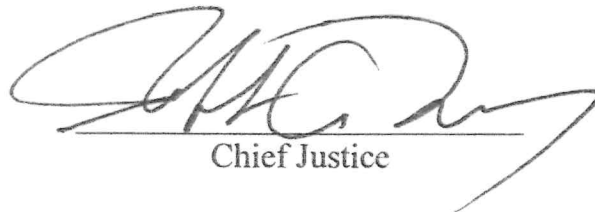
ORDER

Respondent's motion for extension of time to file its opening response.

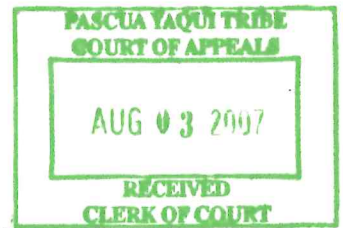
Mr. Schmit, Esq., Pascua Yaqui Prosecutor Office, Tucson, Arizona, Respondent.  
The Hon. Judge Melvin Stoof, Pascua Yaqui Tribal Court, Petitioner.

The court has received and reviewed the Petitioner's motion for extension of time to file pursuant to PYTRAP Rule 5(B). The Court finds good cause for granting the motion. The Respondent Micah Schmit is granted an extension and his response is due no later than 15 days from August 6, 2007.

So ORDERED this 3<sup>rd</sup> day of August, 2007



Chief Justice



IN THE PASCUA YAQUI COURT OF APPEALS  
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

In Re: Micah Schmit, Chief Prosecutor )  
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Case No. CA-07-012

Response to Respondent's Motion  
for Extension to File Response

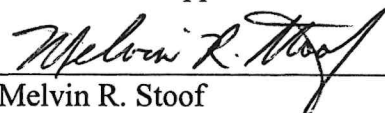
The petitioner, Melvin R. Stoof, files his response to the respondent's Motion for Extension of Time to File Response, does not object to the request for an extension, and would request that the Court of Appeals allow the petitioner additional time to file a reply in the event the Court of Appeals grants the petitioner's motion for extension.

FILED this 1<sup>st</sup> day of August, 2007.

RESPECTFULLY SUBMITTED,

  
\_\_\_\_\_  
Melvin R. Stoof, Petitioner  
Pascua Yaqui Court  
7474 S. Camino de Oeste  
Tucson, AZ. 85757

I undersigned certifies that a copy of the foregoing was hand delivered to the respondent and submitted to the Court of Appeals Clerk on August 1, 2007.

  
\_\_\_\_\_  
Melvin R. Stoof

PASCUA YAQUI TRIBE  
OFFICE OF THE PROSECUTOR  
7474 S. Camino de Oeste  
Tucson, AZ 85757  
(520) 879-6251



IN THE PASCUA YAQUI TRIBE **COURT OF APPEALS**  
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

**In re: Micah Schmit, Chief Prosecutor. No. CA-07-012**

**Respondent's Motion for Extension of Time to File Response (first request).**

The Respondent motions the court for an extension of time to file its opening response pursuant to 3 PYTRAP Rule 5(B). The respondent was on vacation at the time the instant Complaint was first filed/delivered. In addition, several other obligations, some unforeseen, have converged in the month of July (recent high-profile cases, arguments in the Court of Appeals, and tribal budget issues, ongoing) all serving to exacerbate the availability of time to cogently respond to the principle allegations in the complaint. A continuance of approximately 30 days is requested. The current due date is August 6<sup>th</sup>. I will, however, try to file the response earlier if at all possible. As a suggestion, the Court may simply wish to make any reply by the Petitioner due two weeks from the time that the response becomes filed.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of July, 2007.

PASCUA YAQUI TRIBE  
OFFICE OF THE PROSECUTOR

Micah Schmit, Chief Prosecutor  
Respondent

Copies mailed/delivered to:

Petitioner, Judge Melvin Stoof  
Clerk of the Court of Appeals (5 copies)

On July 31, 2007, by

No. CA-07-012  
Pascua Yaqui Tribe Court of Appeals

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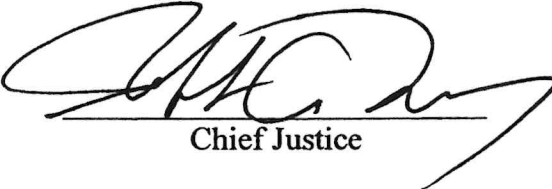
In re G. Micah Schmit, Chief Prosecutor.

ORDER

To: G. Micah Schmit, Esq., Chief Prosecutor, Pascua Yaqui Tribe Office of the Prosecutor, Tucson, Arizona.

On July 6, 2007, a petition was filed against you with this court seeking disciplinary action for alleged ethical violations of the American Bar Association Model Rules of Professional Conduct. Attached to this order is a copy of the petition that has been filed with the court. You shall file a response to the petition with this court no later than August 6, 2007 and serve a copy on the trial court solicitor on the same day you file with the court. No later than September 4, 2007, the trial court solicitor shall file either a response brief on behalf of the petitioner trial judge or file a letter stating that no response brief will be filed. No further briefing will be allowed. The appellate court clerk shall serve a copy of this order with the petition on the petitioner trial judge and the trial court solicitor.

So ordered this 9th day of July, 2007.

  
Chief Justice

No. CA-07-012  
Pascua Yaqui Tribe Court of Appeals



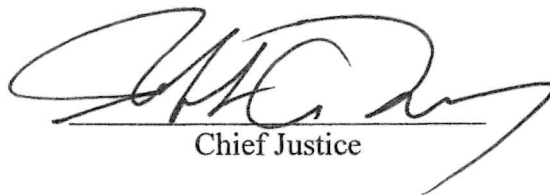
In re G. Micah Schmit, Chief Prosecutor.

ORDER

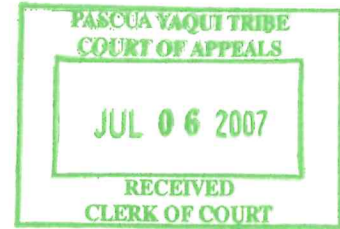
To: G. Micah Schmit, Esq., Chief Prosecutor, Pascua Yaqui Tribe Office of the Prosecutor, Tucson, Arizona.

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So ordered this 9th day of July, 2007.

  
Chief Justice

Melvin R. Stoof  
Associate Judge  
Pascua Yaqui Court  
7474 S. Camino de Oeste  
Tucson, AZ. 85757  
(520) 879-6289



CA - 07 - 012  
TS

July 6, 2007

Chief Justice and Associate Justices  
Pascua Yaqui Court of Appeals

Re: Disciplinary Action Request as to Chief Prosecutor, Micah Schmit

Dear Justices Williams, Geronimo, and Derrick:

Under the American Bar Association's Model Rules of Judicial Conduct, when a judge has knowledge that a lawyer may have committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, the judge has a duty to report such alleged violations to the appropriate authority. The Model Rules provide in pertinent part as follows:

Rule 2.15 Responding to Judicial and Lawyer Misconduct

. . . (D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rule of Professional Conduct shall take appropriate action.

The Pascua Yaqui Associate Judge was recently informed that the Chief Prosecutor, Micah Schmit, has been contacting the Tribal Council, who approves the judge's re-appointment, the Tribal Chairwoman, who nominates a judge for appointment and re-appointment, and he also has been contacting her Chief of Staff, and former interim Attorney General, Pilar Thomas, in an attempt to undermine the re-appointment of the associate judge, whose three year term expired on June 1, 2007. Under the Pascua Yaqui Constitution, it is the Chairwoman who must nominate the Associate Judge prior to any re-appointment recommendations, and the Chief Prosecutor has been advising the Council about the judge's decisions and he has not being truthful with the Council in his communications about the judge and the judge's rulings.

The Associate Judge believes that the information that the prosecutor has been providing is a skewed version of facts taking place during the court's determinations, and the statements are not truthful, because the Chief prosecutor's statements imply that the judge has not been following tribal law, and that the statements he has made to members of the legislative council imply that the court's decision making has been arbitrary and capricious.

Mr. Schmit made the comment in a meeting with the Council that Judge Stoof made a decision to dismiss a drug case, even though the police officer stated under oath that the

defendant admitted he possessed marijuana. The statement alone left the impression that the court decided the case without considering the officer's testimony. What the prosecutor failed to state was that the drug charge was dismissed by the court based on the defendant's counsel motion to do so, because the prosecutor did not have a lab report evidencing the substance seized were, in fact, drugs, the prosecutor did not provide a proper expert witness to testify about toxicology, or a chemist, or even a lab technician as to drug testing, and the court sustained the defense counsel's objection that the police officer could not be qualified as an "expert" to testify that the alleged drug was in fact marijuana, based on his lack of education, training, experience or skill required of such an expert, and the fact that he had not been disclosed as an expert who would be testifying prior to trial. The statement the Chief prosecutor made to the Council implying the court made its decision in the case arbitrarily has not been retracted, even though Mr. Schmit knew such to be a false and misleading set of facts. Further, the criminal case about which the prosecutor has commented, is on appeal, and the prosecutor failed to provide that detail to the Council.

### Ethical Duties of Attorneys Practicing in the Pascua Yaqui Court

All Attorneys practicing in the Pascua Yaqui Court are held to the same rules of professional responsibility, disciplinary rules and standards of the American Bar Association, based on 3 PYTC § 1-4-40(C), which provides as follows:

Dignity and Ethics. Any attorney practicing in the Pascua Yaqui Court shall conform to the usual standards of conduct of the American Bar Association in the performance of their duties as an attorney.

The ABA professional responsibility rule provides as follows:

#### **Model Rules of Professional Conduct**

##### ***Maintaining The Integrity Of The Profession***

##### **Rule 8.2 Judicial And Legal Officials**

(a) **A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.**

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct. (emphasis added).

The comment to Rule 8.2 provides further:

##### ***Maintaining The Integrity Of The Profession***

##### **Rule 8.2 Judicial And Legal Officials - Comment**

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender.

Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, **false statements by a lawyer can unfairly undermine public confidence in the administration of justice.**

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

The ABA Rules of Professional conduct provide that an attorney has a duty to be truthful in dealing with others:

*Transactions With Persons Other Than Clients*

**Rule 4.1 Truthfulness In Statements To Others**

**In the course of representing a client a lawyer shall not knowingly:**

**(a) make a false statement of material fact or law to a third person; or**

**(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.**

**Model Rules of Professional Conduct**

*Transactions With Persons Other Than Clients*

**Rule 4.1 Truthfulness In Statements To Others - Comment**

**Misrepresentation**

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. **A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.** For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. When Mr. Schmit stated only part of the court's determination to the Council leaving them with the impression that the judge made a decision unsupported by facts, his omission to provide a full explanation of all the facts and surrounding circumstances of the court's decision was misleading and the equivalent of an affirmative false statement.

The ABA standards of conduct require that an attorney refrain from commenting on a judge's ruling in a case, particularly where the case is still pending on appeal, in light of standards of conduct rule that provides:

American Bar Association Criminal Justice Standards  
Prosecution Functions  
Standard 3-5.9

An attorney should not make public comments critical of a verdict, whether rendered by judge or jury.

Such conduct of commenting on a judge's rulings subjects an attorney to a disciplinary action. If a prosecutor has a problem with a court's ruling, his remedy is to file an appeal, not to comment publicly about a judge's decision. The purpose of exercising such discretion is to promote independent decision making by a judge free from public pressure or undue influence.

The Chief Judge of the Court has also expressed her concern in a memo to the Pascua Yaqui Tribal Council dated July 7, 2007 (sic) sent to the Council on July 5, 2007. I have attached a copy of that memo to this letter for your review.

RELIEF REQUESTED

The applicant in this grievance would respectfully request that the Court of Appeals admonish the Chief Prosecutor and order him to retract his statement to the Council related to Judge Stoof's recent decisions and verdicts, by way of a formal written apology to both the Chief judge and the Associate Judge.

The applicant also requests that the prosecutor be ordered to take a professional responsibility course addressing specifically ethical duties and responsibilities to the court under the above cited rules of professional responsibility and a continuing legal education course on the role of discretion in ethics specifically designed for prosecutors and their relationship to the court.

The applicant would also respectfully request that the prosecutor cease in commenting on the judge's decisions in cases to the general public and to the Council, because such action undermines the independence of the judiciary. The prosecutor should challenge any decision he feels to be unsupported by facts or law to the appropriate forum, the Court of Appeals, rather than making misrepresentations to the Council about the court's decision making.

I would respectfully request that the Court of Appeals appoint a special commission of licensed attorneys of the Pascua Yaqui Tribe to investigate the matter and to make recommendations to the Court of Appeals as to what, if any further actions should be taken against Mr. Schmit for his misconduct while acting as the Tribe's Chief Prosecutor.

Sincerely,



Melvin R. Stoof  
Associate Judge  
Pascua Yaqui Court