

# COMPLAINT FOR IMPEACHMENT OF THOMAS J. MOYER CHIEF JUSTICE OHIO SUPREME COURT

Filed w/Ohio House of Representatives—July 7, 2004

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Sacramento, California/Columbus, Ohio

Thomas J. Moyer has been the Chief Justice of the Ohio Supreme Court since 1987 and is seeking to be reelected to another six-year term on Nov. 2, 2004.



The Articles of Impeachment set forth below paint a rather sad, albeit disturbing story of a man who has brought the Ohio judiciary into disrepute as a result of his serial violations of the Code of Judicial Conduct and more importantly, repeated violations of his Oath of Office to uphold the Ohio and U.S. Constitutions and laws.

Rather than improve the state of Ohio jurisprudence, Thomas J. Moyer set out to manipulate it to further his personal and/or financial interests, and in the process discredited his office and the citizens of Ohio.

Thomas J. Moyer's impeachment and removal from office is not an option, it is mandatory based on the breadth and egregious nature of his misconduct.

To better understand the details of Moyer's misconduct, I would invite you to go to [www.noethics.org](http://www.noethics.org) and review the following articles:

Moyer Voter Guide #1—Dec. '03

Moyer Voter Guide #2—Jan. '04

Moyer Voter Guide #3—Feb. '04

Moyer Voter Guide #4—Apr. '04

Moyer's reply/complaint—May '04

Special newsletter—May 15, 2004

**SEE CONTACT INFO AT END RE: LEGISLATORS TO ASK WHEN IMPEACHMENT PROCEEDINGS WILL BEGIN AND CONTACT INFO FOR OHIO SECRETARY OF STATE KENNETH BLACKWELL ABOUT INVESTIGATING MOYER'S GUIDELINE/RULE ALLOWING JUSTICES TO USE STATE CARS/FUEL TO ATTEND POLITICAL FUNDRAISERS AND FOR CAMPAIGNING FOR REELECTION.**

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Below is a copy of a verified (sworn) complaint for the impeachment of Thomas J. Moyer, Chief Justice of the Supreme Court of Ohio. The impeachment complaint contains eleven (11) articles of impeachment; definition of misdemeanor in office, and summary of impeachable offenses as set forth below.

- Article 1– Violation of IRS Rules for Reporting Income**
  - Article 2– Allowing subordinates to Evade/Avoid Taxes**
  - Article 3– Authorizing purchase of luxury vehicles**
  - Article 4– Abuses involving use of State cars**
  - Article 5– Evasion of and/or underreporting income**
  - Article 6– Concealing/Refusing to disclose income**
  - Article 7– Violations of Ohio Public Record Laws**
  - Article 8– Retired visiting judge abuses**
  - Article 9– Abuses involving affidavits of bias**
  - Article 10– Unconstitutional perk/compensation**
  - Article 11– Avoidance of legislative review/oversight**
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**VERIFIED COMPLAINT FOR THE IMPEACHMENT  
OF CHIEF JUSTICE THOMAS J. MOYER PURSUANT  
TO OHIO CONSTITUTION IV § 17**

**Complainant:**

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4012 Alamo Court  
El Dorado Hill CA, 95762

**Respondent:**

Thomas J. Moyer  
Chief Justice  
Ohio Supreme Court  
65 South Front Street  
Columbus, OH 43215  
1-800-826-9010  
(614) 387-9000

**PRELIMINARY STATEMENT**

Now comes complainant, David Palmer and pursuant to Ohio Const. IV, § 17 hereby files a complaint seeking the impeachment of Thomas J. Moyer, Chief Justice of the Ohio Supreme Court.

The facts set forth herein will establish that Moyer has engaged in a pattern of misconduct in office involving (a) moral turpitude, (b) willful misfeasance and/or nonfeasance, (c) fraud, deceit and misrepresentation, (d) abuse of power, (d) willful neglect of duty with corrupt intention, and (e) other high crimes and misdemeanors.

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## **ARTICLE 1– Violation of IRS Rules for Reporting Income**

In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States, did: knowingly engage in abuse of power; willful neglect of duty with corrupt intention; gross misfeasance, and high crimes and misdemeanors by violating IRS Rules for reporting income he received for personal use of state cars from 1993 to 2003.

The means used to implement this course of conduct or plan included one or more of the following:

1. In late 1992 Moyer sought legal advice as to the lawfulness and his authority to authorize the purchase of state vehicles for commuting and other personal purposes.
2. On Feb. 10, 1993, Moyer received a memo from then-Court Administrator Steven Stover (attorney) wherein Stover indicated; “IRS considers personal use of state car to be a taxable fringe benefit.”
3. Shortly after receiving Stover’s memo (Ex. 1), Moyer sought advice from Michael R. Baker. On June 1, 1993, Baker wrote to Moyer and attached a “lengthy” memo dated May 20, 1993, which made several essential points as seen below:
  - a. **Personal use must be reported as income for tax purposes**
  - b. **Commuting is personal use and is taxable income**
  - c. **Income is subject to withholding of income and employment taxes**
  - d. **Court is required to include personal use on Justice’s W-2 Form**
  - e. **Justice’s must prove business v. personal use of cars**
4. After receipt of legal advice from Stover/Baker, Moyer executed a **Resolution on Sept. 29, 1993** that ignored their advice and also violated

IRS Rules on reporting his personal use of state cars, which ruled that each justice would report his/her income to the IRS, et al.

5. During the audit on this matter, Moyer adopted *another* Resolution on Feb. 25, 2003, which stated in relevant part as follows:

**...each Justice shall be solely responsible for accounting for his or her personal use of a Court vehicle, including the proper reporting of such use as a taxable benefit to all appropriate federal, state, and local tax regulating authorities, and that no Court administrative or fiscal personnel shall be responsible for reporting such use to such authorities.**

6. On Feb. 17, 2004, Chuck Vollmer, Senior Audit Manager issued a "Summary of findings re: Mr. Palmer's letter of 1/10/04," which states:

**Allegations:** Mr. Palmer cites the provisions of a 2002 Department of Administrative Services (DAS) memo in order to calculate the amount of taxable benefit from their personal use of Court-provided vehicles he feels the justices should have claimed as income during CY 2001 (presumably). He then asserts that this income should have but did not appear on the justices' 2001 W-2 forms, and that the justices did not maintain logs detailing their personal vs. business use of state vehicles as they were required to do.

**Summary of findings:** Since the Court is exempt from the DAS fleet management program described in Ohio Revised Code (ORC) section 125.832, normally the provisions of a DAS memo such as the one Mr. Palmer cites would not apply to the Court. However we reviewed the IRS valuation methods summarized in the memo and used by Mr. Palmer to make his calculations and compared them to the provisions contained in IRS Publication 15-B (Attachment D; relevant pages only). We found that, irregardless of the source of Mr. Palmer's information, the IRS provisions discussed in the memo do indeed apply to the Court. **It appears the logic and methodology behind Mr. Palmer's calculations is correct, although we could not verify the specific figures he used in those calculations. As to Mr. Palmer's allegations that the justices' W-2 form should but do not disclose any taxable benefit from the personal use of state vehicles, he is correct.**

7. For ten years, Moyer *knowingly* violated IRS Reporting Rules for disclosure of income from his use of state cars on his annual W-2. Moreover, it is undisputed that on June 1, 1993, Moyer was advised by Mr. Baker that his income *had* to be reported on his annual W-2 Form.

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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## **ARTICLE 2— Allowing subordinates to Evade/Avoid Taxes**

In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States, did: knowingly engage in abuse of power; willful neglect of duty with corrupt intention; gross misfeasance, and high crimes and misdemeanors by authorizing and/or acquiescing in his subordinates conduct in evading, avoiding and/or underreporting income received for personal use of state cars.

The means used to implement this course of conduct or plan included one or more of the following:

1. Beginning in the late '90s Moyer authorized Administrator Steve Hollon to drive a state-paid-for-car and fuel to commute almost eighty (80) miles from his residence to the Court in a Jeep Grand Cherokee. A review of Hollon's fuel records disclosed that he used about 200 gallons of fuel and drove about 3,500 miles a month at public expense.

2. From 1999 to 2001, Hollon drove about 105,000 miles to commute to the Court from his home in the Lebanon area. At an average of 32.5 cents per mile (IRS rates), Hollon received a fringe benefit (compensation) of about \$34,125, which is in addition to his salary of over \$100,000 a year. However, Hollon's W-2's disclose that he reported about \$600 a year in income for commuting and personal use of a state car.

3. In the late nineties Moyer also authorized Clerk of Court Marcia Mengel to operate a state car to commute to her Worthington home (11.5 miles one-way) and for other personal purposes. Mengel drove about 5,500 miles

a year for commuting purposes only; however her W-2's disclose that she reported about \$500 per year in income. At 32.5 cents per mile, Mengel received annual income of about \$1,787.

4. The fact that the annual W-2's of Hollon and Mengel reported the income they claimed for personal use of state cars is further proof that Moyer knew that he was violating IRS Rules by failing to do the same.

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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### **ARTICLE 3– Authorizing purchase of luxury vehicles**

In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States and/or comply with the Code of Judicial Conduct did: knowingly engage in abuse of power; gross misfeasance and willful neglect of duty in adopting Guidelines allowing justices to purchase luxury vehicles of their choosing without regard to the cost to the public.

The means used to implement this course of conduct or plan included one or more of the following:

1. In his 02-17-04 summary Senior Audit Manager Chuck Vollmer, under the heading "Justices shopping sprees for luxury vehicles:"

**Allegations:** In this section, Mr. Palmer alleges that the Court-provided vehicles provided to the justices were purchased without competitive bidding, and in fact without any regard as to cost.

**Comments:** While the Court's purchases of these vehicles **could be characterized as fiscally irresponsible**, there does not appear to have been anything illegal about the purchases.

2. Moyer authorized the justices to personally select a vehicle and options of their choosing as follows:



- a. Moyer's 2001, Buick Park Avenue Ultra @ \$37,745
- b. Douglas' 2000 Buick Park Avenue Ultra @ \$35,228
- c. Resnick's 2001 Jeep Grand Cherokee @ \$30,852
- d. Sweeney's 1999 Buick Park Avenue Ultra @ \$30,958
- e. Pfeifer's 1999 Jeep Grand Cherokee @ \$32,752
- f. Stratton's 2001 Ford Taurus @ \$19,196

3. In June 2003, Court Administrator Steven Hollon authored Guideline 27-1. Purchase of Court Vehicles, which stated:

- a. \$20,000 limit on purchase of pool vehicles
- b. Pool vehicles replaced from after 5-years or 100,000 miles
- c. \$27,500 limit on purchase of vehicles assigned to justices
- d. Justice vehicles replaced after 4-years or 80,000 miles

4. On June 24, 2003, Moyer held a conference to consider the implementation of Guideline 27-1. On Nov. 26, 2003, Hollon sent Moyer a memo titled **Guideline and Resolution for Purchase of Court Vehicles** (Ex. 7), which changed purchase limits for justices as follows:

- a. \$35,000 limit on purchase of vehicles assigned to justices
- b. Justices vehicles replaced after 4-years or 75,000 miles
- c. Moyer can approve purchases above \$35,000 for justices

Hollon's Nov. 26, 2003 memo went on to say:

- a. The Administrative Director (Hollon) and Fiscal Director are required to determine that purchases of vehicles demonstrate fiscal responsibility and are in the Court's best interest
- b. Court staff shouldn't be put in a position of approving or rejecting a justice's request to purchase particular vehicle with certain features
- c. To relieve staff from being placed in this situation, Moyer indicated he will propose resolution requiring Justices to adhere to purchase guidelines, with some modifications

5. On December 1, 2003, Moyer adopted a Resolution titled "The Purchase of Court Vehicles Assigned for Use by Justices (Ex. 8), which states in relevant part:

- a. Purchasing coordinator **shall be responsible to coordinate selection of model and other features with Justice**
- b. Justice vehicles should be purchased via state term contract
- c. If purchasing justice wishes; vehicle can be purchased outside the state term contract with Moyer's approval

6. Unlike Ohio, the California Supreme Court holds court in San Francisco, Los Angeles and Sacramento. On May 27, 2004, the Administrative Director of the California Supreme Court, Brad Campbell responded to complainant's request regarding state cars being provided to the Justices of the Supreme Court. Mr. Campbell's response stated:

"In 2001, the Supreme Court purchased five vehicles that are assigned for the use of associate Supreme Court justices. Two of these vehicles cost \$20,337.33 each; the remaining three vehicles cost \$20,744.35 each. I also want to clarify my earlier communication to you regarding the process used to procure the vehicles. These vehicles were purchased under a negotiated procurement. The Supreme Court also leases an additional vehicle for the use of one associate Supreme Court justice at a cost of \$4,857.36 per year.

**The Supreme Court did not purchase a vehicle for the Chief Justice. When the Chief Justice travels on court business, it is paid for through a state program on a per mile basis.**

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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#### **ARTICLE 4— Abuses involving use of State cars**

In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States and duty to comply with the Code of Judicial Conduct, did: knowingly engage in abuse of power; willful neglect of duty with corrupt intention, and willful misfeasance by adopting Guidelines authorizing the purchase of publicly financed vehicles without regard of the cost to the public.

The means used to implement this course of conduct or plan included one or more of the following:

1. As Chief Administrator of the Court, Moyer has the *sole responsibility* to assure that *all expenditures* are (a) necessary, (b) fiscally responsible, and (c) in the best interest of the taxpayers. The following



facts, which were obtained by reviewing court records proves that Moyer failed to properly fulfill his duties by authorizing and/or condoning the following conduct.

- a. Authorized justices to use state cars/fuel to attend partisan political fundraisers and for other campaign related functions
- b. Court employees fuel/wash justices cars during work hours
- c. \$55,000-year court employee to act as his personal chauffeur
- d. Ordered \$580 Michelin's Tires for 2001 Park Avenue 5 days *after* delivery (450 miles on Goodyear's) and when claims Goodyear's tires stored in Court's "tire pool" on Goodale Avenue
- e. Justice's use of cars to manage/operate personal businesses
- f. Justice's use of car to act as grand marshall at car race
- g. Justices' use of cars to visit with family members on holidays
- h. Justices' purchasing 200 gallons or more of fuel in a month even though the court conducted no official business
- i. Justices' using cars/fuel to attend parades
- j. Giving waiver to Wilson's Garage year after year even though it is proven that Wilson's has consistently overcharged for services
- k. Failing to properly reporting or disclose locations, dates, persons involved and circumstances re: accidents involving justices thereby allowing state to pay for repairs
- l. Purchasing \$38,000 turbo-charged Park Avenue to commute 3.0 miles to Court
- m. Purchase of car for Justice Stratton to commute 11.8 miles to court from her residence in Worthington when she has 2-3 personal cars available for commuting purposes

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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## **ARTICLE 5– Evasion of and/or underreporting income**

In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States and duty to comply with the Code of Judicial Conduct, did: knowingly engage in abuse of power; willful neglect of duty with corrupt intention; willful misfeasance, and high

crimes and misdemeanors by evading and/or underreporting income he received for personal use of state cars and fuel.

The means used to implement this course of conduct or plan included one or more of the following:

1. Moyer’s Sept. 1993 and Feb. 2003 Resolutions were fashioned to allow him and the other justices to conceal the amount of income received from the personal use of state cars by violating IRS Rules. Moreover, it is apparent that Moyer knew if said income was properly declared on annual W-2’s, it would become a public record and subject to scrutiny from the press and/or concerned citizens.
2. Moyer’s annual W-2 from 1993 to 2002 discloses no income for use of State cars and no withholding of federal income and Medicare taxes as required by IRS Rules and applicable United States Codes. According to applicable IRS Rules and State, City and Medicare tax rates, Moyer’s liability from 2000 to 2003 on income for personal use of cars is: (doesn’t include penalties and interest)

<b>Year</b>	<b>Lease Value</b>	<b>Fuel</b>	<b>Total</b>	<b>IRS @ 28%</b>	<b>Ohio</b>	<b>City</b>	<b>Medi-care</b>	<b>Total Tax</b>
2000	\$10,750	\$1,050	\$11,800	\$3,304	\$755	\$236	\$171	\$4,466
2001	\$10,750	\$1,050	\$11,800	\$3,304	\$755	\$236	\$171	\$4,466
2002	\$10,750	\$1,050	\$11,800	\$3,304	\$755	\$236	\$171	\$4,466
2003	\$10,750	\$1,050	\$11,800	\$3,304	\$755	\$236	\$171	\$4,466
	<b>\$43,000</b>	<b>\$4,200</b>	<b>\$47,200</b>	<b>\$13,216</b>	<b>\$3,020</b>	<b>\$944</b>	<b>\$684</b>	<b>\$17,864</b>

3. By violating IRS Rules that required his income to be reported on his annual W-2, Moyer was able to “conceal” the amount of income he claimed for personal use from public view and scrutiny. Moyer’s mandate in his Resolutions that he “self-report” his income, allowed him to refuse to disclose what he reported to the public by claiming the information was contained in his personal tax returns, which are confidential.

4. In his Feb. 7, 2003 memo to Chief Justice Moyer, Court Administrator Steve Hollon states:

- a. The other consideration is that this issue (reporting income to tax authorities) **is now on the radar screen of at least one tax regulating authority (e.g., the City of Columbus), and possibly others.**
- b. You should be aware that **reporting no or minimal personal use** of a Court vehicle may not be accepted by these authorities (tax agencies) without **legitimate** and **detailed mileage logs.**

5. Hollon's comment that "reporting no or minimal personal use may not be accepted" without "legitimate and detailed mileage logs," is clearly an indication of what Moyer has been doing over the past ten (10) years. In fact, the Court has admitted to complainant in response to a public records request that "no mileage logs" exist.

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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## **ARTICLE 6— Concealing/Refusing to disclose income**

In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States and duty to comply with the Code of Judicial Conduct, did: knowingly engage in abuse of power; willful neglect of duty with corrupt intention; willful misfeasance, and high crimes and misdemeanors by concealing/refusing to disclose income he received from his personal use of state cars.

The means used to implement this course of conduct or plan included one or more of the following:

1. In 2002, complainant asked the Court to disclose and/or provide public records disclosing the amount of income Moyer, et al. received from the personal use of State cars from 1995 to 2003. The Court has consistently refused to provide said information and has in fact claimed that no such records exist. On at least one occasion, complainant has communicated directly with Chief Justice Moyer and asked him to disclose said income; however, he has refused to even respond to the request.

2. Complainant is unaware of any Ohio law that allows a public official to "conceal" from the public the amount of income he/she received from public funds regardless of the source of said funds. Unfortunately, Chief Justice Moyer believes that he is endowed with the power to so act.

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional

government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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## **ARTICLE 7– Violations of Ohio Public Record Laws**

In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States and duty to comply with the Code of Judicial Conduct, did: knowingly engage in abuse of power; willful neglect of duty with corrupt intention; willful misfeasance, and high crimes and misdemeanors by violating Ohio Public Records laws and instructing subordinates to do the same.

The means used to implement this course of conduct or plan included one or more of the following:

1. Ohio Revised Code § 193.43, et seq. requires “prompt” compliance with requests to review records and/or for providing requested copies. The following facts demonstrate serial violations of Ohio’s Public Records Laws by the Supreme Court. It also involves (a) the destruction of and/or alteration of records, and (b) providing false replies to record requests.
  - a. Beginning in the late nineties, complainant requested compensation records for retired visiting judges
  - b. Subsequently, compensation reports from ‘92 were received
  - c. Subsequently, complainant discovered that some retired judges were billing multiple counties for two day’s work on the same day
  - d. In 2001, a Court employee handed a phone number and asked complainant to call him at his residence
  - e. When called; (conversation taped) employee said, court hired two outside employees to review retired judge compensation reports and to alter and/or destroy compensation reports
  - f. After conversation, the Court, in response to records requests for retired judges wage records advised that all records 4-years or older were destroyed
2. On June 12, 2004, complainant submitted a written request for copies of Moyer and Justice O’Donnell’s Jan. to May fuel purchase records and receipts. Subsequently, complainant has “repeatedly” requested that this

"current" file be made available for his review; however, each request has been denied.

3. Twenty-five (25) days have now passed and yet the Court continues to assert that these "current" records are not yet available for review, which is of course cannot be true. During this period of time, complainant has received the following requested copies from agencies under the direct control of the Ohio Supreme Court

- a. Over 500 pages of travel records of a retired judge assigned to the Court of Claims within 48 hours of the request
- b. 68 pages of travel records of retired judge assigned to Court of Claims in less than 24-hours
- c. About 150 pages of financial disclosure statements from Board of Commissioners on Grievances/Discipline in 24-hours

4. In addition, complainant received 660 pages of records from the Ohio Pharmacy Board within 24-hours of the request. Record requests for retired judge travel expenses submitted to Erie County are provided on the same day.

5. On Jan. 20, 2000, complainant sent a written request to Court Administrator Steve Hollon asking for copies of any and all letters, correspondence of any kind, memos, faxes, complaints and/or their equivalent that Chief Justice Moyer and/or anyone acting on his behalf and or in association with him has received from any Judge, attorney, law enforcement agency and/or agents that relate in any manner to David Palmer and/or anyone related to David Palmer and/or anyone associated with him and/or acting on his behalf from 1988 to date.

6. Mr. Hollon's reply that no such documents existed was patently false as the facts below prove.

- a. On December 6, 1999, Hollon received (time stamp receipt Supreme Court of Ohio) a letter from Perrysburg, Ohio attorney Marshall D. Wisniewski re: Your letter to me of November 17, 1999 – David Palmer.
- b. Hollon's 11-17-99 letter was addressed to three judges who Moyer assigned and were then sitting on cases involving complainant and four attorneys who were complainant's adversaries in said litigation
- c. In his 11-17-99 letter, Hollon says, "As you know this is not the first letter the Chief Justice and some of you have received from Mr. Palmer..."

d. Wisniewski's Dec. 2, 1999 letter to Hollon that he falsely denied existed in Feb. 2000, magically arrived at the offices of the *Columbus Dispatch* in May 2004 by an "anonymous" delivery boy

7. There is no dispute that Hollon acted under the direction of Moyer because his 11-17-99 letter states, "Chief Justice Moyer recently received the enclosed letter from David Palmer. He also asked that I forward a copy to each of you for your review." It must also be assumed that Moyer instructed Hollon to falsely respond to complainant's Jan. 24, 2000 request for public records.

8. Compare Moyer's dilatory, obstructionist conduct in complying with Ohio's Public Record Act with Justice Resnick's electronic mail of October 3, 2002 in response to a request from a Radio Show Host:

Subj:**RE: Radio Shows on Baumgartner/Palmer/Invitation**

Date:10/3/2002 11:38:40 AM US Eastern Standard Time

From: *ResnickA@sconet.state.oh.us (Resnick, Alice)*

To: *WBFLegal@aol.com*

I am in no way related to Dr. Resnick.

My IRS tax return is in full compliance with all laws. I report a certain percentage of my automobile provided by the state each year.

**In the past I have suggested to the Chief Justice that he simply let watchdog David Palmer have complete access to all public records at the court. I believe in open disclosure.**

Sincerely,

Alice Robie Resnick

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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**ARTICLE 8– Retired visiting judge abuses**



In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States and duty to comply with the Code of Judicial Conduct, did: knowingly engage in abuse of power; willful neglect of duty with corrupt intention; willful misfeasance, high crimes and misdemeanors by authorizing and/or allowing retired judges to bilk the public by billing for hours never worked, for travel expenses never incurred and the abuse of litigants.

The means used to implement this course of conduct or plan included one or more of the following:

1. Pursuant to Ohio Const. Art. IV (6), the administration of and oversight of the retired visiting judge program is the sole responsibility of Chief Justice Thomas J. Moyer. Complainant has spent hundreds of hours pouring over thousands of public records over the past eight (8) years investigating Moyer's stewardship regarding this issue, which is ongoing as of July 2004. That investigation has proven that Moyer has approved the following compensation for retired visiting judges.

- a. Compensation for hours not worked
- b. Payment for lodging, meal and mileage expenses never incurred
- c. 8-hours pay for claimed work on weekends and holidays, including Christmas, 4<sup>th</sup> of July, Memorial Day and Thanksgiving
- d. \$54 an hour to commute to out-of-county assignments
- e. \$54 an hour to commute to and from hotel
- f. \$54 an hour for time spent eating lunch/breakfast
- g. \$54 an hour for "standing by" w/o performing any judicial work
- h. \$54 an hour for defining work as "other"
- i. Reimbursements for purchases of alcohol
- j. 8-hours pay (\$424) charged v. various counties to attend judicial conferences even though no judicial work performed

2. In addition, Moyer has also engaged in the following conduct regarding the assignment of retired judges:

- a. Backdated assignments in civil and criminal cases
- b. Assigned judges over the age of 90
- c. Assigned judges after he was aware they were billing for hours not worked and for travel expenses not incurred
- d. Billed for two day's work on same day over 20 times
- e. Handing out "renta-judge" business cards in courthouses

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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## **ARTICLE 9– Abuses involving affidavits of bias**

In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States and duty to comply with the Code of Judicial Conduct, did: knowingly engage in abuse of power; willful neglect of duty with corrupt intention, and willful misfeasance by failing to disqualify himself and judges for bias.

The means used to implement this course of conduct or plan included one or more of the following:

1. The Revised Code bestows the Chief Justice with the sole power to remove judges for bias upon the filing of an affidavit of prejudice with the Supreme Court. There is no review of any kind available to Ohio citizens upon an adverse ruling by the Chief Justice.
2. Canon 3 (E)(1) of the Code of Judicial Conduct states, A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.
3. Moyer has refused to disqualify retired visiting judges for the following reasons contained in a party's affidavit of disqualification:
  - a. Defendant in lawsuit filed by the complaining party
  - b. Uses profanity ("where is that goddamn son of a bitch")
  - c. Repeatedly reversed by appellate court for violating party's due process rights and failing to comply with Ohio law
  - d. Violates due process rights by wrongfully imprisoning party
  - e. Engages in "provable" ex parte communications
  - f. Party files criminal charges against judge for double-billing
  - g. Party distributes thousands of "wanted posters" re: misconduct
  - h. Judge files criminal report against party claiming he fears for wife's safety when he's not home and party is stalking him

- i. Posts article titled "Anatomy of a Dishonest Judge" on his website and it becomes #1 on Google under search term "Dishonest Judge"
  - j. Violates Ohio law by failing to appoint interpreter during trial and then awards \$135,000 in attorney fees against her
  - k. Violates law by allowing parties property seized without any notice
4. Moyer refused to recuse himself under the following circumstances involving various parties, which documented by public records.

- a. Runs campaign for his reelection defeat
- b. Distributes flyers accusing Moyer of misconduct
- c. Files one or more lawsuits naming Moyer as defendant
- d. Posts article titled "Chief Justice Moyer Violates Campaign Laws" on his website; becomes #4 on Google, when searching CJ Moyer
- e. Distributes article titled "Moyer-1<sup>st</sup> Team All-American Ethical Dwarf replete with cartoons lampooning him
- f. Files criminal complaints against Moyer
- g. Moyer engages in ex parte communications with adversaries
- h. Calls Moyer "liar" in open court; reported in major papers

5. In all of the above cited circumstances involving retired judges, Moyer ruled that the "*appearance of bias*" wasn't present. In some instances, Moyer ruled on the same day he received the affidavit of bias, and in many others he didn't even require the judge to respond. He consistently ruled that sworn testimony in support of bias/prejudice claims did not constitute "evidence."

6. In many of these cases the offending judge was allowed to remain on cases and engaged in putative conduct aimed at getting even with the complainants. In one particularly egregious case, Moyer refused to remove a retired judge when it was proven he imprisoned a man even after it was proven that the offending judge told the party that he didn't know why he was imprisoning him, but that he'd figure it out later.

7. The Guidelines for Assignment of Judges were adopted by Moyer on May 24, 1988, revised on February 25, 1994, and March 1, 2002. Guidelines for Efficient Use of Assigned Judges states:

**Whenever feasible, an assigned judge from a nearby county shall be designated in order to economize on travel time as well as to eliminate or minimize overnight expenses.**

8. The following are examples of Moyer's abuses in assigning judges:

- a) 1994-2004. J. Warren Bettis of Salem to Court of Claims in Columbus; 165 miles one way; lodging/meal/mileage costs
- b) 1998-2002, Stephen Yarbrough of Toledo works Hamilton, Butler, Franklin, Ross, Greene, Mahoning, Trumbull, Preble County's; never works in Toledo (travel expenses \$12,000 year)
- c) 1996-2002, June Galvin of Toledo works Summit, Cuyahoga, Marion, Franklin; never works in Toledo
- d) While Galvin and Yarbrough avoid Toledo courts, Moyer assigns retired judges from Champaign, Cuyahoga, Erie, Huron, Williams County's to work in Toledo; lodging/meals/mileage/parking
- e) 1999-2002, William Chinnock of Cleveland works 1,000 days in Franklin; Harrison; never works in Cleveland; travel expenses
- f) 1992-2002, Richard B. McQuade of Swanton works Erie, Huron, Lucas, Wood, Scioto, Champaign, Wyandot, Van Wert, Paulding, Williams, Sandusky, Shelby; never works in Swanton

9. There are many more abuses than those cited above. In many instances it is likely that retired judges are passing each other on the highway while traveling to each other's resident county. In other cases, judges are billing for lodging and dinners on Sundays, and others for lodging even though they live 60 or less miles from the assigned court.

10. Persuasive evidence exists that some retired judges are assigned to far-away counties to (a) visit with family members, and (b) conduct rent-a-judge business while billing assigned county's for travel expenses.

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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## **ARTICLE 10– Unconstitutional perk/compensation**

In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States and duty to comply with the Code of Judicial Conduct, did: knowingly engage in abuse of power; willful neglect of duty with corrupt intention; willful misfeasance, and high

crimes and misdemeanors by adopting resolutions to provide himself with a state car.

The means used to implement this course of conduct or plan included one or more of the following:

1. Ohio Const. IV, 6(B) states, "Judges shall receive no fees or perquisites..." It is undisputed that a \$38,000 Park Avenue Ultra is a "perk" as that term is defined by IRS. Moyer's Sept. 29, 1993 Resolution where he authorized the purchase of luxury vehicles for the justices was a violation of the Ohio Const. prohibiting judges from receiving perks.

2. Moyer's Feb. 25, 2003 Resolution contains the following statement:

**It is further determined that the provision of such Court vehicles, being both reasonable and necessary for those who serve in the position of Justice, is not violative of Article IV, Section 6(B) of the Ohio Constitution as perquisite of office.**

3. In his February 3, 2004 letter to Chuck Vollmer, Senior Audit Manager (Ex. 7), Steve Hollon, acting on behalf of Moyer was asked the following question and gave the following response:

**Mr. Vollmer:** In the Court's resolution of Feb. 25, 2003, a determination is stated that the provision of Court vehicles to justices does not constitute a perquisite as addressed in Art. IV [Sec.] 6(B) of the Ohio Constitution. Is this the Court's official position regarding this issue, and if so, was it the Court's official position prior to 2/25/03? Furthermore, **does the Court have any documentation (i.e. legal research) to back up this contention?**

**Mr. Hollon:** In responding, I have been specifically asked to note that the Court's position on this issue is a fully considered determination of the entire Court, and not a "contention." I have also been asked to note that **this request from the Auditor of the State is extraordinary.** A request from an executive branch official to the Court asking it to explain its reasoning on what is at core a constitutional determination, albeit affecting the justices of the Court, **is at best far-reaching, and at a minimum may be at tension with the principle of separation of powers.**

4. There is no constitutional or statutory authority allowing Moyer to act “sua sponte” (on his motion) to make a determination that a \$38,000 Park Avenue Ultra is not a “perk” in violation of Oh. Const. Art. IV 6(B).

5. Moyer’s assertion that the Auditor was violating the doctrine of separation of powers by questioning the legal basis for Moyer’s determination that a luxury car is not a “perk” is without merit. Purchasing cars at public expense is an administrative act having absolutely nothing to do with separation of powers.

6. Two-thirds of the House and Senate have to vote to amend the Constitution and then it goes to the people for a vote before it becomes law. Moyer is not endowed with any legal authority to usurp the power of the legislature and the people by adopting a Resolution, which in actuality constitutes a de facto amending of the Ohio Constitution.

7. Most disturbing is Moyer’s conduct in not recusing himself in determining that a car is not a “perk” in violation of the Ohio Constitution when the Code of Judicial Conduct mandated he do so because he obviously had a financial interest in the outcome.

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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## **ARTICLE 11– Avoidance of legislative review/oversight**

In his conduct of the office of Chief Justice of the Ohio Supreme Court, Thomas J. Moyer, in violation of his constitutional oath to uphold the laws and Constitution of the State of Ohio and United States and duty to comply with the Code of Judicial Conduct, did: knowingly engage in abuse of power; willful neglect of duty with corrupt intention; and willful misfeasance, by taking affirmative action to prevent legislative review and oversight of guidelines he adopted, some of which unjustly enriched him at public expense.



The means used to implement this course of conduct or plan included one or more of the following:

1. Moyer's Guidelines/Rules for Assignment of Judges; Resolutions determining a state car is not a perk, and Guidelines/Rules allowing justices to use cars to attend political fundraisers/campaigning, and to purchase a car of their choosing along with options was "never" submitted to the General Assembly for review and oversight pursuant to Art. IV Sec. 5 of the Ohio Constitution, which states:

**The Supreme Court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the General Assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such Rules (Guidelines/Resolutions) shall take effect on the following first day of July, unless prior to such day the General Assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules (guidelines/resolutions) have taken effect.**

2. Moyer's 1988 Guidelines for Assignment of Judges, which he revised in 1994 and 2002 state, "The Guidelines have not been adopted as rules pursuant to Article IV, Section 5 of the Ohio Constitution." They were never adopted as rules because Moyer "never" submitted them to the legislature for review and comment. Likewise, he avoided legislative oversight by refusing to submit his Guidelines for purchasing vehicles for the justices without regard to cost and his Resolutions determining that a luxury car was not a "perk."

In all of this, Thomas J. Moyer has acted in a manner contrary to his trust as Chief Justice of the Ohio Supreme Court and subversive of constitutional government, to the great prejudice of the cause of law and justice to the manifest injury of the people of the State of Ohio.

Wherefore Thomas J. Moyer, by such conduct, warrants impeachment and trial, and removal from office.

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## Misdemeanor in office defined

Misdemeanor in office has a much broader coverage than the common law misdemeanor usually defined and applied in criminal procedure. It includes any act involving moral turpitude and contrary to justice, honesty, principles, or good morals and performed by virtue or authority of office. It is synonymous with misconduct in office and is broad enough to embrace any willful misfeasance, or nonfeasance in office, and may not necessarily imply corruption or criminal intent. (In re Investigation of Circuit Judge of Eleventh Judicial Circuit of Fla., 93 So. 2d601, 1975).

Misdemeanor in office within Const. 1921, Art. IX § 1, that all state and district officers shall be liable to impeachment for high crimes and misdemeanors in office means "misconduct in office," and use of such expressions to describe one of the causes for impeachment and removal does not necessarily exclude the use of the term gross misconduct for the same purpose (197 La. 627, 2 So. 2d 45).

A "misdemeanor in office" may consist of violating the constitution or a statute, willful neglect of duty with corrupt intention, or negligence so gross and disregard of duty so flagrant as to warrant an inference that it is willful and corrupt (State v. Douglas, 217 Neb 199 (1984)).

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## Summary of impeachable offenses

The magnitude of the egregious misconduct engaged in by Thomas J. Moyer in violating his oath of office is breathtaking and likely unprecedented in the annals of American Jurisprudence.

Most disturbing is Moyer's violations of IRS Rules in reporting income he received from his personal use of state cars and the affirmative steps he took to conceal his income from public view from 1993 to 2003. These violations of the United States Code have gone for eleven (11) years with no end in sight.

Equally disturbing, is Moyer's violation of Ohio Const. IV 6(B) that prohibits judges from receiving any perks in excess of their legislatively set salaries. The machinations that Moyer has engaged in over the past eleven years in purposefully violating his oath of office to uphold the Ohio Constitution is in and of itself sufficient cause for his impeachment and removal from office.

Moyer's gross misfeasance and abuse of power in adopting guidelines/rules allowing justices to use state cars and fuel to attend partisan political fundraisers and campaign events should shock the conscience of the members of the Ohio House of Representatives.

Moyer's gross misfeasance and dereliction of duty in allowing retired visiting judges to bill for hours never worked and to continue to assign them after he became aware of said conduct is appalling.

The balance of the Articles of Impeachment as to Moyer's (a) willful misfeasance and/or nonfeasance, (b) abuse of power, (c) willful neglect of duty with corrupt intention, and (D) other high crimes and misdemeanors speaks for itself and needs no further comment.

Suffice it to say that, any of the eleven (11) Articles of Impeachment standing alone are sufficient in magnitude to cause Moyer's impeachment and removal from office.

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**WHEREFORE**, complainant respectfully moves the Ohio House of Representatives to forthwith institute impeachment proceedings against Thomas J. Moyer.

State of Ohio )

County of Franklin ) SS:

Now comes the undersigned and affirms that the facts set forth above were obtained from public records provided to affiant by the Ohio Supreme Court and State auditor and are true and accurate to the best of affiant's knowledge.

David Palmer

Sworn to before me and signed in my presence this \_\_\_\_\_ day of July, 2004.

Notary Public

## CONTACTING OHIO HOUSE MEMBERS

Below are the names of the ninety-nine members of the Ohio House of Representatives, which includes their email addresses. To learn more about the representatives like phone/fax numbers and committee info, go to:

<http://www.house.state.oh.us/jsp/SearchbyName.jsp>.

Remember this is not a partisan political matter. When it comes to the judiciary, party affiliations must take a back seat to honesty and integrity. Would anyone claim that judicial corruption is acceptable depending on the judge's party affiliation? Of course we wouldn't.

Ask these representatives when the impeachment proceedings are going to begin. Let them know that you are truly concerned about this matter and expect proceedings to get underway in a timely manner. The following representatives are being served with hard copies on July 7, 2004.

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## Contacting Kenneth Blackwell—Secretary of State

As Secretary of State, Mr. Blackwell is responsible for the enforcement of Ohio's Election Laws, which includes violations regarding the use of state employees and/or property by (a) elected officials seeking reelection, and (b) appointed officials seeking election who use state employees or state property to promote their campaigns.

I believe that Mr. Blackwell has a duty to investigate the fact that Chief Justice Moyer adopted Guidelines/Rules authorizing himself and the other six justices to use state cars and fuel to attend partisan political fundraisers and for other campaign purposes.

It would be difficult to imagine that Chief Justice Moyer has the constitutional authority to declare that under the “separation of powers” doctrine that he and the other justices are “exempted” from compliance with Ohio Election Laws. It may well be that Chief Justice Moyer has used a state car and fuel to attend political fundraisers and for campaign purposes since 1995 or even earlier.

**You can contact Kenneth Blackwell as follows:**

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