IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

State of Florida	Lee County Case No.	17-MM-000815
vs		
Huminski, Scott A	Trial Judge:	James R Adams
	Appeal Case No.	18-AP-3 18-AP-9 CONSOLIDATED

RECORD ON APPEAL

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484	03/20/2018	Notice of Appeal Supplemental Filed	1942 - 1943
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493	04/19/2018	Corrected Amended Notice of Appeal	1961 - 1963
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495	04/23/2018	Order from the Second District Court of Appeal dated 03/22/18 now final	1965 - 1965
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514	10/26/2018	Order from the Second District Court of Appeal 18-3856 Motion for Reconsideration Rehearing is Denied	2215 - 2215
515	10/29/2018	Order from the 20th Judicial Circuit Filed	2216 - 2218
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LEE COUNTY CLERK OF COURTS

CASE SUMMARY

CASE NO. 17-MM-000815

State of Florida	§	Location:	**County Criminal**
vs	§	Judicial Officer:	**Adams, James R**
Huminski, Scott A	§	Filed on:	**06/30/2017**
	§		

CASE INFORMATION

Offense	Statute	Deg	Date		
Jurisdiction: **Lee County**				Case Type:	**Misdemeanor**
1. CONTEMPT OF COURT CIRCUIT OR COUNTY Sequence: 1	900.04	N	06/05/2017	Case Flags:	**Court Appointed Attorney** **Defendant Placed on Probation** **Appeal Under Review by Appellate Court**

Related Cases
18-AP-000003 (Appeal)
18-AP-000009 (Appeal)

Warrants
Violation of County Probation Warrant - Huminski, Scott A (Judicial Officer: Adams, James R)
08/30/2018 Issued
08/29/2018 Ordered
Hold No Bond

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**State of Florida**	**Kunasek, Anthony William** 239-533-1000(W)
Defendant	**Huminski, Scott A**	**Pro Se** 239-300-6656(H)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
06/05/2017	Order to Show Cause Filed	
06/29/2017	Court Minutes Filed	
06/29/2017	Pretrial Order	
07/10/2017	Order Filed *Order on Arraignment*	
07/31/2017	Other Document Filed *Notice of taking Deposition for US Bankruptcy*	
07/31/2017	Other Document Filed	
07/31/2017	Other Document Filed	
07/31/2017	Other Document Filed	
07/31/2017	Correspondence Filed	
08/01/2017	Other Document Filed	

08/11/2017	Other Document Filed
08/11/2017	Other Document Filed
08/11/2017	Other Document Filed
08/11/2017	Motion Filed
08/11/2017	Correspondence Filed
08/11/2017	Other Document Filed
08/12/2017	Motion to Dismiss Filed
08/12/2017	Notice Filed
08/12/2017	Motion Filed
08/13/2017	Other Document Filed
08/13/2017	Motion Filed
08/13/2017	Notice Filed
08/14/2017	Correspondence Filed
08/14/2017	Notice Filed
08/14/2017	Motion Filed
08/14/2017	Order Filed *of Disqualification*
08/15/2017	**Case Management Conference** (1:00 PM) (Judicial Officer: Adams, James R ;Location: Courtroom 4-H) **MINUTES** Present With Attorney Public Defender to Evaluate Speedy Trial Waived Continued; **SCHEDULED HEARINGS** **Docket Sounding** (09/01/2017 at 8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 1-A)
08/15/2017	Present With Attorney

08/15/2017	Public Defender to Evaluate
08/15/2017	Speedy Trial Waived
08/15/2017	Commitment Form Filed
08/15/2017	Order of Reassignment Filed
08/16/2017	Notice Filed
08/16/2017	Motion Filed
08/16/2017	Motion Filed
08/16/2017	Motion Filed
08/16/2017	Motion Filed
08/16/2017	Motion Filed
08/17/2017	Motion to Dismiss Filed
08/17/2017	Motion to Dismiss Filed
08/17/2017	Motion to Dismiss Filed
08/18/2017	Order Appointing Public Defender Filed
08/18/2017	Notice Filed
08/21/2017	Motion Filed
08/22/2017	Order Striking Motion Filed
08/22/2017	Notice Filed
08/22/2017	Motion Filed
08/22/2017	Notice Filed
08/23/2017	Correspondence Filed
08/23/2017	Notice Filed
08/23/2017	Motion to Strike Filed
08/23/2017	Notice of Hearing Filed

08/25/2017	Amended Notice of Hearing Filed
08/25/2017	Notice Filed
08/25/2017	Notice Filed
08/27/2017	Notice Filed
08/30/2017	Notice Filed
09/01/2017	**Docket Sounding** (8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 1-A) **MINUTES** Present With Attorney Public Defender to Evaluate Commitment Form Filed Continued; **SCHEDULED HEARINGS** **Docket Sounding** (09/22/2017 at 8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A)
09/01/2017	Application for Indigent Status Filed
09/01/2017	Present With Attorney
09/01/2017	Public Defender to Evaluate
09/01/2017	Commitment Form Filed
09/04/2017	Motion to Strike Filed
09/04/2017	Notice Filed
09/06/2017	Notice of Hearing Filed
09/06/2017	Notice Filed
09/11/2017	*CANCELED* **Motions** (2:00 PM) (Judicial Officer: Adams, James R ;Location: Courtroom 3-B) *Per Judge's Office*
09/14/2017	Correspondence Filed
09/15/2017	Notice Filed
09/15/2017	Notice Filed
09/16/2017	Correspondence Filed
09/16/2017	Affidavit Filed
09/17/2017	

	Notice Filed
09/18/2017	**Motions** (2:00 PM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A) *M/Strike Order Appointing PD* **MINUTES** Present With Attorney Motion Hearing *Withdrawn- Moot* Commitment Form Filed Hearing Withdrawn/Cancelled;
09/18/2017	Correspondence Filed
09/18/2017	Present With Attorney
09/18/2017	Motion Hearing *Withdrawn- Moot*
09/18/2017	Commitment Form Filed
09/20/2017	Not of Appearance/Wvr of Arrgn/Wrttn Plea NG/Dmd Disc Filed
09/20/2017	Motion Filed
09/20/2017	Notice Filed
09/20/2017	Correspondence Filed
09/21/2017	Motion Filed
09/21/2017	Motion Filed
09/21/2017	Motion Filed
09/21/2017	Notice Filed
09/21/2017	Notice Filed
09/22/2017	**Docket Sounding** (8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A) **MINUTES** Present With Attorney Speedy Trial Waived Commitment Form Filed Continued by Defendant's Attorney; **SCHEDULED HEARINGS** **Docket Sounding** (10/27/2017 at 8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 1-A)
09/22/2017	Present With Attorney
09/22/2017	Speedy Trial Waived

09/22/2017	Commitment Form Filed
09/22/2017	Notice Filed
09/22/2017	Motion Filed
09/22/2017	Notice of Appearance of Counsel Filed
09/22/2017	Motion Filed
09/22/2017	Stipulation and Order Filed *Modify Conditions of Pretrial Release*
09/23/2017	Motion Filed
09/23/2017	Motion Filed
09/23/2017	Motion Filed
09/23/2017	Motion Filed
09/23/2017	Motion Filed
09/25/2017	Motion Filed
09/25/2017	Motion Filed
09/25/2017	Other Document Filed
09/26/2017	Motion Filed
09/27/2017	Certification of Conflict of Interest Filed
09/27/2017	Motion Filed
09/27/2017	Motion Filed
09/29/2017	Order Allowing Withdrawal & Appoint Regional Counsel Filed
10/02/2017	Motion Filed
10/03/2017	Not of Appearance/Wvr of Arrgn/Wrttn Plea NG/Dmd Disc Filed
10/03/2017	Notice Filed
10/03/2017	Correspondence Filed

10/03/2017	Motion Filed
10/04/2017	Correspondence Filed
10/05/2017	Correspondence Filed
10/05/2017	Notice Filed
10/06/2017	Motion Filed
10/06/2017	Motion Filed
10/09/2017	Not of Appearance/Wvr of Arrgn/Wrttn Plea NG/Dmd Disc Filed
10/09/2017	Notice Filed
10/14/2017	Motion Filed *To Dismiss for Want of Procedural and Substantive Due Process*
10/18/2017	Motion Filed *To Disqualify Z. Miller, Esq*
10/18/2017	Correspondence Filed
10/19/2017	Order Filed *Striking Pro Se Pleadings*
10/20/2017	Motion Filed *To Vacate Pre-Trial and Protective Orders*
10/23/2017	Correspondence Filed
10/27/2017	**Docket Sounding** (8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 1-A) **MINUTES** Present With Attorney Speedy Trial Waived Commitment Form Filed Continued by Defendant's Attorney; **SCHEDULED HEARINGS** **Docket Sounding** (11/17/2017 at 8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A)
10/27/2017	Present With Attorney
10/27/2017	Speedy Trial Waived
10/27/2017	Commitment Form Filed
10/28/2017	Notice Filed

10/29/2017	Notice Filed
10/30/2017	Motion to Withdraw as Counsel Filed
11/02/2017	Notice Filed
11/03/2017	Notice of Hearing Filed
11/06/2017	*CANCELED* **Motions** (2:00 PM) (Judicial Officer: Adams, James R ;Location: Courtroom 3-B) *Per Judge's Office* *3pm*
11/07/2017	Notice of Hearing Filed
11/13/2017	**Motions** (2:00 PM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A) **MINUTES** Present With Attorney Motion Hearing *to Withdraw as Counsel- Denied*
11/14/2017	Commitment Form Filed Motion Denied;
11/13/2017	Present With Attorney
11/13/2017	Motion Hearing *to Withdraw as Counsel- Denied*
11/14/2017	Commitment Form Filed
11/15/2017	Motion to Dismiss Filed *& Disqualify Counsel*
11/17/2017	**Docket Sounding** (8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A) **MINUTES**
	Commitment Form Filed Speedy Trial Waived Present By Attorney Continued; **SCHEDULED HEARINGS** **Docket Sounding** (12/21/2017 at 8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 1-A)
11/17/2017	Commitment Form Filed
11/17/2017	Speedy Trial Waived
11/17/2017	Present By Attorney
11/17/2017	Correspondence Filed
11/21/2017	Correspondence Filed

12/02/2017	Notice Filed
12/02/2017	Motion Filed
12/02/2017	Motion Filed
12/02/2017	Motion Filed
12/07/2017	Notice Filed
12/14/2017	Correspondence Filed
12/16/2017	Other Document Filed
12/16/2017	Other Document Filed
12/20/2017	Other Document Filed
12/20/2017	Motion to Withdraw as Counsel Filed
12/21/2017	**Docket Sounding** (8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 1-A) **MINUTES** Present With Attorney Commitment Form Filed Continued; **SCHEDULED HEARINGS** **Trial** (01/08/2018 at 8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A)
12/21/2017	Present With Attorney
12/21/2017	Commitment Form Filed
12/22/2017	Notice of Appearance of Counsel Filed
12/22/2017	Motion Filed
12/22/2017	Notice Filed
12/22/2017	Correspondence Filed
12/22/2017	Motion Filed
12/22/2017	Motion Filed
12/22/2017	Motion Filed
12/22/2017	Notice Filed

12/22/2017	Waiver of Arraignment *Withdrawal of Waivers of Arraignment*
12/26/2017	Motion Filed
12/27/2017	Correspondence Filed
12/27/2017	Correspondence Filed
12/27/2017	Order Filed
12/28/2017	Motion Filed
12/28/2017	Notice Filed
12/28/2017	Motion Filed
12/29/2017	Motion Filed
12/29/2017	Motion Filed
12/29/2017	Motion Filed
12/29/2017	Motion Filed
12/29/2017	Motion Filed
12/29/2017	Motion Filed
01/01/2018	Motion to Withdraw as Counsel Filed
01/01/2018	Motion Filed
01/03/2018	Notice of Hearing Filed
01/03/2018	Motion Filed
01/04/2018	Motion to Withdraw as Counsel Filed
01/04/2018	Motion Filed
01/04/2018	Motion Filed
01/04/2018	Motion Filed
01/04/2018	Motion Filed

01/05/2018	Motion Filed
01/05/2018	Motion Filed
01/08/2018	**Trial** (8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A) **MINUTES** Present With Attorney Commitment Form Filed Continued; **SCHEDULED HEARINGS** **Trial** (02/13/2018 at 1:00 PM) (Judicial Officer: Adams, James R ;Location: Courtroom 1-A)
01/08/2018	Not of Appearance/Wvr of Arrgn/Wrttn Plea NG/Dmd Disc Filed
01/08/2018	Present With Attorney
01/08/2018	Commitment Form Filed
01/09/2018	Motion Filed
01/09/2018	Motion Filed
01/09/2018	Motion Filed
01/09/2018	Motion Filed
01/09/2018	Motion Filed
01/09/2018	Motion Filed
01/09/2018	Motion Filed
01/09/2018	Motion to Recuse Judge Filed
01/09/2018	Notice Filed
01/10/2018	Motion Filed
01/10/2018	Memorandum *MEMORANDUM IN SUPPORT OF MOTION FOR SUBPOENA*
01/11/2018	Order Allowing Withdrawal Of Counsel Filed *Regional Counsel*
01/12/2018	Motion Filed
01/12/2018	Motion Filed

01/12/2018	Motion Filed
01/12/2018	Motion Filed
01/12/2018	Motion Filed
01/12/2018	Motion Filed
01/17/2018	Motion Filed
01/18/2018	Order Filed *Striking Notice of Appearance And Denying Requests For Appointment of Counsel*
01/18/2018	Order Filed *Dismissing Pleadings Regarding Counsel*
01/18/2018	Order Filed *Dismissing Pleadings Regarding Charging Documents And Arraignment*
01/18/2018	Order Denying Motion Filed *to Disqualify Judge*
01/18/2018	Order Striking Motion Filed *For Hearing*
01/18/2018	Order Filed *Denying in Part Motion For Records*
01/18/2018	Order Denying Motion Filed *to Disqualify Judge*
01/18/2018	Motion Filed
01/18/2018	Motion Filed
01/18/2018	Motion Filed
01/18/2018	Motion Filed
01/18/2018	Notice Filed
01/19/2018	Motion Filed
01/19/2018	Motion Filed
01/19/2018	Motion Filed
01/19/2018	Motion Filed

01/19/2018	Motion Filed
01/19/2018	Order Denying Motion Filed *to Certify Questions*
01/19/2018	Order Filed *Striking Pleadings Regarding Bankruptcy*
01/19/2018	Motion Filed
01/19/2018	Notice Filed
01/19/2018	Notice Filed
01/19/2018	Motion Filed
01/19/2018	Motion to Dismiss Filed
01/19/2018	Motion Filed
01/19/2018	Motion Filed
01/19/2018	Motion Filed
01/19/2018	Motion Filed
01/19/2018	Motion Filed
01/19/2018	Motion Filed
01/19/2018	Motion Filed
01/21/2018	Motion Filed
01/21/2018	Motion Filed
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01/21/2018	Motion Filed
01/21/2018	Notice Filed
01/21/2018	Motion Filed
01/21/2018	Motion Filed

01/21/2018	Motion Filed
01/21/2018	Motion Filed
01/21/2018	Notice Filed
01/22/2018	Motion Filed
01/22/2018	Motion Filed
01/23/2018	Motion Filed
01/23/2018	Motion Filed
01/23/2018	Motion Filed
01/23/2018	Motion Filed
01/23/2018	Motion Filed
01/23/2018	Motion Filed
01/23/2018	Motion Filed
01/24/2018	Motion Filed
01/24/2018	Motion Filed
01/25/2018	Order Striking Motion Filed *Order Striking Motions For Subpoenas.*
01/25/2018	Order Denying Motion Filed *For Change of Venue*
01/25/2018	Order Filed *Order Striking Pleadings To Withdraw Plea And Arraignment.*
01/25/2018	Order Denying Motion Filed *For ADA Accommodations.*
01/25/2018	Motion Filed
01/26/2018	Motion Filed
01/26/2018	Motion Filed
01/26/2018	Motion to Disqualify or Recuse Filed

01/26/2018	Motion Filed
01/26/2018	Motion to Disqualify or Recuse Filed
01/26/2018	Motion Filed
01/27/2018	Motion Filed
01/27/2018	Motion Filed
01/27/2018	Motion Filed
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01/29/2018	Motion Filed

01/29/2018	Motion Filed
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01/29/2018	Motion Filed
01/29/2018	Motion Filed
01/29/2018	Motion Filed
01/29/2018	Motion Filed
01/29/2018	Motion Filed
01/29/2018	Motion Filed
01/29/2018	Motion Filed
01/30/2018	Order Denying Motion for Continuance Filed
01/30/2018	Order Striking Motion Filed *Striking Motions - To appoint counsel, Right To Counsel, For Rehearing.*
01/30/2018	Order Denying Motion Filed *To Disqualify State Attorney.*
01/30/2018	Order Denying Motion Filed *For Bill Of Particulars.*
01/30/2018	Order Filed *Order Striking Notices.*
01/30/2018	Order Denying Motion Filed *Order Denying Successive Motions.*
01/30/2018	Order Denying Motion Filed *Order Denying Motions Regarding Service And Filing.*
01/30/2018	Order Denying Motion Filed *Multiple Motions.*
01/30/2018	Order Denying Motion Filed *To Disqualify Judge.*
01/30/2018	Order Denying Motion Filed *To Stay Proceedings.*

01/30/2018	Order Dismissing Motion Filed *For Case Files.*
01/30/2018	Order Denying Motion Filed *To Disqualify Judge.*
01/30/2018	Order Denying Motion Filed *To Adopt Authority.*
01/30/2018	Order Denying Motion Filed *For Transcript Of Bankruptcy Hearing.*
01/30/2018	Order Denying Motion Filed *For Subpoena.*
01/30/2018	Order Denying Motion Filed *To Vacate.*
01/30/2018	Order Denying Motion to Compel Filed
01/30/2018	Motion Filed
01/30/2018	Motion Filed
01/30/2018	Notice Filed
01/30/2018	Motion Filed
01/30/2018	Motion Filed
01/31/2018	Order Denying Motion Filed
02/01/2018	Order Denying Motion Filed *For Hearing On Federal Removal*
02/01/2018	Order Denying Motion Filed *To Disqualify Judge.*
02/01/2018	Order Denying Motion Filed *For ADA Advocate.*
02/01/2018	Order Denying Motion Filed *To Vacate Orders And Motion To Allow State Attorney Participation.*
02/01/2018	Motion Filed
02/01/2018	Motion Filed
02/01/2018	Motion Filed

02/01/2018	Motion Filed
02/01/2018	Notice Filed
02/02/2018	Order Denying Motion Filed *To Disqualify Judge.*
02/02/2018	Order Denying Motion Filed *For Subpoena*
02/02/2018	Order Filed *Striking Notice Of Settlement Demand*
02/02/2018	Motion Filed
02/02/2018	Notice Filed
02/02/2018	Motion to Dismiss Filed
02/02/2018	Motion Filed
02/02/2018	Motion to Dismiss Filed
02/03/2018	Motion to Dismiss Filed
02/03/2018	Motion to Dismiss Filed
02/03/2018	Petition for Writ of Mandamus Filed *Copy*
02/05/2018	Answer to Demand for Discovery Filed
02/06/2018	Notice Filed
02/06/2018	Notice Filed
02/06/2018	Motion Filed
02/06/2018	Motion Filed
02/06/2018	Motion Filed
02/06/2018	Motion Filed
02/06/2018	Motion Filed
02/06/2018	Correspondence Filed

02/06/2018	Confidential Documents Filed
02/06/2018	Motion Filed
02/07/2018	Motion Filed
02/07/2018	Notice Filed
02/07/2018	Motion Filed
02/07/2018	Motion Filed
02/09/2018	Motion Filed
02/09/2018	Motion Filed
02/09/2018	Motion Filed
02/09/2018	Motion Filed
02/10/2018	Motion Filed
02/11/2018	Motion Filed
02/11/2018	Motion Filed
02/11/2018	Motion Filed
02/11/2018	Motion Filed
02/11/2018	Motion Filed
02/12/2018	Motion Filed
02/12/2018	Notice Filed
02/12/2018	Motion Filed
02/12/2018	Motion Filed
02/12/2018	Motion Filed
02/12/2018	Motion Filed
02/13/2018	**Trial** (1:00 PM) (Judicial Officer: Adams, James R ;Location: Courtroom 1-A) **MINUTES** Speedy Trial Waived Present Without an Attorney

	Commitment Form Filed Continued; **SCHEDULED HEARINGS** **Trial** (03/06/2018 at 8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A)
02/13/2018	Motion Filed
02/13/2018	Memorandum
02/13/2018	Motion Filed
02/13/2018	Order Denying Motion to Dismiss Filed
02/13/2018	Order Denying Motion Filed *For Sanctions*
02/13/2018	Order Denying Motion Filed *For Subpoena*
02/13/2018	Order Denying Motion Filed *Regarding Circuit Court Case*
02/13/2018	Order Filed *Denying Successive Motions*
02/13/2018	Order Denying Motion Filed *to Disqualify Judge*
02/13/2018	Order Denying Motion Filed *For Subpoena*
02/13/2018	Order Denying Motion to Dismiss Filed *Regarding Jury Trial*
02/13/2018	Order Denying Motion to Dismiss Filed *Regarding Protective Orders*
02/13/2018	Order Denying Motion Filed *Successive Motions to Appoint Counsel*
02/13/2018	Order Denying Motion Filed *Various Listed Motions*
02/13/2018	Order Denying Motion Filed *For Subpoena*
02/13/2018	Order Denying Motion Filed *Various Listed Motions*
02/13/2018	

	Order Denying Motion Filed *For Subpoena*
02/13/2018	Order Denying Motion Filed *Successive Motions- All Listed*
02/13/2018	Order Denying Motion Filed *For ADA Accommodations*
02/13/2018	Speedy Trial Waived
02/13/2018	Present Without an Attorney
02/13/2018	Commitment Form Filed
02/14/2018	Motion Filed
02/14/2018	Motion to Dismiss Filed
02/14/2018	Motion Filed
02/14/2018	Motion Filed
02/15/2018	Motion Filed
02/15/2018	Motion Filed
02/15/2018	Answer to Demand for Discovery (Amended) Filed
02/16/2018	Motion Filed
02/16/2018	Motion Filed
02/16/2018	Motion Filed
02/16/2018	Motion Filed
02/16/2018	Motion Filed
02/16/2018	Motion Filed
02/16/2018	Motion Filed
02/18/2018	Notice of Appeal Filed *Set Up as a Non Final Appeal Filing Number 68113613 Copy Provided to the MM Judge and CA Judge*
02/18/2018	Notice Filed

02/18/2018	Notice of Appeal Filed *Set Up as a Non Final Appeal Filing Number 68113596 Copy Provided to the MM Judge and CA Judge*
02/18/2018	Notice of Filing Filed *Attached Application for Criminal Indigent Status*
02/19/2018	Notice of Appeal Filed *Set Up as a Non Final Appeal Amended Filing Number 68114660 Copy Provided to the MM Judge and CA Judge*
02/19/2018	Memorandum
02/19/2018	Motion Filed
02/19/2018	Motion Filed
02/20/2018	Motion Filed
02/20/2018	Affidavit Filed
02/21/2018	Motion Filed
02/21/2018	Notice Filed
02/21/2018	Other Document Filed
02/22/2018	Notice of Clerk's Review
02/22/2018	Notice of Clerk's Review
02/22/2018	Order Denying Motion Filed *Successive Motions to Appoint Counsel*
02/22/2018	Order Denying Motion Filed *Regarding Circuit Court Case*
02/22/2018	Order Denying Motion Filed *Regarding Service And Filing*
02/22/2018	Order Denying Motion Filed *to Sanction Sheriff Scott*
02/22/2018	Order Denying Motion Filed *to Strike*
02/22/2018	Motion Filed
02/22/2018	Notice Filed

02/23/2018	Notice Filed
02/23/2018	Other Document Filed
02/23/2018	Notice Filed
02/23/2018	Notice Filed
02/26/2018	Unable to Process *Application is Incomplete*
02/26/2018	Notice Filed
02/27/2018	Motion Filed
02/27/2018	Motion Filed
02/27/2018	Motion Filed
02/27/2018	Motion Filed
02/27/2018	Motion Filed
02/27/2018	Motion Filed
02/27/2018	Motion Filed
02/27/2018	Motion Filed
02/28/2018	Motion Filed
03/01/2018	Order Denying Motion Filed *For Competency Examination*
03/01/2018	Order Denying Motion Filed *to Stay Proceedings*
03/01/2018	Order Denying Motion Filed *Denying Successive Motions*
03/01/2018	Order Denying Motion Filed *to Issue Bench Warrants*
03/01/2018	Application for Indigent Status Filed
03/01/2018	Motion Filed
03/01/2018	Motion Filed

03/01/2018	Memorandum
03/01/2018	Motion Filed
03/02/2018	Motion Filed
03/03/2018	Motion Filed
03/05/2018	Order Filed *directing appellant to file amended notice of appeal and amended affidavit of indigency within ten (10) days*
03/05/2018	Motion Filed
03/05/2018	Certification of Conflict of Interest Filed
03/05/2018	Order Filed *Striking Successive Motions*
03/05/2018	Order Striking Motion Filed *For State Discolsure*
03/05/2018	Order Filed *Striking Appointment of Public Defender*
03/05/2018	Order Filed *on Notices of Orders Entered After Appeal*
03/05/2018	Motion Filed
03/05/2018	Motion Filed
03/06/2018	**Trial** (8:30 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A) **MINUTES** Present Without an Attorney Commitment Form Filed Continued by Defendant; **SCHEDULED HEARINGS** **Trial** (03/16/2018 at 8:45 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A)
03/06/2018	Present Without an Attorney
03/06/2018	Commitment Form Filed
03/06/2018	Motion Filed
03/06/2018	Motion Filed
03/06/2018	Notice of Appeal Filed

	Supplemental Copy Provided to the Judge and Staff Attorney
03/07/2018	Notice Filed
03/08/2018	Order from the 20th Judicial Circuit Filed *18-AP-3 Dismissing Public Defender's Emergency Motion to Strike Application and/or Motion to Withdraw as Moot*
03/08/2018	Motion Filed
03/08/2018	Notice of Appeal to Supreme Court Filed *Filing Number 68966028 Copy Provided to the MM Judge and CA Judge Sent to the Supreme Court*
03/08/2018	Certificate Filed *of Service Re: Notice of Appeal*
03/09/2018	Order from the 20th Judicial Circuit Filed *Declaring Defendant Indigent and Appointing Private Registry Attorney for Appeal*
03/09/2018	Motion Filed
03/09/2018	Motion Filed
03/09/2018	Motion Filed
03/09/2018	Notice of Appeal to Supreme Court Filed *Filing Number 69057701 Notice of Appeal To The Supreme Court Copy Provided to the MM Judge and the CA Judge*
03/09/2018	Notice of Appeal to Supreme Court Filed *Filing Number 69059249 Amended Notice of Appeal to the Supreme Court Copy Provided to the MM Judge and the CA Judge*
03/09/2018	Motion to/for Stay Filed
03/10/2018	Motion Filed
03/12/2018	Order Striking Motion Filed *Successive Motions*
03/12/2018	Notice Filed
03/13/2018	Notice of Appeal to Supreme Court Filed *Filing Number 69184535 Supplemental Copy Provided to the Judge*
03/13/2018	Notice of Appeal to Supreme Court Filed *Filing Number 69184328 Supplemental Copy Provided to the Judge*
03/13/2018	Motion to/for Stay Filed *Pending Appeal Disposition in the Florida Supreme Court*

03/13/2018	Notice Filed
03/14/2018	Motion to Withdraw as Counsel Filed *for 18-AP-3 Only*
03/14/2018	Notice Filed
03/15/2018	Acknowledgement Filed *of New Case With the Supreme Court SC18-403 Treat as a Writ of Prohibition*
03/15/2018	Motion Filed
03/15/2018	Notice Filed
03/15/2018	Motion Filed
03/16/2018	**Trial** (8:45 AM) (Judicial Officer: Adams, James R ;Location: Courtroom 2-A) **MINUTES** Final Disposition Filed Present Without an Attorney **Plea** (Judicial Officer: Adams, James R) 1. CONTEMPT OF COURT CIRCUIT OR COUNTY Pled Not Guilty OBTS: Sequence: 1 **Disposition** (Judicial Officer: Adams, James R) 1. CONTEMPT OF COURT CIRCUIT OR COUNTY Non Jury Trial - Adjudicated Guilty OBTS: Sequence: 1 **Sentence** (Judicial Officer: Adams, James R) 1. CONTEMPT OF COURT CIRCUIT OR COUNTY 05 - Fine and/or Court Costs Attorneys at Sentencing (Lead Prosecutor Kunasek, Anthony William, Lead Defense Huminski, Scott A) Confinement (Effective 03/16/2018, Min. Not Applicable, Max. 45 Days , Lee County Jail) Suspended for: 45 Days County Reporting Probation (6 Mo) Provisions (Provisions May Convert Fines/Costs to Community Service, Report to Probation Today or Upon Release from Jail) Motion Hearing *Motion For Mistrial - Denied. Motion To Dismiss - Denied. Any Future Filings Are To Be Under The Signature Of A Licensed Attorney; No Communication With The Parties In The Civil Or Criminal Case.* Sentenced;
03/16/2018	Order Filed *Striking Successive Motions*
03/16/2018	Record of Exhibits Filed

03/16/2018	Final Disposition Filed
03/16/2018	Present Without an Attorney
03/16/2018	**Plea** (Judicial Officer: Adams, James R) 1. CONTEMPT OF COURT CIRCUIT OR COUNTY Pled Not Guilty OBTS: Sequence: 1
03/16/2018	**Disposition** (Judicial Officer: Adams, James R) 1. CONTEMPT OF COURT CIRCUIT OR COUNTY Non Jury Trial - Adjudicated Guilty OBTS: Sequence: 1
03/16/2018	**Sentence** (Judicial Officer: Adams, James R) 1. CONTEMPT OF COURT CIRCUIT OR COUNTY 05 - Fine and/or Court Costs Attorneys at Sentencing (Lead Prosecutor Kunasek, Anthony William, Lead Defense Huminski, Scott A) Confinement (Effective 03/16/2018, Min. Not Applicable, Max. 45 Days , Lee County Jail) Suspended for: 45 Days County Reporting Probation (6 Mo) Provisions (Provisions May Convert Fines/Costs to Community Service, Report to Probation Today or Upon Release from Jail)
03/16/2018	Motion Hearing *Motion For Mistrial - Denied. Motion To Dismiss - Denied. Any Future Filings Are To Be Under The Signature Of A Licensed Attorney; No Communication With The Parties In The Civil Or Criminal Case.*
03/16/2018	Acknowledgment of New Case - Appeal Filed *2D18-1009 prohibition civil*
03/16/2018	Order from 2nd DCA Filed *18-1009 petitioner is insolvent for this petition*
03/16/2018	Order from 2nd DCA Filed *18-1009 directing petitioner to serve certificate certifying service within 15 days*
03/16/2018	Court Minutes Filed
03/18/2018	Motion for Rehearing Filed *Copy Provided to the Supreme Court*
03/19/2018	Order Filed *Striking Notice of Proposed Settlement*
03/19/2018	Order Denying Motion Filed *to Stay Proceedings*
03/19/2018	Order Filed *On Defendant's Notice of State to 4th Amendment Appointment- Denied*

03/19/2018	Order Denying Motion Filed *to Disqualify as Legally Insufficient*
03/19/2018	Supreme Court Order Filed *Motion for Rehearing is Denied*
03/20/2018	Order Granting Motion to Withdraw Appointing Counsel Filed *Anthony M. Candela is appointed as appellant counsel*
03/20/2018	Other *Filing Number 69526746 Notice of Supplemental Notice of Appeal to the 2DCA 2D18-1009*
03/20/2018	Notice Filed *Filing Number 69526592 Notice of Appeal Supplemental Filed with the 2DCA 2D18-1009*
03/22/2018	Order from 2nd DCA Filed *18-1009 denying petition for writ of prohibition; denying motion to vacate final judgment in court and to stay that matter; denying motion to vacate county court proceedings and to stay that matter; denying motion to correct/clarify filings; denying motions to appoint counsel in this proceeding*
03/22/2018	Notice of Appeal Sent to 2nd DCA *the Notice of Appeal Supplemental Filed 3-20-18*
03/24/2018	Notice Filed *Filing Number 69760135 Notice of Appeal Supplemental Clarified Copy Provided to the Judge*
03/29/2018	Notice of Appeal Sent to 2nd DCA *the Notice of Appeal Supplemental Clarifed Filed 3-24-18*
04/04/2018	**Supervision Instructions** (1:30 PM) (Judicial Officer: Judge, Not Assigned ;Location: Courtroom 5-G)
04/05/2018	Order of Probation Filed
04/06/2018	Order from 2nd DCA Filed *Petitioners Motion for Clarification, Transfer and Emergency Motion to Stay are All Denied*
04/06/2018	Notice Filed *Supplemental Notice of Appeal filing number 70382931 Copy Provided to the CA Judge and the MM Judge*
04/06/2018	Notice Filed *Supplemental Notice of Appeal filing number 70383485 Copy Provided to the CA Judge and the MM Judge*
04/13/2018	Order of Probation Filed *corrected*
04/19/2018	Notice Filed *Amended Notice of Appeal for Appeal 18-1512*
04/19/2018	Notice Filed

	Corrected Amended Notice of Appeal for Appeal 18-1512
04/23/2018	Order from 2nd DCA Filed *order dated 03/22/18 now final*
04/23/2018	Order from 2nd DCA Filed *order dated 03/22/18 now final*
04/27/2018	Order from 2nd DCA Filed *Transferring case 2D18-1512 to Lee County Appellate Division see 18-AP-9*
05/04/2018	Order from 2nd DCA Filed *18-1512 Motion for Rehearing is Denied*
05/15/2018	Order from 2nd DCA Filed *18-1512 denying appellants motion to transmit order of transfer*
05/21/2018	Order Appointing Counsel *for Appeal 18-AP-9*
07/03/2018	Order from 2nd DCA Filed *striking appellants motion to vacate order transferring case as unauthorized*
07/26/2018	Order from the 20th Judicial Circuit Filed *granting motion to consolidate; directing clerk to transfer contents from 18-AP-9 into 18-AP-3; granting leave to file directions and designations, striking pro se motions at request of appointed counsel and dismissing motion to transfer to second district court of appeal without prejudice*
08/07/2018	Motion to Withdraw as Counsel Filed *for Appeal 18-AP-3*
08/22/2018	Order Dismissing Motion Filed *to Withdraw and Directing Appellant to File Initial Brief Within Twenty Days*
08/22/2018	Response Filed *to Order to Show Cause 18-AP-3*
08/30/2018	Affidavit and Warrant in Violation of Probation Filed
09/11/2018	Motion Filed *for Evidentiary Hearing Filed in the AP case*
09/14/2018	Notice Filed *of retenion of appellate counsel*
09/27/2018	Supreme Court Order Filed *Petition Denied*
09/27/2018	Notice Filed
09/27/2018	Other

	Copy of Notice of Petition in 2DCA and Notice of Payment of DCA Filing Fee Via the E Filing Portal Filed with the 2DCA
10/02/2018	Order from 2nd DCA Filed *18-3856 denying petitioners motion to accept filing fee as moot; fee was received today*
10/15/2018	Notice Filed
10/18/2018	Order from 2nd DCA Filed *18-3856 denying petition for writ of prohibition; denying motion for appointment of counsel and to waive filing fees; denying emergency petition to stay arrest warrant; denying motion to stay order of conviction*
10/26/2018	Order from 2nd DCA Filed *18-3856 Motion for Reconsideration Rehearing is Denied*
10/29/2018	Order from the 20th Judicial Circuit Filed
10/31/2018	Directions to Clerk Filed
10/31/2018	Notice of Appeal to Circuit Court Filed *Amended*
10/31/2018	Designation to Court Reporter Filed
10/31/2018	Correspondence Filed
11/08/2018	Reporter's Acknowledgement Filed
11/14/2018	Notice of Filing Filed
11/14/2018	Transcript Filed *6-29-17*
11/14/2018	Transcript Filed *8-15-17*
11/14/2018	Transcript Filed *9-1-17*
11/14/2018	Transcript Filed *9-22-17*
11/14/2018	Transcript Filed *10-27-17*
11/14/2018	Transcript Filed *11-17-17*
11/14/2018	Transcript Filed *12-21-17*

11/14/2018	Transcript Filed *1-8-18*	
11/14/2018	Transcript Filed *2-13-18*	
11/14/2018	Transcript Filed *3-6-18*	
11/14/2018	Transcript Filed *3-16-18*	
12/10/2018	Order from 2nd DCA Filed *18-3856 order dated 10/18/18 now final*	

DATE	FINANCIAL INFORMATION		
	Defendant Huminski, Scott A		
	Total Charges		1,195.00
	Total Payments and Credits		360.00
	Balance Due as of 12/21/2018		**835.00**
08/14/2017	Charge	Defendant Huminski, Scott A	50.00
03/01/2018	Charge	Defendant Huminski, Scott A	50.00
03/16/2018	Credit	Defendant Huminski, Scott A	(100.00)
03/16/2018	Charge	Defendant Huminski, Scott A	795.00
03/22/2018	Charge	Defendant Huminski, Scott A	300.00
04/04/2018	Criminal Fees & Fines Receipt # ODFM-2018-38956	Defendant Huminski, Scott A	(160.00)
06/04/2018	Criminal Fees & Fines Receipt # ODFM-2018-63589	Defendant Huminski, Scott A	(100.00)
10/31/2018	Charge	Defendant Huminski, Scott A	281.00
12/20/2018	Adjustment	Defendant Huminski, Scott A	(281.00)
	Plaintiff State of Florida		
	Total Charges		300.00
	Total Payments and Credits		300.00
	Balance Due as of 12/21/2018		**0.00**
09/27/2018	Charge	Plaintiff State of Florida	150.00
09/27/2018	Court Fees & Fines Receipt # ODFM-2018-113265	Plaintiff State of Florida	(150.00)
09/27/2018	Charge	Plaintiff State of Florida	150.00
09/27/2018	Court Fees & Fines Receipt # ODFM-2018-113267	Plaintiff State of Florida	(150.00)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

CIVIL CASE CAPTION

SCOTT HUMINSKI,
Plaintiff
v.
TOWN OF Gilbert, AZ, et al

Civil Case No.: 17CA421

Criminal Case No. 17-MM-000815

DESCRIPTION OF SCOTT HUMINSKI	
GENDER: Male RACE: Caucasian HEIGHT: approx. 5 ft 10 in. WEIGHT: ? DOB: 12/1/59	EYE COLOR: ? HAIR COLOR: Brown LAST KNOWN ADDRESS: 24544 Kingfish St. Bonita Springs, FL 34134

ORDER TO SHOW CAUSE

This cause comes before the court for review based upon the alleged conduct of SCOTT HUMINSKI for the issuance of an Order to Show Cause directed to SCOTT HUMINSKI for violation of the Orders set forth below copies of which are attached hereto and made a part hereof.

The Orders that SCOTT HUMINSKI is alleged to be in violation of are:

DATE executed by Court	CASE No.	ORDER TITLE
4/19/17	17CA421	Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order (specifically Paragraphs 1, 2 & 7) – attached hereto as Exhibit A
4/19/17	17CA421	Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and

		Other Relief (specifically Paragraph 2) – attached hereto as Exhibit B

COUNT 1: INDIRECT CRIMINAL CONTEMPT
In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically ordered that any further pleadings be signed by a licensed attorney representing the Plaintiff (Paragraph 7). In the Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and Other Relief, SCOTT HUMINSKI was specifically ordered not to file any additional documents or materials of any nature with the Court unless the filing was signed by an attorney and specifically provided that an Order to Show Cause might be entered against him if he did so (Paragraph 2). SCOTT HUMINSKI has continued to file multiple documents in the Court file in contradiction to these Orders as evidenced by the attached composite Exhibit C.

COUNT 2: INDIRECT CRIMINAL CONTEMPT
In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically prohibited from directly contacting, communicating with or otherwise serving materials directly on Sheriff Scott, his agents and employees (see Paragraph 1 & 2). SCOTT HUMINSKI was specifically ordered to direct such contact to counsel for Mike Scott (see Paragraph 2). SCOTT HUMINSKI has repeatedly violated this Order by contacting Sheriff Scott, his agents and employees since the execution of the Court's orders – see the emails attached as composite Exhibit D.

NOW, THEREFORE, you SCOTT HUMINSKI are hereby ORDERED to appear before this court before Judge *KRIER* on **THURSDAY, 6/29/17**, at ***1:30* p.m.**, in Room 4H of the Lee County Courthouse, located at1700 Monroe Street, Ft. Myers, Florida 33901, to be arraigned. THIS IS A CRIMINAL PROCEEDING. A subsequent trial will be scheduled requiring Respondent to show cause why he should not be held in contempt of this court for violation of the above Orders. **Punishment, if imposed, may include a fine and incarceration.** Should the court determine, based on the evidence presented at trial, that the conduct of SCOTT HUMINSKI warrants sanctions for civil contempt in addition to or instead of indirect criminal contempt, the court reserves the right to find him guilty of civil contempt and impose appropriate civil sanctions.

IF YOU FAIL TO APPEAR as set forth above, a warrant for your arrest or a writ of bodily attachment may be issued to effectuate your appearance.

The court hereby appoints the STATE ATTORNEY's OFFICE to prosecute the case.

The Court hereby advises SCOTT HUMINSKI that he is entitled to be represented by counsel and if he can't afford an attorney, that one may be appointed for him in this criminal contempt proceeding ONLY (not in the civil Case). This Court hereby appoints the PUBLIC DEFENDER's OFFICE to provisionally represent SCOTT HUMINSKI at the above Arraignment proceeding pending a determination of indigency. This Court anticipates that SCOTT HUMINSKI will be found to be indigent.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Court Administration at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

IT IS FURTHER ORDERED that the Sheriff of this County serve this **Order to Show Cause** by delivering copies to SCOTT HUMINSKI, with proof of Sheriff's service.

DONE AND ORDERED in Lee County, Florida, on 6/5/17.

Circuit Judge, Elizabeth V. Krier

Copies to:
__✓__ State Attorney's Office
__✓__ Public Defender's Office

6/5/17 EV

S. Douglas Knox & Keely Morton, attorneys for Defendant-City of Glendale at doglas.knox@quarles.com; keely.morton@quarles.com; docketfl@quarles.com
Robert D. Pritt & James D. Fox, Attorneys for City of Surprise, AZ at serve.rpritt@ralaw.com; jfox@ralaw.com; serve.jfox@ralaw.com
Robert Sherman, attorneys for Defendant-Sheriff Mike Scott at Robert.sherman@henlaw.com; Courtney.ward@henlaw.com
Kenneth R. Drake & Doron Weiss, attorneys for SCRIBD, INC. at kendrake@dldlawyers.com; dweiss@dldlawyers.com

17mm815

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CIVIL ACTION**

Huminski, Scott
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421
Date: **June 29, 2017**
Judge: **Elizabeth V Krier**
Deputy Clerk: **Brenda Horton**
Court Reporter:

MINUTES

Attorney for Plaintiff: **Kevin Sarlo** ☑ Present ☐ Not Present
Attorney for Defendant: **Anthony Kunasck** ☑ Present ☐ Not Present

Hearing Information:

SHOW CAUSE / ARRAIGNMENT PROCEEDING:

-Plea of Not Guilty Entered
-CMC scheduled on 8/15/17 at 1:00 for 10 minutes
-CMC is set to review how the State is proceeding with the case and at that Point we can schedule future hearings. Also to be discussed transfer case From civil to criminal
-Pretrial release without bond / Conditions: Mr. Huminski is to check in with Pretrial officer every 2 weeks, along with the condition to not violate anymore Orders. Only Mr. Huminski's PD or licensed attorney may contact the courts. He must not contact the courts or Sheriff's Department by email

☐ Motion _____ ☐ Granted ☐ Denied ☐ Reserved

Notes:
-Scott Huminski-present
-Copies of orders on file given to Mr. Huminski, Mr. Sarlo, and Mr. Kunasck In court

*Sworn

☐ For additional details refer to Court Reporter transcript ☐ Hearing Cancelled

☐ Waived the 15 day exception rule ☑ Order signed in open court

Order to be prepared by:

☐ Magistrate ☐ Plaintiff's Attorney ☐ Defendant's Attorney

☐ Exhibits Received

*Sworn

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

Vs. CASE NO: 17-MM-815

SCOTT HUMINSKI

_____/

ORDER ON ARRAIGNMENT

THIS CAUSE having come before this Court on 6/29/17 for Arraignment on the Order to Show Cause issued on 6/5/17 and SCOTT HUMINSKI having been served with the Order and having appeared before the Court and the Court having appointed the Public Defender's Office to represent SCOTT HUMINSKI, and being advised of the premises, it is ORDERED and ADJUDGED as follows:

1. SCOTT HUMINSKI was advised of his rights.

2. The Public Defender's Office was appointed to represent SCOTT HUMINSKI.

3. SCOTT HUMINSKI entered a plea of not guilty.

4. The Court ordered pre-trial release for SCOTT HUMINSKI with the conditions set forth below. **Failure to comply with the conditions may result in this pre-trial release being revoked.**

   A. SCOTT HUMINSKI shall check in with the pre-trial release program and thereafter check in with a pre-trial officer every two (2) weeks.;

   B. SCOTT HUMINSKI shall comply with all previously entered orders of the Court in Case number 17-CA-421 including:
      (1) SCOTT HUMINSKI shall not contact the Lee County Sherriff's Office except through their legal counsel, unless said contact is initiated by the Sherriff's office, such as if SCOTT HUMINSKI is arrested or stopped for a traffic violation.

      (2) SCOTT HUMINSKI shall not file anything in the Court file in Case No. 17-CA-421 unless such filing occurs by an attorney licensed in the State of Florida.

(3) SCOTT HUMINSKI shall not contact the Court's office except through an attorney licensed in the State of Florida.

5. This Case is scheduled for case management on 8/15/17 at 1PM. At the time of Case Management, the State shall inform the Court and Defendant whether they will be requesting a sentence less than 60 days that would entitle SCOTT HUMINSKI to a non-jury trial or a greater sentence that would require a jury trial. At the time of case management, the Court will set a trial date.

DONE and ORDERED this 7 day of July, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
SAO
PD
Pre-trial release program, Scott Peckham

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

NOTICE OF TAKING OF DEPOSITION OF United States Bankrutptcy Trustee, Robert Tardif

NOW COMES, Scott Huminski ("Huminski"), and, notwithstanding his objection that this Court has no jurisdiction and without waiving jurisdictional issues, notifies that he will take the deposition of U.S. Trustee Robert Tardif at a time arranged with the State's Attorney to clarify, at deposition, issues concerning the existence of an automatic stay commencing on 10 a.m., 4/28/2017 as the defendants in the civil case requested monetary compensation against the debtor for costs, fees and other relief and to verify that the civil case was indeed removed to Bankruptcy Court on 6/26/2017.

At hearing on 6/29/2017, Judge Krier insulted and demeaned the debtor, Huminski, by vigorously stating that nothing gets removed to a Bankruptcy Court. Evidence that the Court may be pursuing the agenda of an *ex parte* influence that Huminski needs to uncover to defend this matter. This is also supported by statements of the Court made in the first hearing in this matter that Huminski did not receive death threats in the U.S. Mail from Trevor Nelson of Glendale AZ in retaliation for the suicide of his father contrary to every sworn fact on the record.

It is well known by all seasoned attorneys and judges such as the Circuit Court that an automatic stay of bankruptcy exists and that cases can and do get removed to federal court all the time. The bankruptcy court is a unit of the U.S. District Court. Judge Krier's 6/29/2017 false statements concerning bankruptcy are the product of an *ex parte* influence concerning this case as is her opinion on the death threats not supported anywhere on the record. It is essential that Huminski know the identity of the *ex parte* entity that is manipulating the judge and these matters.

Attached hereto as Exhibit "A" is Huminski's affidavit concerning the somewhat outrageous statements concerning bankruptcy law of Judge Krier transcribed from the audio disk supplied by the Court.

Huminski has already filed his notice of taking deposition of Judge Krier in these matters.

Dated at Bonita Springs, Florida this 31st day of July 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was efiled with service upon the State's Attorney or hand delivered or mailed via First Class Mail, prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 31st day of July, 2017.

-/s/- Scott Huminski

Scott Huminski

cc: rtardif@comcast.net, U.S. Trustee, In Re: Scott Alan Huminski

In The

United States Bankruptcy Court
For the Middle District of Florida

IN RE,	)
SCOTT ALAN HUMINSKI,	) CASE NO.17-03658-9D7
DEBTOR	)
	) ADV. PROC. NO. 9:17--509-FMD
	) HUMINSIKI V. TOWN OF GILBERT, ET AL

AFFIDAVIT OF SCOTT HUMINSKI RE: STATE COURT STATEMENTS ON BANKRUPTCY FROM AUDIO RECORDING

NOW COMES, Debtor, Scott Huminski ("Huminski"), and based upon personal knowledge, under oath, hereby swears, deposes and states as follows:

1. Huminski is over the age of 18 and under no legal disablity.

2. Huminski received an audio disk from the 20th Circuit Court containing the hearing of 6/29/2017 in 17-CA-421, Huminski v. Town of Gilbert, et al., 3 days after removal, and herein are the true and correct statements made by the State Court concerning bankruptcy.

3. On the audio disk at 1:25:10 the State Court opines, "*This case hasn't been removed anyplace Mr. Huminski*".

4. On the audio disk at 1:26:35 the State Court opines, "*Nothing gets removed from this Court to Bankruptcy Court. That doesn't happen - ever.*".

5. On the audio disk at 1:37:10 the Huminski States, "*You will not respect the removal to United States bankruptcy court?*" and the State Court replies "*Again evidence that you do not understand the law, it's not removed to bankruptcy court*".

6. On the audio disk at 1:37:11 the State Court opines, "*It [bankruptcy] might stay a civil proceeding ... Bankruptcy court can stay a civil proceeding*".

7. Upon information and belief and from the aforementioned content and below docket entries, the State Court does not accept the fundamental precept that there exists an automatic stay of bankruptcy intending to give the debtor breathing room during the bankruptcy process. From interaction with the State Court, Huminski believes the State Court mistakenly thinks that a debtor has to file a motion to stay concerning every creditor placing an additional burden on a debtor instead of breathing room provided by the automatic stay. The violations of

stay and removal may also be intentional as the State Court judge has 40 years of experience in the practice of law as an attorney and a judge.

8. Below are true and correct docket entries from the State Court from the date of bankruptcy filing to the present.

04/28/2017	OrderProhibiting Contact Comments: Prohibiting Contact	2
05/02/2017	Motionto Show Cause Comments: to Show Cause	1
05/09/2017	Suggestion of Bankruptcy	5
05/10/2017	Motionto Show Cause Comments: to Show Cause	2
05/11/2017	Notice of Appearance	3
05/12/2017	Return of Service Served	1
05/12/2017	Order to Show Cause Returned Not Served	120
05/12/2017	Motion to Dismiss	9
05/25/2017	Certified Copy of Show Cause Order for Service handed to LCSO	
05/25/2017	Minutes	1
05/25/2017	Order to Show Cause Returned Not Served	120
06/05/2017	Order to Show Cause	3
06/05/2017	Certified Copy of Show Cause Order for Service handed to LCSO	
06/14/2017	Order to Show Cause Returned Served	3
06/26/2017	Notice of Removal to US District CourtBankruptcy Court Comments: Bankruptcy Court	13
06/27/2017	Motionto Allow Service of Sheriff Comments: to Allow Service of Sheriff	16

06/28/2017	Order of Dismissal	3
06/28/2017	Objection	1
06/29/2017	Minutes	2
07/01/2017	Correspondence	15
07/02/2017	Correspondence	28
07/05/2017	Order Setting Case Management Conference(Rescheduled) to 8/15/17 Comments: (Rescheduled) to 8/15/17	1
07/05/2017	Bankruptcy Document	5
07/08/2017	Motion to Dismiss	2
07/09/2017	Notice of Taking Deposition	2
07/09/2017	Notice of Taking Deposition	2
07/11/2017	Bankruptcy Document	2
07/11/2017	Correspondence	3

Dated at Bonita Springs, Lee County, Florida this 24th day of July, 2017.

Scott Huminski, pro se

24544 Kingfish St.

Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

SWORN AND SUBSCRIBED to before me this 24th day of July, 2017,

Notary Exp. Dec 15, 20

HARMONY J. MULLINS
Notary Public - State of Florida
Commission # GG 047913
My Comm. Expires Nov 15, 2020

V# 001004

Tracking # MR017033

Twentieth Judicial Circuit

Electronic Court Reporting

Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901
Phone 239.533-8207 – FAX 239.485.2524

REQUEST FOR DIGITAL RECORDING OF DUE PROCESS PROCEEDING

MAIL REQUEST FORM & PAYMENT TO ELECTRONIC COURT REPORTING AT THE ADDRESS LISTED ABOVE, OR BRING THE FORM TO YOUR LOCAL COURTHOUSE. REQUESTS FOR GLADES & HENDRY COUNTIES MUST BE MAILED TO LEE ECR OFFICE IN FORT MYERS. A CHECK OR MONEY ORDER FOR $25.00US PAYABLE TO *STATE OF FLORIDA* FOR EACH PROCEEDING PER DATE REQUESTED MUST BE RECEIVED BEFORE A REQUEST CAN BE FILLED.

CASE NUMBER: 17-CA-421
JUDGE/MAG/HEARING OFFICER: KRIER **COUNTY:** LEE
CASE NAME/STYLE: Scott Humiński v. Town of Gilbert AZ et al.

TYPE OF PROCEEDING	DATES	TIMES	CHECK NUMBER
Civil Hearing Show Cause	6-29-17	1:30	1004

☐ CRIMINAL ☒ CIVIL ☐ POST-CONVICTION ☐ DELINQUENCY*
☐ DEPENDENCY* ☐ OTHER _____ ☐ APPEAL **

* Court order required for juvenile proceedings outlined in Florida Rules of Juvenile Procedure
** Designation to Court Reporter and Order Approving Transcript required for indigent defendants

REQUESTED BY: Scott Humiński **DATE:** 7/17/2017
EMAIL ADDRESS: S_Humiński@Live.com **COURTHOUSE BOX #:** None
AGENCY/FIRM: Plaintiff pro se

^Order of Appointment must be attached.

☐ Private Atty. ☒ Pro Se ☐ State Atty/ Pub Def/Reg Coun ☐ ^Court Appointed Atty.

ADDRESS: 24544 Kingfish St.
Bonita Springs FL 34134

Electronic Court Recording will only supply a certified copy of recorded proceedings.

DISCLAIMER

The Administrative Office of the courts of the Twentieth Judicial Circuit, Electronic Court Reporting Office, Court Administrator, Judges, State, County and any employees thereof, shall not be held responsible or liable for any errors, omissions, mistakes, negligence, or any other acts committed by or on behalf of the transcriptionist, or committed by or on behalf of any party, person, or entity requesting or utilizing the electronic recording, regardless of whether or not the acts are, or were, committed intentionally, maliciously, or in bad faith. Any party, person or entity requesting a recording of due process proceedings electronically recorded for transcription purposes, or for any other purposes, shall indemnify and hold harmless the Administrative Office of the Courts of the Twentieth Judicial Circuit, Electronic Court Reporting Office, Court Administrator, Judges, State, County and any employees thereof, from any actions or claims which might arise based upon any errors, omissions, mistakes, negligence, or any other acts committed by or on behalf of the transcriptionist, or committed by or on behalf of any party, person, or entity requesting or utilizing the electronic recording, regardless of whether or not the acts are or were committed intentionally, maliciously, or in bad faith.

Requests will be filled within 7-10 days from receipt of full payment.

00:27:20

A1

ACKNOWLEDGEMENT

RELEASE OF AUDIO RECORDING OF COURT PROCEEDING
TO ATTORNEY OF RECORD OR PARTY

CASE STYLE: Scott Huminski v. Town of Gilbert AZ et al.
CASE NO.: 17-CA-421

PROHIBITION AGAINST DISSEMINATION

The audio recording of the above-referenced court proceeding that has been provided to you upon request may contain information that is confidential or exempt from public disclosure by court order or under Florida law. Dissemination of this confidential or exempt information to any other person is strictly prohibited. Violation of this prohibition may subject you to legal action for contempt of court.

Members of the general public may obtain a copy of this recording through a request to the Electronic Court Reporting Office, unless the recording is protected from public disclosure by court order or Florida law. Prior to release of the recording to a member of the general public, the Electronic Court Reporting Office will review the recording for confidential or exempt information, and redact such information from the recording.

I, Scott Huminski, am an attorney of record or a party in the above-referenced court case. I acknowledge that I have received and read the **Prohibition Against Dissemination** and understand that further dissemination of any confidential or exempt information contained on the audio recording provided to me is strictly prohibited and may subject me to legal action for contempt of court. By my signature below, I acknowledge, understand, accept and agree to comply with the **Prohibition Against Dissemination.**

[signature] 7/17/2017
Signature of Requester **Date**

Scott Huminski
Printed Name of Requester

24544 Kingfish St, Bonita Springs FL 34134
Requester's Address

239 300 6656
Requester's Telephone Number

S_Huminski@Live.com

10172014

CourtSmart Tag Report

1:21:15 PM	<<<MR017033 BEGINS>>>
1:21:16 PM	HUMINSKI, SCOTT vs TOWN OF GILBERT AZ 17CA421 SHOW CAUSE / CRIMINAL CONTEMPT Atty KNOX, STEVEN DOUGLAS
1:21:17 PM	APPEARANCES
1:21:21 PM	DISCUSSION
1:21:51 PM	IN RE: BOND/PRETRIAL RELEASE
1:25:01 PM	MR. HUMINSKI SPEAKS
1:25:33 PM	COURT ADVISES MR. HUMINSKI OF HIS RIGHTS
1:26:52 PM	COURT SUGGESTS MENTAL HEALTH EVAL
1:27:30 PM	8/15/17 @ 1PM
1:28:40 PM	COURTS CONCERNS ABOUT PRETRIAL ASPECTS
1:29:31 PM	ARGUMENTS AS TO PRETRIAL
1:30:42 PM	MR. HUMINSKI REQUESTS CLARIFICATION
1:35:10 PM	MR. HUMINSKI INQUIRES ABOUT BEING PRO SE
1:36:56 PM	DISCUSSION OF BANKRUPTCY
1:38:25 PM	COURT ADVISES MR. HUMINSKI TO GET AN ATTORNEY
1:40:35 PM	PLEA OF NOT GUILTY
1:40:41 PM	MR. HUMINSKI OBJECTS TO JURISDICTION OF THE COURT
1:47:35 PM	MR. HUMINSKI DISCUSSES BANKRUPTCY
1:48:35 PM	CONCLUDED
1:48:35 PM	<<<MR017033 ENDS>>>

Twentieth Judicial Circuit
Lee County
Scott Humiinski vs. Town of Gilbert AZ, et al
17-CA-421
Show cause / criminal contempt
Judge Krier
Date: 6-29-17
Length: 00:27:20
MR01703J
I certify that, to the best of my ability, this CD is a true and accurate copy of the original audio recording of the proceedings named below.
Date
7/20/17

[8NPTRML] [NOTICE OF PRETRIAL CONFERENCE]

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

In re:

Scott Alan Huminski

Debtor* /

Case No. 9:17-bk-03658-FMD
Chapter 7

Scott Alan Huminski

Plaintiff(s)

vs.

Town of Gilbert, AZ

Defendant(s) /

Adv. Pro. No. 9:17-ap-00509-FMD

NOTICE OF PRETRIAL CONFERENCE

Notice is hereby given that a Notice of Removal of a civil action has been filed by Scott Alan Huminski , removing a case pending in the Circuit Court of the Twentieth Judicial Circuit of Lee County, Florida styled Scott Huminski, for himself and for those similarly situated , Plaintiff(s) vs. Town of Gilbert, AZ et al , Defendant(s), Case No 17-CA-421 .

Notice is further given that the moving party, if it has not done so, shall file copies of the entire record of the removed case and if required, remit the $350.00 filing fee within fourteen (14) days from the entry of this notice.

Notice is further given that a pre-trial conference shall be held in Ft. Myers, FL – Room 4-117, Courtroom E, United States Courthouse, 2110 First Street , on July 28, 2017 at 9:30 am .

At the pretrial conference, the Court will schedule for hearing any pending motions, establish pretrial procedures pursuant to Fed. R. Bankr. P. 7016, and schedule this proceeding for trial, if appropriate.

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO DISMISS, re: SELECTIVE AND DISCRIMINATORY PROSECUTION IN LIGHT OF DANIEL BERNATH

NOW COMES, Scott Huminski ("Huminski"), and, notwithstanding his objection that this Court has no jurisdiction and without waiving jurisdictional issues, moves to dismiss this matter as selective and discriminatory and brought on behalf of an *ex parte*. In light of the coddling of this Court of Daniel Bernath and his 3 years of litigation, thousands of pages of filings and causing his adversaries,in one instance $90,000 in costs and fees, it becomes even more evident that this case was brought on behalf of an *ex parte* to this matter, as the Court's approach to contempt, exemplified by the coddling of Daniel Bernath, is to not seek criminal contempt even in the instance of Mr. Bernath where his contempt dwarfs any allegations pending against Huminski.

The order facing Huminski is that he is never to communicate with the only local law enforcement agency with jurisdiction in his town – **for life**. The Court has already admitted the unconstitutional vagueness and over-breadth with regard to the First Amendment by allegedly narrowly-tailoring its order on July 11, 2017 by allowing Huminski to communicate with law enforcement in a traffic stop. At hearing the Court complained that the Sheriff had problems serving Huminski and implied some blame on Huminski, when the order of the Court itself constitutes an order that interferes with law enforcement service by prohibiting a citizen from have communications or contact with law enforcement. The order promotes evading service and non-cooperation with law enforcement in violation of public policy and the First Amendment. The order targets a citizen with loss of public safety resources in violation of equal protection

and enforcement of the laws. The order prohibits Huminski's First Amendment report of crime to law enforcement. The order prevents Huminski's First Amendment core political criticism of an elected official, Sheriff Mike Scott. The order constituted criminal obstruction of justice as it prevented Huminski from serving the bankruptcy Notice of Removal upon Sheriff Mike Scott and Scribd that is required under Bankruptcy Rule 9027. The Circuit Court refused to narrowly-tailor even after alerted to the ongoing crime against the federal courts embodied in the order. Both the Sheriff and Scribd failed to appear in the bankruptcy court and failed to object to discharge and are listed as *pro se* by the Bankruptcy Court. The order prevents pro se Huminski from serving the pro se Sheriff as required by federal law violating the First Amendment and Due Process. The Circuit Court's threats against speech and service of process is an ongoing crime governed by the continuing criminal offense doctrine, AKA continuing offense doctrine. The threats also constitute the most notorious of First Amendment violations, prior restraint.

Further under the *collateral bar rule*, the allegations against Huminski fall into two exceptions whereby it is valid to disobey a court order. The order must not require an irretrievable surrender of constitutional guarantees. See Maness v. Meyers, 419 U.S. at 460, 95 S. Ct. at 592 (1975); United States v. Dickinson, 465 F.2d at 511(5th Cir. 1972). In such a case, the only way to preserve a challenge to the validity of the order and repair the error is to violate the order and contest its validity on appeal from the district court's judgment of criminal contempt.*fn1Finally, court orders that are transparently invalid or patently frivolous need not be obeyed. Id. at 509; In re Providence Journal Co., 820 F.2d 1342, 1347 (1st Cir. 1986), modified, 820 F.2d 1354 (1st Cir. 1987) (en banc; per curiam), cert. dismissed for lack of jurisdiction, 485 U.S. 693, 108 S. Ct. 1502, 99 L. Ed. 2d 785 (1988). This exception is based, on the notion that "the right of the citizen to be free of clearly improper exercises of judicial authority" demands respect. Id.

Dated at Bonita Springs, Florida this 31st day of July, 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was efiled with service upon the State's Attorney or hand delivered or mailed via First Class Mail, prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 31st day of July, 2017.Copies of this document and any attachment(s) was mailed via First Class Mail or hand delivered, prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 31st day of July, 2017.

-/s/- Scott Huminski

_____

Scott Huminski

*Fn1 For example, Maness involved an order for the production of allegedly obscene materials; the order was challenged as violative of the fifth amendment right against self-incrimination. Although the petitioner, the attorney for the defendant below, had counseled violation of a facially valid court order, the Supreme Court reversed his conviction for criminal contempt. The Court concluded that "when a court during trial orders a witness to reveal information. . . compliance could cause irreparable injury because appellate courts cannot always 'unring the bell' once the information has been released. Subsequent appellate vindication does not necessarily have its ordinary consequence of totally repairing the error." Maness, 419 U.S. at 460, 95 S. Ct. at 592. In such a situation, the person to whom such an order is directed may resist that order and challenge its issuance on appeal, "with the concomitant possibility of an adjudication of contempt if his claims are rejected on appeal." Id. (citing United States v. Ryan, 402 U.S. 530, 532-33, 91 S. Ct. 1580, 1582, 29 L. Ed. 2d 85 (1971)).

From: scott huminski <s_huminski@live.com>
Sent: Monday, July 31, 2017 4:19 PM
To: stateattorney@sao.cjis20.org
Subject: State v. Huminski Atty Anthony Kunasec

Hello,

To avoid unnecessary depositions the U.S. Trustees on the bankruptcy case, I would ask that the State concede that I filed Chapter 7 Bankruptcy on 4/28/2017 10 am initiating the automatic stay of bankruptcy under 11 USC 362 concerning the matter of Huminski v. Town of Gilbert as defendants in that matter had/have requested costs, fees and other relief and the lawsuit was part of the bankruptcy estate.

Secondly, I wish the State concede that Huminski v. Town of Gilbert was removed to the U.S. Bankruptcy Court on 6/26/2017. See removal papers filed in State case on 6/26.

Additionally, I filed a correspondence from the bankruptcy court concerning the removal in the instant criminal case confirming the removal. Also below is output from PACER indicating the removal. I attended a hearing at bankruptcy court on 7/28 re: Huminski v. Town of Gilbert and Judge Delano confirmed she had jurisdiction. The civil case will be remanded shortly. The ranting and insults of Judge Krier at the hearing of 6/29/2017 were the product of an ex parte contact/influence as no reasonable attorney or jurist would have made the statements she made that day contrary to bedrock jurisdictional law. Several other papers have been efiled today along with this correspondence. see below PACER report. -- scott humnski

9:17-bk-03658-FMD Scott Alan Huminski
Case type: bk **Chapter:** 7 **Asset:** No **Vol:** v **Judge:** Caryl E. Delano
Date filed: 04/28/2017 **Date of last filing:** 07/24/2017

Associated Cases

Case	Associated Case	Type
9:17-bk-03658-FMD Scott Alan Huminski	9:17-ap-00509-FMD Huminski v. Town of Gilbert, AZ et al	Adversary

Other Filings by Same Debtor(s)

There Are No Case Filing Associations For This Case

PACER Service Center
Transaction Receipt

07/25/2017 07:58:29			
PACER Login:	mollydog123:5271502:0	Client Code:	
Description:	Associated Cases	Search Criteria:	9:17-bk-03658-FMD
Billable Pages:	1	Cost:	0.10

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICITION

NOW COMES, Scott Huminski ("Huminski"), and, notwithstanding his objection that this Court has no jurisdiction and without waiving jurisdictional issues, moves to dismiss this matter as misdemeanors are the sole jurisdiction of County Courts. Circuit Courts only have jurisdiction of misdemeanors accompanied by a felony charge. Apparently, the Court clerk concurs with this precept as a County Court case has been docketed State v. Huminski with a "MM" designation which only exists in County Court and no criminal case exists for the Circuit Court in the 20th Circuit case search utility. A County Court case does exist. E-Filings made by Huminski have electronically been acknowledged as filed in the County Court.

26.012 Jurisdiction of Circuit Court

(d) Of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged;

34.01 Jurisdiction of County Court

(1)(a) In all misdemeanor cases not cognizable by the circuit courts;

The Supreme Court has recently addressed the issue of proper venue for contempts. The Supreme Court has explained that criminal contempt proceedings arising out of civil litigation are between the public and the defendant, and are not a part of the original cause. Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787, 804 (1987) (reversing criminal contempt judgment against defendants found to have aided or abetted violations of permanent injunction prohibiting infringement of manufacturer's trademark). Concurring, Justice Scalia also noted that the trial court itself cannot prosecute constructive criminal contempt charges. Id. at 816-19 (Scalia, J.,

concurring); Crowe v. Smith, 151 F.3d 217, 227-28 (5th Cir. 1998) ("where criminal contempt is involved, there must actually be an independent prosecutor of some kind, because the district court is not constitutionally competent to fulfill that role on its own"). A motion to show cause *sua sponte* authored by the Court initiated this matter and is the charging document. The constitution demands that the charging document be drafted by the State's Attorney. The charging document in this case is void for lack of compliance with the constitution.

Dated at Bonita Springs, Florida this 1st day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was e-filed and electronically served, or hand delivered or mailed via First Class Mail , prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 1st day of August, 2017.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO VACATE ALL ORDERS OF JUDGE KRIER AS SUCH ORDERS WERE WERE AUTHORED IN VIOLATION OF JUDICIAL ETHICAL CANNONS

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as Judge Krier admitted in her recusal order, she was acting in this case with impermissible violations of judicial cannons violating Huminski's Due Process rights to an unbiased decision-maker and propriety of judicial proceedings.

Dated at Bonita Springs, Florida this 9th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO VACATE ALL ORDERS AND DOCKET ENTRIES SUBSEQUENT TO THE FILING OF BANKRUPTCY AS VIOLATIONS OF THE AUTOMATIC STAY

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as this matter was stayed as of 4/28/2017 by the automatic stay 11 U.S.C. 362, the lawsuit is part of the Bankruptcy Estate and the defendants have requested costs, fees and other relief addressed in the still pending bankruptcy.

Dated at Bonita Springs, Florida this 9th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO VACATE ALL ORDERS AND DOCKET ENTRIES SUBSEQUENT TO REMOVAL OF THIS CASE TO FEDERAL COURT ON 6/26/2017

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as the Court was deprived of all jurisdiction from 6/26/2017 to remand on 8/2/2017. The Circuit Court was deprived of all jurisdiction during this period.

Dated at Bonita Springs, Florida this 9th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO STAY PENDING DISPOSITION OF COLLATERAL MOTIONS IN CIVIL CASE

NOW COMES, Scott Huminski ("Huminski"), and, moves to stay this case to allow the Civil Circuit Court to resolve issues that are core to this proceeding (ie. The legality and/or constitutionality of the acts and orders of the civil court prior to recusal). See copies of civil motions filed herewith. Duplicitous litigation prejudices the administration of justice. This matter originated in the civil case, as such, propriety of various acts and orders of the civil case which are currently under direct attack in the civil case weighs heavily to allow that Court to address issues which are material under the *collateral bar rule (that the orders required surrender of a constitutional right or are transparently invalid/unconstitutional).*

As the misdemeanor allegations in this matter fall exclusively under the jurisdiction of the County Courts (see pending Motion to Dismiss), the Court with superior jurisdiction of subject matter should decide the issues that are pertinent to the civil case and this collateral case. The civil court had original jurisdiction of this matter and the charging document was authored by the civil court, the propriety of orders of the civil court should be evaluated by the civil court. The recusal of the original judge in the civil case is cause for the civil court to evaluate the propriety of orders issued with concerns of judicial ethics cited in the recusal.

An order that prevents contact and communication with the only local law enforcement agency with jurisdiction in the town Huminski lives in - FOR LIFE – is cause for serious concern especially accompanied with a recusal.

Dated at Bonita Springs, Florida this 11th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

From: scott huminski <s_huminski@live.com>
Sent: Friday, August 11, 2017 3:06 PM
To: ServiceSAO-LEE@sao.cjis20.org; stateattorney@sao.cjis20.org
Subject: State v. Huminski, attn anthony kunasec

FYI

Please respond to my motions in writing. I am pro se. We could save court time if you responded in writing, so I may determine if i consent to your opposition. Like this misdemeanor issue. According to statute, it seems to be a county court matter and the clerk's office is treating it as such.

If you have another statute or precedent that indicates otherwise, I may decide to withdraw my motion. I see that judge presides over other MM cases, i don't see the statute that allows it. I'm retired and on this full time. I defeated Vermont in Vermont v. Huminski after 5 years of litigation and several trips to the Vermont Supreme Court. With the automatic stay violations, the contempt of federal court after removal by judge krier and other irregularities have this case following the same path.

Filings are pending in the civil court seeking to dispose of the orders that violate the automatic stay, removal and for other issues. See below for recent activity.

I formerly wish to alert you to pending death threats from Trevor Nelson / Debra Riffel of Arizona. Alerting the LCSO to this assassination plot is my only means of self defense. A court order won't stop the murder, only an arrest and incarceration of the terrorists from AZ will. They have openly admitted the motive that they blame me for the suicide of Justin M. Nelson. The necessity defense is also at play here, in addition to the collateral bar rule.

The threat that I do not have contact or communication with the only local law enforcement agency with jurisdiction in my town patently falls into 2 exceptions to the collateral bar rule 1. surrender of constitutional rights 2. transparently invalid / unconstitutional.

Judge Krier's own ruling, stating that I could interact with the sheriff in a traffic stop, highlights the unconstitutional nature of the matter. The orders are patently and transparently unconstitutionally vague and over broad and constitute prior restraints.

I am preparing an abuse of process claim against Judge Krier for ignoring the removal to federal court and acting absent all jurisdiction when the case was removed.

Do you consent to interlocutory appeal to determine the applicability of the collateral bar rule. I see that the State is seeking interlocutory review in the Lavaya May case, I would move under a similar theory to take the matter immediately to appeal. I have amicus support from two first

amendment organizations, that have agreed to file on appeal. The third and fourth exceptions to the collateral bar rule apply to this case.

I was plaintiff in a 1st amendment case that spanned 6 years, those precepts are applicable here. See Huminski v. Corsones, 396 F 3d 53 (2nd Cir 2005). Once again, my full time job seems to be defending the First Amendment.

Notice of Electronic Filing - Filing # 60278779

Notice of Service of Court Documents

Filing Information

Filing #:	60278779
Filing Time:	08/11/2017 11:21:29 AM ET
Filer:	Scott Alan Huminsky 239-300-6656
Court:	Twentieth Judicial Circuit in and for Lee County, Florida
Case #:	362017MM000815000ACH
Court Case #:	17-MM-000815
Case Style:	State of Florida vs Huminski, Scott A

Documents

Title	File
Motion	vacate all krier.docx
Motion	vacate during automatic stay.docx
Motion	vacate during removal.docx
Motion	motion to stay criminal.docx

E-service recipients selected for service:

Name	Email Address
Scott Alan Huminsky	scott.huminski@gmail.com
scott huminski	s_huminski@live.com
State Attorney	ServiceSAO-LEE@sao.cjis20.org

E-service recipients deselected for service:

Name	Email Address
No Matching Entries	

This is an automatic email message generated by the Florida Courts E-Filing Portal. This email address does not receive email.

Thank you,
The Florida Courts E-Filing Portal

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTIFICATION OF OBSTRUCTION OF JUSTICE OF BANKRUPTCY CASE

NOW COMES, Scott Huminski ("Huminski"), and, notifies that the orders entered in the collateral civil action obstructed Huminski's service of Sheriff Mike Scott with a Notice of Removal mandated by Bankruptcy Rule 9027. Both Huminski and the Sheriff are listed as pro se in the bankruptcy adversary proceeding, yet, the State Court has injected itself into federal court matters obstructing justice by insulating the Sheriff from federal process.

Crimes are the side effects of unconstitutionally vague and over-broad court orders, which is why regulation of speech must be a careful endeavor.

Similarly, the orders forbid Huminski's reporting of crime to local law enforcement and forbid Huminski's core political speech critical of politician Mike Scott.

Dated at Bonita Springs, Florida this 11th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 11th day of July, 2017.

-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO DISMISS RE: DUE PROCESS VIOLATIONS

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss as the charging document and orders of the Civil Court were issued with impermissible judicial violations of judicial cannons violating Due Process and rendering the orders of the Civil Court *void ab initio* for want of due process.

Huminski filed motions to recuse Judge Krier on 4/19/2017 and 4/20/2017. Recusal finally happened on 8/1/2017. All proceedings in the interim were tainted with an improper judicial animus, bias or another impropriety violating Due Process and they are *void ab initio*. The recusal of Judge Krier is dispositive regarding this issue.

Dated at Bonita Springs, Florida this 12th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF JUDICIAL FINDING OF FELONY PERJURY

NOW COMES, Scott Huminski ("Huminski"), and, notifies that Hon. Judge Krier found that the sworn complaint in the civil action constituted felony perjury and was entirely untrue. A third degree felony in Florida.

The prosecution of contempt with alleged felony perjury on the record before the prosecution indicates the probable existence of an improper prosecutorial motive. The failure of Judge Krier to forward the matter to the State's Attorney for prosecution is consistent with her recusal grounded upon violation of judicial cannons. Huminski filed a motion to recuse Judge Krier on 4/19/2017 and 4/20/2017 recusal finally happened on 8/1/2017. All proceedings in the interim were tainted with an improper judicial animus, bias or another issue violating Due Process.

Dated at Bonita Springs, Florida this 12th day of August 2017.

-/S/- Scott Huminski

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24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

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Scott Huminski

In The

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In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO UNLOCK VOR FILINGS IN THE CIVIL AND CRIMINAL CASES

NOW COMES, Scott Huminski ("Huminski"), and, moves for an order to the clerk to unlock all filings in this criminal and the collateral civil cases. The VOR system does not function for Huminski and there is no valid reason to censor any documents in these two cases.

Dated at Bonita Springs, Florida this 12th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
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SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION FOR PERMISSION TO PERSUE INTERLOCUTORY APPEAL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above under the same theory for appeal proffered by the State's Attorney in State v. Lavaya May 16-CF-000346.

Huminski seeks to pose the questions on appeal if the civil orders forming the basis for this case: (1) require the surrender of a constitutional right or (2) are transparently unconstitutional and invalid and (3) constitute prior restraints upon speech and core political speech. All orders of the Court authored while the case was removed to U.S. Bankruptcy Court are VOID AB INITIO for lack of all jurisdiction as are orders violating the automatic stay of bankruptcy that was applied in April and is pending to this day.

MEMORANDUM OF LAW

An appeal would likely end this case.

A transparently invalid order cannot form the basis for a contempt citation. See 3 Wright, Federal Practice & Procedure Sec. 702 at 815 n. 17 (1982) (collateral bar rule does not apply if the order violated was transparently unconstitutional); State ex rel. Superior Ct. of Snohomish County v. Sperry, 79 Wash.2d 69, 483 P.2d 608 (1971), cert. denied, 404 U.S. 939, 92 S.Ct. 272, 30 L.Ed.2d 252 (contempt citation improper because order violated was transparently void); see also United States v. Dickinson, 465 F.2d 496, 509-10 (5th Cir.1972) (recognizing exception to collateral bar rule for transparently invalid orders); Ex parte Purvis, 382 So.2d 512, 514 (Ala.1980) (same)

Court orders are not sacrosanct. See Cobbledick v. United States, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940); accord United States v. Ryan, 402 U.S. 530, 91 S.Ct. 1580, 29

L.Ed.2d 85 (1971). In Cobbledick, the Supreme Court ruled that when a motion to quash a subpoena is denied, the movant may either obey its commands or violate them, and, if cited for contempt, properly contest its validity in the contempt proceeding. Cf. Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972); Maness v. Meyers, 419 U.S. 449, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975) These cases involve orders that require the surrender of irretrievable rights and establish that blind obedience to all court orders is not required. See also Nebraska Press Assoc., 427 U.S. at 559, 96 S.Ct. at 2802 ("A prior restraint ... has an immediate and irreversible sanction.") An appeal can not undo the immediate constitutional injury of a prior restraint such as we have in the instant matter. The instant matter does constitute a prior restraint against core political critism of a politician (Sheriff) and a prior restraint concerning reporting crime to local law enforcment. An order entered by a court clearly without jurisdiction over the contemnors or the subject matter is not protected by the collateral bar rule. United Mine Workers, 330 U.S. at 293, 67 S.Ct. at 695 Were this not the case, a court could wield power over parties or matters obviously not within its authority--a concept inconsistent with the notion that the judiciary may exercise only those powers entrusted to it by law. The civil court did issue orders and held hearings in a removed case and in violation of the automatic stay of bankruptcy.

Huminski's email publications to large audiences on the topics of report of terrorist death threats originating in Arizona and transmitted into Lee County, report of crime to law enforcement and criticism are pure speech and core political protected expression. The principal purpose of the First Amendment's guaranty is to prevent prior restraints. Near, 283 U.S. at 713, 51 S.Ct. at 630 The Supreme Court has declared: "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1577, 29 L.Ed.2d 1 (1971); see also Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963) When, as here, the prior restraint impinges upon the right of the press to communicate news and involves expression in the form of pure speech--speech not connected with any conduct--the presumption of unconstitutionality is virtually insurmountable. Nebraska Press Assoc., 427 U.S. at 558, 570, 96 S.Ct. at 2802, 2808 (White, J., concurring) Huminski notes his status as a citizen-reporter. See Generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)

Dated at Bonita Springs, Florida this 12th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION FOR ADA ACCOMMODATIONS

NOW COMES, Scott Huminski ("Huminski"), and, moves for accommodations under the ADA as he is fully disabled on social security disability with PTSD, Anxiety Disorder, Bi-polar depression and is being evaluated for early onset Alzheimer's.

As an accommodation, Huminski requests that all hearings be transcribed and that he be allowed to respond to issues brought up at hearing in writing within a week of the hearing. Huminski has difficultly responding and analyzing situations on the spot, especially in a tense adversarial setting such as a criminal prosecution. Without accommodations Huminski will be severely prejudiced.

Huminski also requests all motions that he files be responded to in writing by the State's Attorney and that he be allowed a to file a written reply withing 10 days to the State's Attorney opposition prior to hearing.

Huminski has been deemed fully disabled by the Social Security Administration for approximately 9 years. Attached hereto are exhibits verifying Huminski's complete disability.

Dated at Bonita Springs, Florida this 13th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

_____

Scott Huminski

disability benefit payments or lump sum awards. You must also report any new payments you receive.

Your New Benefit Amount

BENEFICIARY'S NAME: SCOTT A HUMINSKI

Your Social Security benefits will increase by 0.3% percent in 2017 because of a rise in the cost of living. You can use this letter as proof of your benefit amount if you need to apply for food, rent, or energy assistance. You can also use it to apply for bank loans or for other business. Keep this letter with your important financial records.

How Much Will I Get And When?

• Your monthly amount (before deductions) is	$1,583.00
• The amount we deduct for Medicare medical insurance is (If you did not have Medicare as of November 17, 2016, or if someone else pays your premium, we show $0.00.)	$126.00
• The amount we deduct for your Medicare prescription drug plan is (We will notify you if the amount changes in 2017. If you did not elect withholding as of November 1, 2016, we show $0.00.)	$0.00
• The amount we deduct for voluntary Federal tax withholding is (If you did not elect voluntary tax withholding as of November 17, 2016, we show $0.00.)	$0.00
• After we take any other deductions, you will receive on or about Jan. 3, 2017.	$1,457.00

If you disagree with any of these amounts, you must write to us within 60 days from the date you receive this letter. We would be happy to review the amounts.

If you receive a paper check and want to switch to an electronic payment, please visit the Department of the Treasury's Go Direct website at ***www.godirect.org*** online.

What If I Have Questions?

- Visit our website at ***www.socialsecurity.gov*** for more information about Social Security.
- Call us toll-free at **1-800-772-1213** (TTY **1-800-325-0778**) if you have questions. If you

FACTS ABOUT YOUR 2016 SOCIAL SECURITY BENEFIT STATEMENT

Your 2016 Social Security Benefit Statement is on the back of this form. Use it, along with the information below, to see if part of your Social Security benefits may be taxable.

What You Need To Do
Use the 2016 statement on the reverse, with the Internal Revenue Service (IRS) Notice 703 below, to see if any of your Social Security benefits are taxable.

Box 2–"Social Security Number"– shows the Social Security number of the person shown in Box 1, if we have the number.

Box 3–"Benefits Paid in 2016"– shows the total amount

Box 4–"Benefits Repaid to SSA in 2016"– shows the total amount of benefits you repaid us in 2016. We show items that apply to you in the column headed "Description of Amount in Box 4."

FORM SSA-1099 – SOCIAL SECURITY BENEFIT STATEMENT

2016 • PART OF YOUR SOCIAL SECURITY BENEFITS SHOWN IN BOX 5 MAY BE TAXABLE INCOME.
• SEE THE REVERSE FOR MORE INFORMATION.

Box 1. Name		
SCOTT A HUMINSKI		[redacted]
Box 3. Benefits Paid in 2016	Box 4. Benefits Repaid to SSA in 2016	Box 5. Net Benefits for 2016 *(Box 3 minus Box 4)*
$18,946.80	NONE	$18,946.80

DESCRIPTION OF AMOUNT IN BOX 3

Paid by check or direct deposit	$17,972.40
Medicare Part B premiums deducted from your benefits	$974.40
Total Additions	$18,946.80
Benefits for 2016	$18,946.80

DESCRIPTION OF AMOUNT IN BOX 4

NONE

Box 6. Voluntary Federal Income Tax Withheld

NONE

Box 7. Address

SCOTT A HUMINSKI
24544 KINGFISH ST
BONITA SPRINGS FL 34134-7112

Box 8. Claim Number *(Use this number if you need to contact SSA.)*

045-40-4327A

Form **SSA-1099-SM** (1-2017) **DO NOT RETURN THIS FORM TO SSA OR IRS**

Medicare Summary Notice
for Part B (Medical Insurance)

The Official Summary of Your Medicare Claims from the Centers for Medicare & Medicaid Services

SCOTT A HUMINSKI
PO BOX 10224
NAPLES FL 34101-0224

THIS IS NOT A BILL

Notice for Scott A Huminski

Medicare Number [redacted]

Date of This Notice **December 11, 2015**

Claims Processed Between **September 11 – December 11, 2015**

Your Deductible Status

Your deductible is what you must pay for most health services before Medicare begins to pay.

Part B Deductible: You have now met your **$147.00** deductible for 2015.

Be Informed!

Get your Medicare Summary Notices (MSNs) in a new and exciting way - electronic delivery! Access your electronic MSNs (eMSNs) monthly at MyMedicare.gov. Go paperless and help Medicare save money! Login to MyMedicare.gov to sign up. Need help? Call 1-800-MEDICARE (1-800-633-4227) TTY (1-877-486-2048).

Your Claims & Costs This Period

Did Medicare Approve All Services? **NO**

Number of Services Medicare Denied **9**

See claims starting on page 3. Look for **NO** in the "Service Approved?" column. See the last page for how to handle a denied claim.

Total You May Be Billed **$1,769.64**

Providers with Claims This Period

July 30 – August 20, 2015
Gladiolus Surgery Cente

August 12 – October 7, 2015
Swf Associates IN Podiatric M

September 9, 2015
Holiday Cvs LLC

¿Sabia que puede recibir este aviso y otro tipo de ayuda de Medicare en español? Llame y hable con un agente en español.
如果需要国语帮助，请致电联邦医疗保险，请先说"agent"，然后说"Mandarin" **1-800-MEDICARE (1-800-633-4227)**

FBLIM2485 - 008560 - 001 CP 008

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

NOTICE OF PROTECTIVE ORDERS OBSTRUCTION OF JUSTICE WITH REGARD TO APPEAL OF COLLATERAL CIVIL CASE, HUINSKI V. GILBERT

NOW COMES, Scott Huminski ("Huminski"), and, notices that the protective orders issued in the collateral civil case have obstructed the service of Sheriff Mike Scott concerning the Rule 9027 removal to bankruptcy court and will act as a prior restraint to service of the Sheriff concerning appeal of the collateral civil case in State Court. The protective orders are so incredibly unconstitutionally vague and over broad that they manage to constitute criminal obstruction of justice in both Federal and State Courts.

In the bankruptcy matter they are a State Court's attempt to nullify federal bankruptcy law, specifically Bankruptcy Rule 9027, with threats of arrest, a serious crime and bedrock violation of the Supremacy Clause.

Dated at Bonita Springs, Florida this 13th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was e-filed and electronically served, or hand delivered or mailed via First Class Mail , prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 13th day of August, 2017.

-/s/- Scott Huminski

_____

Scott Huminski

From: scott huminski <s_huminski@live.com>
Sent: Monday, August 14, 2017 8:02 AM
To: ServiceSAO-LEE@sao.cjis20.org; stateattorney@sao.cjis20.org
Subject: State v. Huminski, att anthony kunasek

Hi,

There are about 10 motions that await your response. I have moved for ADA accommodations that require your written response to my motion and allow me an opportunity for a written reply.

Via there papers you will see that over the last 2 plus years myself and my wife have been recipients of death threats from a domestic terror cell operating out of Maricopa County AZ. The 10 or so letters in that came in the mail have forensic evidence on them implicating Trevor Nelson and/or Debra Riffel both of Maricopa County AZ (Glendale or Scottsdale). Do not continue to aid and abet these terrorists.

They both have admitted to law enforcement a huge motive, they blame me for the suicide of Justin M. Nelson.
http://www.rivernewsonline.com/main.asp?SectionID=3&SubSectionID=28&ArticleID=57106

They need to be polygraphed. I submitted to a polygraph with the LCSO concerning this terrorism.
-- scott huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

NOTICE OF PROTECTIVE ORDERS FURTHERANCE OF DOMESTIC TERRORISM ORIGINATING IN MARICOPA COUNTY, AZ

NOW COMES, Scott Huminski ("Huminski"), and, notiifies that the protective orders issued in this case further, aide, assist and abet the AZ terror cell consisting of Trevor Nelson, Debra Riffel and others who have engaged in a two year long campaign of death threats and terror against Huminski and his wife.

The two year existence of this assassination plot exists sworn on the record in the collateral civil matter. All of Huminski's emails to his recipient lists are intended to act as the only means of self-defense Huminski has against the AZ terrorists, the report of crime concerning the terror and criticism of law enforcement that who have chosen to support the terrorism via ignoring the terror death threats. The leaders of the AZ domestic terror cell have admitted to AZ law enforcement that they blame Huminski for the suicide at age 36 of Trevor Nelson's father, Justin M. Nelson. See obituary, http://www.rivernewsonline.com/main.asp?SectionID=3&SubSectionID=28&ArticleID=57106.

The pursuit of this case by Florida constitutes aide to the terrorist death cell that has targeted Huminski for assassination. There is no legitimate governmental reason to silence Huminski's publications concerning these terrorists other than to engage in an illegal prior restraint and further the likelihood of Huminski' murder.

Dated at Bonita Springs, Florida this 14th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se

24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO INCORPORATE THE RECORD FROM COLLATERAL CIVIL CASE AS PART OF THE RECORD IN THIS MATTER

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above because the context of the protective orders is material to issues in this case concerning Huminski's core protected First Amendment political speech of reporting crime and criticizing politicians (Sheriff Mike Scott).

Dated at Bonita Springs, Florida this 14th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

vs.

SCOTT HUMINSKI

Defendant

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

COPY

ORDER / COMMITMENT FORM | **COUNTY COURT, LEE COUNTY, FLORIDA**

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	08/15/2017	BM

Attorney: PD Public Defender

APPEARANCE
____ Failed to Appear
____ Present w/o Attorney
X Present w/ Attorney
____ Present by Attorney
____ Present w/ Interpreter
____ Interpreter Services Requested
Language _____
____ Victim/Other _____

PLEA
____ Guilty
____ Not Guilty
____ Nolo Contender
____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
____ Withheld by Judge
____ Adjudicated Guilty
____ Withheld by Clerk
_____

VERDICT
____ Guilty by Judge
____ Not Guilty by Judge
____ Guilty by Jury
____ Not Guilty by Jury
____ Mistrial
_____

DISPOSITION
____ Acquitted
____ Nolle Pros
____ No Information
____ Dismissed
____ Adm.Dismissed
____ Merge & Dismiss

SENTENCE
____ Probation Reporting _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ One Time Cost $_____ Waive COS $_____
____ Report to Probation Today or Upon Release Within _____
____ Probation may terminate early when conditions are met
____ May Transfer Probation to _____
____ May Report to Probation and/or Instruct by Mail
____ Ignition Interlock Device _____ DD/MM/YY
____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
____ Statutory Exception to Vehicle Impound
____ Does Not Own Vehicle ____ Shared Vehicle
____ Other _____
____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
____ No Possession or Consumption of Alcohol or Illicit Substances
____ DUI School - Follow recommendations/Phase ____ I ____ II
____ School to Determine which Phase
____ Sign up w/in _____ days
____ Traffic School 4 Hr / 8Hr / 12 Hr
____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
____ Sign up for Batterer's Intervention Program w/in 30 Days
____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
____ Attend & Complete Program _____
____ DNA Testing Collected ____ in Court ____ at LCJ
____ Other Testing ____ HIV ____ STD _____
____ Defendant Advised of Habitual and/or Felony Status

____ Jail Time _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ Weekend Time Fri 6pm to Sun 6pm
____ Beginning _____
____ Day Work Program* _____ Days
___ Minimum ___ day(s) a week ___ consecutive weeks
____ Credit Time Served _____ DD/MM/YY
____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
____ Defendant Remanded ____ Sentence Suspended
____ DL Suspended/Revoked _____ DD/MM/YY
____ Spec. Conditions - Drive for Work/Business purposes
____ Show Valid Driver's License within _____
____ Produced Valid Driver's License in Court
____ Community Service _____ Hours and/or Pay $_____
____ Must complete _____ hours of community service before buyout
____ Show Proof of Com. Service to Clerk w/in _____
____ Stay Away from arrest location _____
____ No Contact with victim _____
____ State Orally Amends Charge in Open Court
____ Formal Filing of Information is Waived
____ Information Filed in Open Court
____ Successfully Completed Pretrial Diversion Program
____ Judicial Warning
____ Defendant Accepted DV Diversion
____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to 9-1-17

MANDATORY COURT APPEARANCE

For _____ AR X DS _____ TR _____ DA _____ DD _____ DT _____ RH

Time 8:30 (AM) PM Court Room 1A

X Speedy Trial Waived ____ Speedy Trial Tolled

____ (JRA) ____ HAS ____ MEG ____ ZMG ____ DSG ____ JMG ____ TPP ____ ABH _____

X Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** 8/15/17

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	08/15/2017	

FINE ASSESSMENTS (statutes indicated)
____ Fine $_____ (775.083)
____ 5% Surcharge $_____ (938.04)

MANDATORY ASSESSMENTS
____ Court Costs (Include Crime Stoppers & Crime Prevention) (318.18 / 775.083 / 938.01 / 938.03 / 938.05 / 938.06 / 939.185)
___ $220.00 ___ Other $_____
If Ordered Under - Reason:
_____
____ $33.00 Certain Traffic Offense Court Cost (318.17 / 318.18)
____ $135.00 DUI Court Costs (938.07)
____ $70.00 Reckless Driving Court Costs (318.18 / 316.192)
____ $65.00 Racing Court Costs (318.18)
____ $5.00 Leaving the Scene Court Costs (316.061)
____ $195.00 BUI Court Costs (938.07 / 327.35)
____ $201.00 Domestic Violence Trust Fund (938.08)
____ $151.00 Rape Crisis Trust Fund (938.085)
____ $151.00 Crimes Against Minors (938.10)
____ $5000.00 Civil Penalty (796.07)
____ $40.00 Contested By Nonprevailing Party Fee (34.045)

DISCRETIONARY ASSESSMENTS
____ $100.00 FDLE Trust Fund/Statewide Crime Lab (938.25)
____ Investigative Fee $_____ to
to ___ FDLE ___ FMP ___ LCSO ___ Statewide Pros.
___ Other _____ (938.27)
____ Worthless Check Diversion Fee $_____ (832.08)
____ Diversion Cost of Supervision $_____ (948.09)

Pay Within _____ DD/MM/YY
_____
_____
____ Upon release from In-Custody

MOTION HEARINGS
____ Revoke Bond ____ Reinstate Bond
____ Set/Reduce/Increase Bond to _____
____ Suppress ____Dismiss ____Continue
____ Expunge/Seal (Outstanding monetary obligations must be addressed in court and the $42.00 fee must be paid to the Clerk's office before the case is officially expunged/sealed.)
____ Withdraw Plea
____ Withdraw as Counsel
____ Modify No Contact Order ____ Lift No Contact Order
____ Other _____
Motion Result (Circle One): Granted Denied Reserves Ruling

____ State & Defense Stipulate to Suppress the Breath Test Results
____ State Amends Information from BAL of .15 or Above to .08
____ Clerk to Update Case w/ Defendants Information Listed

ATTORNEY FEES & SURCHARGES
____ $50.00 Cost of Prosecution (938.27)
____ $50.00 Public Def Application Fee (27.52)
Additional Application Fees $_____
(Must be addressed on the record)
____ Defense Attorney Costs at Conviction (938.29)
___ $50.00 ___ Other $_____

RESTITUTION
____ Minimum Payment of $_____ per Month
to _____
___ As a Condition of Probation
____ Restitution Ordered $_____ to
_____
____ Restitution Reduced to Judgment
____ Court Orders Restitution - Reserves on Amount

DISPOSITION OF MONETARY OBLIGATIONS
____ May Convert Fine/Cost _____ All or In Part to Community Service at $10 per Hour
___ Defendant Advised of Notary Requirement for Community Service (For Non-Probationary Sentences)
____ Credit Time Served for Fines/Costs/Fees _____
____ Monetary Obligations Referred to Clerk of Court Collections
____ Monetary Obligations Reduced to Judgment ___ Previous Only
____ Monetary Obligations (VOP) ___ Carried Forward
____ Defendant to sign up for Payment Plan
____ First Payment Due within 30 Days
____ Waive all Additional Mandatory Costs

WARRANTS/BONDS
____ BW/D6 Ordered Balance $_____
____ Issue Bench Warrant _____ MM/DD/YYYY
____ Bond Estreature $_____
____ Non-Compliance/Non-Appearance $_____
____ Set Aside BW/D6 $_____
____ Set Aside Estreature $_____
____ Cash Bond to pay Fine/Cost including _____
____ Return Cash Bond to Depositor
_____
____ Conflicting Appearance Date Addressed in Court

REVOCATION HEARINGS
____ Defendant Pleas Guilty/Admits Allegations
____ Defendant Pleas Not Guilty/Denies Allegations
____ Adjudicated Guilty ____ Adjudication Withheld
____ Probation Reinstated _____
____ Probation Modified _____
____ Same Terms and Conditions to Apply
____ Probation Revoked & Terminated ____ Probation Terminated
____ COS Fees Due & Owing in the amount $_____

Pre-sentence Investigation/Sentencing _____ Full/Partial

If probation has not been imposed, you must pay your financial obligation within the time allowed by the Judge or sign up for the payment plan option offered by the Clerk of Court. If sentenced to Probation, you must adhere to standards as directed.
Failure to comply with any part of this order may result in a suspension of your driver license privilege and/or warrant being issued for your arrest (322.245) .
Unpaid financial obligations still remaining 90 days after payment due date will be referred by the Clerk of Court to a collection agency and an additional fee of up to 40% of the outstanding balance owed will be added at that time (28.246).
Mandatory assessments are imposed and shall be included in the judgment without regard to whether the assessment was announced in open court.

Asst. State Attorney A. Kunasek Bar No. 26999 Date _____

Judge Elizabeth V Krier _____ Date _____

JAMES R. ADAMS FOR:

Rev.05/05/2017

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL DIVISION

STATE OF FLORIDA,

vs.

Case No.: 17-MM-815

SCOTT A. HUMINSKI,

Defendant.
_____/

ORDER OF REASSIGNMENT

THIS CAUSE came before the Court on August 15, 2017, it is hereby

ORDERED AND ADJUDGED that the above case shall be reassigned to the Honorable James R. Adams. You are to appear before Judge Adams on September 1, 2017 at 8:30 a.m. in Courtroom 1-A for docket sounding.

DONE AND ORDERED in Lee County, Florida this 15th day of August 2017.

JAMES R. ADAMS
Administrative County Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via e-service to the following on this 15th day of August 2017:

Office of the State Attorney, 20th Judicial Circuit
Pro Se Defendant, S_Huminski@live.com

Judicial Assistant

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

NOTICE OF AFFIRMATIVE DEFENSES

NOW COMES, Scott Huminski ("Huminski"), and, notifies as above based upon the assassination plot existing against Huminski by a demestic terror cell in Arizona led by Trevor Nelson and/or his mother who have sent Huminski and his wife death threats continually over the last two years.

Huminski's only means short of taking a gun and killing the terrorist was to keep law enforcement alerted to the terrorism. An activity that has been prohibited as protective orders prohibit the reporting of crime to the only local law enforcement agency with jurisdiction in his town, Bonita Springs.

Huminski assert the defenses of self-defense, duress and necessity. The following police agencies have evidence and other information related to the death threats, U.S. Postal Inspection Service, LCSO, Gilbert AZ police, Phoenix AZ police, Glendale AZ police, Surprise AZ police, Maricopa County Sheriff's Office, Scottsdale AZ police. Below is a threat received by Huminski via the U.S. mail likely from Trevor Nelson who has admitted to the Glendale AZ police that he blames Huminski for the suicide of his father – a massive motive for murder,

"Hello Scott,

It's almost time for you to die.
Did you think that I would let you get away with your bullshit and your lawsuits? … Enjoy your last few days on earth.

I'll be there real soon. Officer Pillar"

Dated at Bonita Springs, Florida this 16th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO VACATE HEARING AND ARRAIGNMENT OF 6/29/2017

NOW COMES Scott Huminski (Huminski) and moves to vacate the hearing and arraignment of 6/29 because the matter was removed to U.S. Bankuptcy Court on 6/26. As the docket indicates there was no criminal case on 6/29. A criminal case was docketed on 6/30.

9:17-bk-03658-FMD Scott Alan Huminski

Case type: bk **Chapter:** 7 **Asset:** No **Vol:** v **Judge:** Caryl E. Delano

Date filed: 04/28/2017 **Date of last filing:** 08/03/2017

Associated Cases

Case	Associated Case	Type
9:17-bk-03658-FMD Scott Alan Huminski	9:17-ap-00509-FMD Huminski v. Town of Gilbert, AZ et al	Adversary

Other Filings by Same Debtor(s)

There Are No Case Filing Associations For This Case

U.S. Bankruptcy Court

Middle District of Florida (Ft. Myers)

Adversary Proceeding #: 9:17-ap-00509-FMD

Assigned to: Caryl E. Delano
Lead BK Case: 17-03658
Lead BK Title: Scott Alan Huminski

Date Filed: 06/26/17
Date Removed From State: 06/26/17

Lead BK Chapter: 7
Show Associated Cases

Demand:
Nature[s] of Suit: 01 Determination of removed claim or cause

Plaintiff

Scott Alan Huminski
24544 Kingfish Street
Bonita Springs, FL 34134
239-300-6656
SSN / ITIN: [redacted]

represented by **Scott Alan Huminski**
PRO SE

V.

Defendant

Town of Gilbert, AZ

represented by **Town of Gilbert, AZ**
PRO SE

Defendant

Gilbert Police Department

represented by **Gilbert Police Department**
PRO SE

Defendant

Ryan Pillar

represented by **Ryan Pillar**
PRO SE

Defendant

Stephanie Ameiss

represented by **Stephanie Ameiss**
PRO SE

Defendant

City of Surprise, AZ represented by **City of Surprise, AZ**
PRO SE

Defendant

City of Phoenix, AZ represented by **City of Phoenix, AZ**
PRO SE

Defendant

Phoenix Police Department represented by **Phoenix Police Department**
PRO SE

Defendant

Heather Ard represented by **Heather Ard**
PRO SE

Defendant

Scribd, Inc. represented by **Scribd, Inc.**
PRO SE

Defendant

Jason Bentley represented by **Jason Bentley**
PRO SE

Defendant

Lee County, Florida represented by **Lee County, Florida**
PRO SE

Defendant

Lee County Sheriff's Office represented by **Lee County Sheriff's Office**
PRO SE

Defendant

Sheriff Mike Scott represented by **Sheriff Mike Scott**
PRO SE

Defendant

Brian Allen represented by **Brian Allen**
PRO SE

Defendant

City of Glendale, AZ represented by **City of Glendale, AZ**
PRO SE

Defendant

Glendale Police represented by **Glendale Police**
PRO SE

Defendant

Tracey Wood represented by **Tracey Wood**
PRO SE

Defendant

Surprise Police Department represented by **Surprise Police Department**
PRO SE

Filing Date	#	Docket Text

06/26/2017	1 (95 pgs; 4 docs)	Notice of Removal by Scott Alan Huminski against Town of Gilbert, AZ, Gilbert Police Department, Ryan Pillar, Stephanie Ameiss, City of Surprise, AZ, Surprise Police Department, City of Phoenix, AZ, Phoenix Police Department, Heather Ard, Scribd, Inc., Jason Bentley, Lee County, Florida, Lee County Sheriff's Office, Sheriff Mike Scott, Brian Allen, City of Glendale, AZ, Glendale Police, Tracey Wood. Filing Fee Not Required. Nature of Suit: [01 (Determination of removed claim or cause)]. (Attachments: # 1 Exhibit Verified Complaint - Lee County 17-CA-421 # 2 Exhibit Notice of Appeal of Judgment, et al, CT USDC 3-14-cv-01390-MPS # 3 Exhibit LCSO Polygraph Report) (Deanna) Modified on 6/27/2017 (Deanna). (Entered: 06/27/2017)
06/26/2017	2 (2 pgs)	Motion to Vacate *State Orders of Judge Krier* Filed by Plaintiff Scott Alan Huminski. (Deanna) (Entered: 06/27/2017)
06/26/2017	3 (5 pgs)	Motion to Vacate *Protective Orders as Void Ab Initio or Void and for Declaratory Relief* Filed by Plaintiff Scott Alan Huminski. (Deanna) (Entered: 06/27/2017)
06/26/2017	4 (1 pg)	Motion for Order to Show Cause *as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and*, Motion for Protective Order *Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees* Filed by Plaintiff Scott Alan Huminski (Deanna) (Entered: 06/27/2017)
06/26/2017	5 (2 pgs)	Second Motion for Order to Show Cause *as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and*, Motion for Protective Order *Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees* Filed by Plaintiff Scott Alan Huminski (related document(s)4). (Deanna) (Entered: 06/27/2017)
06/28/2017	6 (8 pgs)	Summons issued on Town of Gilbert, AZ, Gilbert Police Department, Ryan Pillar, Stephanie Ameiss, City of Surprise, AZ, Surprise Police Department, City of Phoenix, AZ, Phoenix Police Department, Heather Ard, Scribd, Inc., Jason Bentley, Lee County, Florida, Lee County Sheriff and #039;s Office, Sheriff Mike Scott, Brian Allen, City of Glendale, AZ, Glendale Police, Tracey Wood along with Local Rule 7001-1 - Adversary Proceedings - Procedures. Answer Due 07/28/2017. If one or more defendants are the United States or an officer or agency thereof, add an

		additional five days to the Answer Due date. A copy of this summons must be included when filing proof of service of this summons. (ADIclerk) (Entered: 06/28/2017)
06/29/2017	7 (1 pg)	Service Executed of Complaint, on Clerk, 20th Judicial Circuit Court, Lee County Filed by Plaintiff Scott Alan Huminski (related document(s)6). (Susan M.) (Entered: 07/03/2017)
06/29/2017	10 (2 pgs)	Motion *for Ex Parte Order to Allow Service of Sheriff Mike Scott* Filed by Plaintiff Scott Alan Huminski. (Susan M.) (Entered: 07/05/2017)
07/03/2017	8 (4 pgs)	Emergency Motion *for ex parte Temporary Restraining Order* Filed by Plaintiff Scott Alan Huminski. (Ryan S.) (Entered: 07/03/2017)
07/03/2017	9 (2 pgs)	Order Abating Motion *for ex parte Temporary Restraining Order* (Related Doc # 8). Service Instructions: Clerks Office to serve. (Ryan S.) (Entered: 07/03/2017)
07/05/2017	11 (2 pgs)	Notice of Pretrial/ Status Conference. . Pre-Trial Conference set for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) Additional attachment(s) added on 7/5/2017 (Susan M.). (Entered: 07/05/2017)
07/05/2017	12 (2 pgs)	Service of Previously Entered Order/Notice via Bankruptcy Noticing Center. Title of Previously Entered Document: Notice of Pretrial/ Status Conference Entered on the Docket July 5, 2017 (related document(s)11). (Susan M.) (Entered: 07/05/2017)
07/05/2017	13 (2 pgs)	Notice of Preliminary Hearing on Motion to Vacate State Orders of Judge Krier Filed by Plaintiff Scott Alan Huminski. (related document(s)2). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)
07/05/2017	14 (2 pgs)	Notice of Preliminary Hearing on Motion to Vacate Protective Orders as Void Ab Initio or Void and for Declaratory Relief Filed by Plaintiff Scott Alan Huminski (related document(s)3). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)

07/05/2017	15 (2 pgs)	Notice of Preliminary Hearing on Motion for Order to Show Cause as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and, Motion for Protective Order Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees Filed by Plaintiff Scott Alan Huminski (related document(s)4). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)
07/05/2017	16 (2 pgs)	Notice of Preliminary Hearing on Second Motion for Order to Show Cause as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and, Motion for Protective Order Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees Filed by Plaintiff Scott Alan Huminski (related document(s)5). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)
07/05/2017	17 (1 pg)	Order Vacating *Order Abating Motion for ex parte Temporary Restraining Order* (related document(s)9). Service Instructions: Clerks Office to serve. (Susan M.) Additional attachment(s) added on 7/5/2017 (Susan M.). (Entered: 07/05/2017)
07/05/2017	18 (1 pg)	Service of Previously Entered Order/Notice via Bankruptcy Noticing Center. Title of Previously Entered Document: Order Vacating Order Abating Motion for ex parte Temporary Restraining Order Entered on the Docket July 5, 2017 (related document(s)17). (Susan M.) (Entered: 07/05/2017)
07/05/2017	19 (2 pgs)	Notice of Preliminary Hearing on Emergency Motion for ex parte Temporary Restraining Order Filed by Plaintiff Scott Alan Huminski (related document(s)8). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)
07/05/2017	20 (2 pgs)	Notice of Preliminary Hearing on Motion for Ex Parte Order to Allow Service of Sheriff Mike Scott Filed by Plaintiff Scott Alan Huminski (related document(s)10). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered:

		07/05/2017)
07/05/2017	21 (3 pgs)	BNC Certificate of Mailing - Order (related document(s) (Related Doc # 9)). Notice Date 07/05/2017. (Admin.) (Entered: 07/06/2017)
07/07/2017	22 (2 pgs)	Certificate of Service Re: *Emergency Motion for ex parte Temporary Restraining Order Filed by Plaintiff Scott Alan Huminski* Filed by Plaintiff Scott Alan Huminski (related document(s)8). (Susan M.) (Entered: 07/07/2017)
07/07/2017	23 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 13)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	24 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 14)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	25 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 15)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	26 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 16)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	27 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 19)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	28 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 20)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	29 (3 pgs)	BNC Certificate of Mailing - PDF Document. (related document(s) (Related Doc # 12)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	30 (2 pgs)	BNC Certificate of Mailing - PDF Document. (related document(s) (Related Doc # 18)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/10/2017	31 (8 pgs)	Motion *to Hold Service and Answer Dates in Abeyance While State Court Continues to Claim Jurisdiction* Filed by Plaintiff Scott Alan Huminski. (Deborah K.) (Entered: 07/10/2017)

07/13/2017	32 (2 pgs)	Notice of Preliminary Hearing on Motion to Hold Service and Answer Dates in Abeyance While State Court Continues to Claim Jurisdiction (related document(s)31). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Deborah K.) (Entered: 07/13/2017)
07/13/2017	33 (1 pg)	Notice *of Compliance with F.R.C.P. 65(b)(1)(A), 65(b)(1)(B), RE: Ex Parte TRO* Filed by Plaintiff Scott Alan Huminski. (Ryan S.). Related document(s) 8. Modified on 7/13/2017 (Ryan S.). (Entered: 07/13/2017)
07/15/2017	34 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 32)). Notice Date 07/15/2017. (Admin.) (Entered: 07/16/2017)
07/28/2017	35 (2 pgs)	Hearing Proceeding Memo: Hearing Held - **APPEARANCES:** Scott Huminski **WITNESSES: EVIDENCE: RULING:** (1) Pretrial Conference on Notice of Removal - **Remand back to state court O/law clerk** (2) Motion to Vacate State Orders of Judge Krier Filed by Plaintiff Scott Alan Huminski; Doc #2 (3) Motion to Vacate Protective Orders as Void Ab Initio or Void and for Declaratory Relief Filed by Plaintiff Scott Alan Huminski; Doc #3 (4) Motion for Order to Show Cause as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and, Motion for Protective Order Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees Filed by Plaintiff Scott Alan Huminski; Doc #4 - **Denied, stay would prohibit creditors from collecting prepetition debts O/law clerk** (5) Second Motion for Order to Show Cause as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and, Motion for Protective Order Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees Filed by Plaintiff Scott Alan Huminski (related document(s)4); Doc #5 - **Denied, stay would prohibit creditors from collecting prepetition debts O/law clerk** (6) Motion for Ex Parte Order to Allow Service of Sheriff Mike Scott Filed by Plaintiff Scott Alan Huminski; Doc #10 (7) Emergency Motion for ex parte Temporary Restraining Order Filed by Plaintiff Scott Alan Huminski; Doc #8 *(8) Motion to Hold Service and Answer Dates in Abeyance While State Court Continues to Claim Jurisdiction Filed by Plaintiff Scott Alan Huminski. (Kerkes, Deborah) (Doc #31) -Notice of Compliance with F.R.C.P. 65(b)(1)(A), 65(b)(1)(B), RE: Ex Parte TRO Filed by Plaintiff Scott Alan

		Huminski. (Scanlon, Ryan). Related document(s) 8. (Doc #33) Proposed Orders, if applicable, should be submitted within three days after the date of the hearing - Local Rule 9072-1(c). **This docket entry/document is not an official order of the Court**. (Dkt) (Entered: 07/28/2017)
08/01/2017	36 (2 pgs)	Order *Denying Motions for Violation of Automatic Stay without Prejudice.* (related document(s)4, 5). Service Instructions: Clerks Office to serve. (Laura G.) (Entered: 08/01/2017)
08/02/2017	37 (2 pgs)	Order *Remanding Case to State Court - Circuit Court of the Twentieth Judicial Circuit, in and for Lee County, Florida, Case No. 17-CA-241* (related document(s)1, 35). Service Instructions: Clerks Office to serve. (Brenton) (Entered: 08/02/2017)
08/03/2017	38 (3 pgs)	BNC Certificate of Mailing - PDF Document. (related document(s) (Related Doc # 36)). Notice Date 08/03/2017. (Admin.) (Entered: 08/04/2017)
08/04/2017	39 (3 pgs)	BNC Certificate of Mailing - PDF Document. (related document(s) (Related Doc # 37)). Notice Date 08/04/2017. (Admin.) (Entered: 08/05/2017)

PACER Service Center			
Transaction Receipt			
08/16/2017 10:06:02			
PACER Login:	mollydog123:5271502:0	Client	

Dated at Bonita Springs, Florida this 16th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656

S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was e-filed and electronically served, or hand delivered or mailed via First Class Mail , prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 16th day of August, 2017.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO DISMISS - ENTRAPMENT

NOW COMES Scott Huminski (Huminski) and moves to dismiss this case for entrapment.

After Judge Krier forbade contact with the LCSO she sent the LCSO to my home on several occasions with the sole reason to entrap me in the "crime" of having contact and communications with the LCSO. In one instance the deputy spoke to my wife while I hid inside our home and requested contact with me in violation of the no contact order.

This is the danger of prior restraints that violate the First Amendment as being not narrowly tailored, vague and over-broad. Prior restraints are considered the most notorious violations of the First Amendment. The orders of Judge Krier impede the duties of the LCSO and force evasion of service. The orders constitute criminal obstruction of justice with regard to the several services I had to evade to abide by the orders.

Dated at Bonita Springs, Florida this 16th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION FOR CHANGE OF VENUE - ENTRAPMENT

NOW COMES Scott Huminski (Huminski) and moves to for change of venue because he has to have contact with the LCSO at security screening and in the courtroom which is a forbidden crime under the protective orders issued in this case.

In the alternative, this case should be dismissed as the protective orders are wildly over-broad and are not narrowly-tailored as required by the First Amendment.

Dated at Bonita Springs, Florida this 16th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO VACATE ARRAIGNMENT

NOW COMES Scott Huminski (Huminski) and moves to vacate the arraignment in this matter as the Circuit Courts have no jurisdiction over misdemeanors. The Circuit Court was without jurisdicition. The arraignment was void.

Judge Krier should have referred the matter to the state's attorney to allow the drafting of a proper charging instrument for prosecution in the County Court.

Dated at Bonita Springs, Florida this 16th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO VACATE ASSIGNMENT

NOW COMES Scott Huminski (Huminski) and moves to vacate the order of assignment as the Circuit Court administrative judge is Hon. Alane Laboda. Reassignment of a Circuit Court case must be done by the Circuit Court administrative judge.

There is no filing of a recusal order by Judge Krier, this case remains in Circuit Court presided over by Judge Krier. This matter is plagued with procedural issues that violate Due Process and should be dismised to allow the State's Attorney to start over with a proper charging document in the proper court.

Dated at Bonita Springs, Florida this 16th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO DISMISS – JUDGE KRIER HAD NO SUBJECT MATTER JURISDICTION

NOW COMES Scott Huminski (Huminski) and moves to dismiss as Judge Krier initiated the case without subject matter jurisdiction which resides solely with the County Courts, not the Circuit Courts.

Dated at Bonita Springs, Florida this 17th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO DISMISS – ILLEGAL TRANSFER FROM CIRCUIT COURT TO COUNTY COURT

NOW COMES Scott Huminski (Huminski) and moves to dismiss as there exists no valid charging document in the County Court. A show cause order exists in the Circuit Court that was heard on 6/29/2017. A separate County Court case was initiated on 6/30/2017 absent a County court charging document.

The only possible valid criminal matter remains in Circuit Court presided over by Judge Krier who failed to file her recusal order in any court.

Dated at Bonita Springs, Florida this 17th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO DISMISS – JUDGE KRIER NEVER RECUSED FROM A COUNTY CASE, SHE RECUSED FROM A CIRCUIT CASE

NOW COMES Scott Huminski (Huminski) and moves to dismiss as there never existed a county criminal case presided over by Judge Krier, she recused from a Circuit criminal case as is clear from the caption and heading on her recusal order.

The only possible valid criminal matter remains in Circuit Court presided over by Judge Krier who failed to file her recusal order in any court. There exists no charging document in County Court.

Dated at Bonita Springs, Florida this 17th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL DIVISION

STATE OF FLORIDA,

vs. Case No.: 17-MM-815

SCOTT A. HUMINSKI,

Defendant.
_____/

ORDER APPOINTING THE PUBLIC DEFENDER

THIS CAUSE came before the Court and the Court having taken testimony of the Defendant, and making a determination that he meets the financial requirements for Court appointed counsel. Therefore, it is hereby

ORDERED AND ADJUDGED that the Public Defender's Office is appointed to represent the Defendant in this matter; it is further

ORDERED AND ADJUDGED that the Defendant shall be responsible for payment of fees associated with this Court appointment.

DONE AND ORDERED in Lee County, Florida *nunc pro tunc* on this 14th day of August 2017.

Honorable James R. Adams
County Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via e-service to the Office of the State Attorney and Defendant at S_Huminski@live.com on this 18th day of August 2017.

Judicial Assistant

In The

Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

NOTICE OF OBSTRUCTION OF JUSTICE

NOW COMES Scott Huminski (Huminski) and notifies that aside from the protective orders in this case obstructing the service of Sheriff Mike Scott in U.S. Bankruptcy Court, it has obstructed service in the Circuit Court. Below is Huminski's electronic filing leaving off the Sheriff and his counsel from service. This not only is a first amendment prior restraint, it violates the Sheriff's Due Process rights.

Notice of Electronic Filing - Filing # 60476581

Notice of Service of Court Documents

Filing Information

Filing #:	60476581
Filing Time:	08/16/2017 11:47:51 AM ET
Filer:	Scott Alan Huminsky 239-300-6656
Court:	Twentieth Judicial Circuit in and for Lee County, Florida
Case #:	362017CA000421A001CH
Court Case #:	17-CA-000421
Case Style:	Huminski, Scott et al Plaintiff vs Town of Gilbert AZ et al Defendant

Documents

Title	File
Motion	motion for hearibg.docx

E-service recipients selected for service:

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Name	Email Address
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E-service recipients deselected for service:

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	sheriff@sheriffleefl.org
	jholloway@sheriffleefl.org

This is an automatic email message generated by the Florida Courts E-Filing Portal. This email address does not receive email.

Thank you,

The Florida Courts E-Filing Portal

Dated at Bonita Springs, Florida this 18th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was e-filed and electronically served, or hand delivered or mailed via First Class Mail , prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 18th day of August, 2017.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA STATE V. HUMINSKI

MOTION TO CERTIFY QUESTIONS PROFFERED IN MOTION FOR INTERLOCUTORY APPEAL TO DISTRICT COURT OF APPEALS

NOW COMES, Scott Huminski ("Huminski"), and moves to certify the questions posed in his motion for interlocutory appeal dated 8/12/2017 for appeal to the District Court of Appeals. Resolution of the issues posed will be dispositive concerning the instant matter.

Dated at Bonita Springs, Lee Couny, Florida this 21st day of August, 2017.

-/s/- Scott Huminski

Scott Huminski, pro se

24544 Kingfish St.

Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

Certificate of Service

Copies of this document and any attachment(s) was served via the court's efiling system on this 21st day of August, 2017 to adversary parties.

-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL DIVISION

STATE OF FLORIDA,

vs. Case No.: 17-MM-815

SCOTT A. HUMINSKI,
Defendant.
_____/

ORDER STRIKING PLEADINGS

THIS CAUSE came before the Court upon the filing of Defendant's Motions, the Court having determined that Defendant is currently represented by counsel, it is hereby

ORDERED AND ADJUDGED that:

1. Defendant's Motion to Vacate Hearing and Arraignment of 6/29/2017 is STRICKEN.
2. Defendant's Motion to Dismiss – Entrapment is STRICKEN.
3. Defendant's Motion for Change of Venue – Entrapment is STRICKEN.
4. Defendant's Motion to Vacate Arraignment is STRICKEN.
5. Defendant's Motion to Vacate Assignment is STRICKEN.
6. Defendant's Motion to Dismiss – Judge Krier Had No Subject Matter Jurisdiction is STRICKEN.

DONE AND ORDERED in Lee County, Florida on this 21st day of August 2017.

Honorable James R. Adams
County Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Striking Pleadings has been furnished via e-service to the Office of the State Attorney and to the Defendant at S_Huminski@live.com on this 22nd day of August 2017.

Judicial Assistant

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE THAT CIRCUIT COURT AMENDED NO CONTACT ORDER ON 7/7/2017

NOW COMES, Scott Huminski ("Huminski"), and, notifies that in an order issued on 7/7/2017 (a void violation of removal to Federal Court), the Circuit Court attempted to narrowly-tailor the protective order that is central to this matter after Huminski argued, at hearing, that the order is patently vague and over-broad under the First Amendment.

The void order still fails concerning compliance with the First Amendment as it does not bring the protective order in compliance with the First Amendment as Huminski can not report crime to the only local law enforcement agency with jurisdiction where he resides and Huminski's publication of criticism concerning politicians (core protected political speech), Judge Krier and Sheriff Scott, is prohibited by the order.

Even the Circuit Court itself realized constitutional problems with the original order, as should the State of Florida.

Huminski notes that he has captioned this case as above because he was never served with the recusal order of Judge Krier and sees no legal mechanism whereby the case transferred from the Circuit Court to the County Court. The caption on the order of 7/7/2017 and all orders prior to 8/2/2017 clearly state that the case was in Circuit Court. A recusal should have been followed by an assignment by the Circuit Court administrative judge which never happened. This case is procedurally infirm.

Dated at Bonita Springs, Florida this 22nd day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 22nd day of August, 2017.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO DISMISS - NO INFORMATION, INDICTMENT OR OTHER CHARGING DOCUMENT EXISTS IN COUNTY COURT – NO COUNTY COURT ARRAIGNMENT EXISTS

NOW COMES, Scott Huminski ("Huminski"), and, notifies as set forth in the above title. All orders of the Circuit Court (absent subject matter jurisdiction in misdemeanor cases) including the recusal order of 8/1/2017 and all orders and documents prior are captioned in the Circuit Court and were presided over by a Circuit Court judge.

The State has chosen not to file a criminal information or indictment in County Court. The orders of the Circuit Court reflect an arraignment in Circuit Court not County Court. This case is procedurally infirm.

Dated at Bonita Springs, Florida this 22nd day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 22nd day of August, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF SECOND RECUSAL IN COLLATERAL CIVIL CASE

NOW COMES, Scott Huminski ("Huminski"), and, notifies as set forth in the above title and attached hereto is a true and correct copy of the second recusal.

Dated at Bonita Springs, Florida this 22nd day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 22nd day of August, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, STATE OF FLORIDA CIVIL

Scott Huminski,

Plaintiff

vs.

Town of Gilbert AZ et al,

Defendant.

Case No.: 17-421CA

ORDER

THIS CAUSE coming before the Court upon the Court's own Motion, and the undersigned Circuit Court Judge hereby recuses himself from any further participation in the above-styled cause.

DONE AND ORDERED in Chambers this 22 day of August 2017.

John E. Duryea, Jr.
Circuit Court Judge

Copies to:
Scott Huminski, pro se Plaintiff at s_huminski@live.com
Sanders & Parks, P.C.Jeffrey.Smith@SandersParks.com
Quarles & Brady, LLP douglas.knox@quarles.com
deeley.morton@quarles.com
nichole.perez@quarles.com
donna.santoro@quarles.com
ivon.delarosa@quarles.com
docketfl@quarles.com
Roetzel & Andress, LAP serve.rpritt@ralaw.com
jfox@ralaw.com

serve.jfox@ralaw.com
Henderson, Franklin, Atarnes & Holt, P.A.Robert.shearman@henlaw.com
Courtney.ward@henlaw.com
DeMahy Labrador Drake Victor Rojas & Cabeza kendrake@dldlawyers.com
dweiss@dldlawyers.com
Court Administration

Re: State v. Huminski 17-mm-815 8/23/2017

Dear Public Defender's Office,

Please note that all documents authored by Judge Krier were captioned in the Circuit Court and the case was indeed presided over by the Circuit Court. The State has chosen not to file any charging document in County Court and, similarly, there has been no arraignment in County Court.

Please advise the State's Attorney of the procedural infirmities with their prosecution. Also, re-file any motions that were stricken by the County Court.

There is no legal mechanism to make a Circuit Court case magically pop up in County Court. The case is VOID and frivolous.

Also, note that Judge Krier herself admitted the transparent unconstitutionality of her orders by attempting to narrowly-tailor them in her 8/7/2017 order. Surrender of a constitutional right and transparent unconstitutionality are 2 exceptions to the *collateral bar rule* that allow direct attack upon the orders.

This case poses the odd scenario of attack on a Circuit Court order in a court or inferior jurisdiction, the County Court. From my research, a case of first impression in Florida. The situation arose because of Judge Krier failing to recognize that misdemeanors need to be adjudicated in County Court. She can not overrule statutory jurisdictional issues and all her orders are void for lack of subject matter jurisdiction.

Please see if you can wrap this up prior to the next Court date on 7/1/2017.

Regards,

-/s/- Scott Huminski

CC: State's Attorney

Speckham@ca.cjis20.org

Kathleens@pd.cjis20.org

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF VOID TRANSFER FROM CIRCUIT COURT TO COUNTY COURT

NOW COMES, Scott Huminski ("Huminski"), and, notifies that all orders and content in this case from Judge Krier were captioned in Circuit Court and were presided over by a Circuit Court judge.

Transfer of this case from Circuit Court to County Court is illegal. The proper method of transfer would have been to dismiss the Circuit Court case and the State's Attorney authoring/filing of a criminal information in the proper venue, County Court, if the prosecutor deems a violated order did not force surrender of a constitutional right and if the order was not transparently unconstitutional, 2 exceptions to the *collateral bar rule.*

Dated at Bonita Springs, Florida this 23rd day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 23rd day of August, 2017 to all parties.

-/s/- Scott Huminski

_____

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

vs.

SCOTT HUMINSKI

Defendant
_____/

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

KS/SK

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA CASE NO. 17-MM-000815 (JRA)

vs.

SCOTT ALAN HUMINSKI

_____/

MOTION TO STRIKE ORDER APPOINTING THE PUBLIC DEFENDER

COMES NOW, the Public Defender, by and through undersigned counsel, and moves this Court to strike its August 18, 2017 Order Appointing the Public Defender, and states the following as grounds:

FACTS

1. Scott Alan Huminski has not applied for the appointment of the Public Defender.
2. Following his Case Management Conference on August 15, 2017, Mr. Huminski went to Pre-trial Services with Scott Peckham, but Mr. Huminski declined to fill out an application, saying he wished to represent himself.
3. On August 18, 2017, the Court filed an Order Appointing the Public Defender.

ARGUMENT

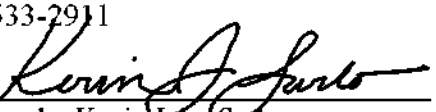
1. Fla. Stat. § 27.51(1)(b)3 provides "[t]he public defender shall represent, without additional compensation, any person determined to be indigent under s. 27.52 and… charged with… criminal contempt."
2. Under Fla. Stat. § 27.52(1), a person seeking appointment of the public defender "**must apply** to the clerk of court for a determination of indigent status **using an application form** developed by the Clerk of Court Operations Corporation with final approval by the Supreme Court." (emphasis added).
4. Fla. Stat. § 27.51(2) also states that "[t]he court **may not** appoint the public defender to represent, even on a temporary basis, any person who is not indigent." (emphasis added).

5. "It is the defendant… who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for the individual which is the lifeblood of the law.' " *Faretta v. California*, 422 U.S. 806, 833 (1975) (quoting *Illinois v. Allen*, 397 U.S. 337, 350-51 (1970) (Brennan, J., concurring)); see also U.S. Const. amend. VI; *Bowen v. State*, 677 So.2d 863, 865 (Fla. 2d DCA 1996) ("The trial court may not force a lawyer upon the defendant").

WHEREFORE, the Public Defender moves this Honorable Court to grant this Motion to Strike Order Appointing the Public Defender.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; this 23rd day of August, 2017.

KATHLEEN A. SMITH
Public Defender
2000 Main Street
Fort Myers, FL 33902-1980
(239) 533-2911

By: 
Of Counsel – Kevin John Sarlo
Florida Bar No. 126369

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF FAILURE TO SERVE MOTION TO STRIKE

NOW COMES, Scott Huminski ("Huminski"), and, notifies that he has not been served the Motion to Strike docketed on 8/23/2017 and the VOR online system doesn't allow Huminski access to the filing. Further, Huminski requested a copy from the public defender as set forth in the below emails and has not been provided a copy,

From: scott huminski <s_huminski@live.com>
Sent: Thursday, August 24, 2017 10:31 AM
To: Smith, Kathleen A
Subject: State v. Huminski

Dear PD,

Please re-file all my motions stricken by the County Court.

Judge Krier had no subject matter jurisdiction over this misdemeanor case. All of her rulings are VOID. The arraignment is VOID. No jurisdiction in Circuit Court to hold a misdemeanor arraignment. See statutory jurisdiction of Circuit/County courts.

Please move to vacate the assignment to county court. The County Judge had no jurisdiction to re-assign a Circuit Court case. Also please move to vacate the order striking motions. The County Court has no jurisdiction, no County charging document, no county arraignment. Judge Krier totally messed up with this case by trying to prosecute it herself by bypassing the State's Attorney. -- scott huminski
From: scott huminski <s_huminski@live.com>
Sent: Thursday, August 24, 2017 1:41 PM

To: Smith, Kathleen A

Subject: Re: State v. Huminski

yes

Please forward to me your motion to strike. The VOR isn't working for me.

This is/was a Circuit Court case. All orders of Judge Krier indicate Circuit Court, by caption and by her signature defined as a Circuit Court judge. She had no jurisdiction to handle this misdemeanor. The transfer to County court is illegal. To accomplish this the SA needs to dismiss the Circuit Court criminal case and re-file in County Court.

REDACTED PARAGRAPH

An order that prohibits my criticism of politicians (sheriff) and prohibit my reporting of crime to the only local law enforcement agency in Bonita is patently vague and over-broad under the 1st amendment and constitutes a prior restraint on core protected political expression. -- scott huminski

From: Smith, Kathleen A <Kathleens@pd.cjis20.org>
Sent: Thursday, August 24, 2017 11:01 AM
To: 'scott huminski'
Subject: RE: State v. Huminski

So I take this to mean that you are affirmatively requesting my office to proceed as attorney of record and acknowledge that the court's order appointing us and saying that you are responsible for costs associated with representation is valid and acceptable to you.

Dated at Bonita Springs, Florida this 25th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 25th day of August, 2017 to all parties.

-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF FAILURE OF STATE'S ATTORNEY TO MOVE TO REMAND IN BANKRUPTCY COURT

NOW COMES, Scott Huminski ("Huminski"), and, notifies that after removal of this case on 6/26/2017 to Bankruptcy Court, the State's Attorney failed to file an emergency motion to remand in the bankruptcy court. Because of the failure to file for remand in the Bankruptcy Court, all acts and orders of the Circuit Court, Judge Krier presiding, between 6/26/2017 and 8/1/2017 were issued in the absence of all jurisdiction and are Void Ab Initio.

The State's Attorney is proceeding with unclean hands by litigating this matter with a void arraignment and with knowledge that the Circuit Court, Judge Krier presiding, acted in the absence of subject matter jurisdiction as misdemeanors are the exclusive jurisdiction of County Court.

Dated at Bonita Springs, Florida this 25th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 25th day of August, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF PENDENCY OF THIS MATTER IN CIRCUIT COURT, NOT COUNTY COURT

NOW COMES, Scott Huminski ("Huminski"), and, notifies that this matter remains in Circuit Court, not County Court.

Attached hereto are all documents in this matter in Circuit Court, Judge Krier presiding, captioned in Circuit Court and signed by Judge Krier in her capacity as a Circuit Judge. Clearly dispositive are the minutes filed on 6/29/2017 stating,

"CMC is set to review how the State is proceeding with the case and at that point we can schedule future hearings. Also to be discussed transfer of the case from civil to criminal"

The very next day, 6/30/2017, State v. Huminski popped up in the County Court online viewer with case initiation listed as 6/30/2017 with no valid charging document in County Court and no arraignment in County Court. Procedurally, this case seeking to take away liberty rights, is exceedingly sloppy and procedurally infirm.

The State has refused to obey the order minutes above by failing to advise as to how it is "proceeding" and to opine as to how it planned to "transfer" the case. The case was never legally transferred. The State is in contempt of the minute

order of 6/29/2017. Huminski should not be held to a higher standard than the sovereign.

The State has acted with unclean hands as to the order/hearing of 6/29/2017 and has engaged in gamesmanship by manipulating the online docket by having the case magically pop up in the County Court online docket without a legal mechanism to accomplish the task. This type of *behind the scenes* manipulation of case dockets should be condemned and is a clear violation of Due Process and indicates corruption on the part of those responsible for illegally causing the docketing in County Court. Cases do not jump from court to court in absence of all legal procedures without covert human intervention.

These irregularities are accompanied by a recusal of Judge Krier from the original matter casting a cloud of suspicion over the entire situation and illegal docket manipulation.

Dated at Bonita Springs, Florida this 26th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 26th day of August, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

CIVIL CASE CAPTION

SCOTT HUMINSKI,
Plaintiff

v.

TOWN OF Gilbert, AZ, et al

Civil Case No.: 17CA421

Criminal Case No. 17-MM-000815

DESCRIPTION OF SCOTT HUMINSKI	
GENDER: Male RACE: Caucasian HEIGHT: approx. 5 ft 10 in. WEIGHT: ? DOB: 12/1/59	EYE COLOR: ? HAIR COLOR: Brown LAST KNOWN ADDRESS: 24544 Kingfish St. Bonita Springs, FL 34134

ORDER TO SHOW CAUSE

This cause comes before the court for review based upon the alleged conduct of SCOTT HUMINSKI for the issuance of an Order to Show Cause directed to SCOTT HUMINSKI for violation of the Orders set forth below copies of which are attached hereto and made a part hereof.

The Orders that SCOTT HUMINSKI is alleged to be in violation of are:

DATE executed by Court	CASE No.	ORDER TITLE
4/19/17	17CA421	Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order (specifically Paragraphs 1, 2 & 7) – attached hereto as Exhibit A
4/19/17	17CA421	Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and

		Other Relief (specifically Paragraph 2) – attached hereto as Exhibit B

COUNT 1: INDIRECT CRIMINAL CONTEMPT
In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically ordered that any further pleadings be signed by a licensed attorney representing the Plaintiff (Paragraph 7). In the Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and Other Relief, SCOTT HUMINSKI was specifically ordered not to file any additional documents or materials of any nature with the Court unless the filing was signed by an attorney and specifically provided that an Order to Show Cause might be entered against him if he did so (Paragraph 2). SCOTT HUMINSKI has continued to file multiple documents in the Court file in contradiction to these Orders as evidenced by the attached composite Exhibit C.

COUNT 2: INDIRECT CRIMINAL CONTEMPT
In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically prohibited from directly contacting, communicating with or otherwise serving materials directly on Sheriff Scott, his agents and employees (see Paragraph 1 & 2). SCOTT HUMINSKI was specifically ordered to direct such contact to counsel for Mike Scott (see Paragraph 2). SCOTT HUMINSKI has repeatedly violated this Order by contacting Sheriff Scott, his agents and employees since the execution of the Court's orders – see the emails attached as composite Exhibit D.

NOW, THEREFORE, you SCOTT HUMINSKI are hereby ORDERED to appear before this court before Judge *KRIER* on **THURSDAY, 6/29/17**, at ***1:30* p.m.**, in Room 4H of the Lee County Courthouse, located at1700 Monroe Street, Ft. Myers, Florida 33901, to be arraigned. THIS IS A CRIMINAL PROCEEDING. A subsequent trial will be scheduled requiring Respondent to show cause why he should not be held in contempt of this court for violation of the above Orders. **Punishment, if imposed, may include a fine and incarceration.** Should the court determine, based on the evidence presented at trial, that the conduct of SCOTT HUMINSKI warrants sanctions for civil contempt in addition to or instead of indirect criminal contempt, the court reserves the right to find him guilty of civil contempt and impose appropriate civil sanctions.

IF YOU FAIL TO APPEAR as set forth above, a warrant for your arrest or a writ of bodily attachment may be issued to effectuate your appearance.

The court hereby appoints the STATE ATTORNEY's OFFICE to prosecute the case.

The Court hereby advises SCOTT HUMINSKI that he is entitled to be represented by counsel and if he can't afford an attorney, that one may be appointed for him in this criminal contempt proceeding ONLY (not in the civil Case). This Court hereby appoints the PUBLIC DEFENDER's OFFICE to provisionally represent SCOTT HUMINSKI at the above Arraignment proceeding pending a determination of indigency. This Court anticipates that SCOTT HUMINSKI will be found to be indigent.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Court Administration at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

IT IS FURTHER ORDERED that the Sheriff of this County serve this **Order to Show Cause** by delivering copies to SCOTT HUMINSKI, with proof of Sheriff's service.

DONE AND ORDERED in Lee County, Florida, on 6/5/17.

Circuit Judge, Elizabeth V. Krier

Copies to:
__✓__ State Attorney's Office
__✓__ Public Defender's Office

6/5/17 BV

S. Douglas Knox & Keely Morton, attorneys for Defendant-City of Glendale at doglas.knox@quarles.com; keely.morton@quarles.com; docketfl@quarles.com
Robert D. Pritt & James D. Fox, Attorneys for City of Surprise, AZ at serve.rpritt@ralaw.com; jfox@ralaw.com; serve.jfox@ralaw.com
Robert Sherman, attorneys for Defendant-Sheriff Mike Scott at Robert.sherman@henlaw.com; Courtney.ward@henlaw.com
Kenneth R. Drake & Doron Weiss, attorneys for SCRIBD, INC. at kendrake@dldlawyers.com; dweiss@dldlawyers.com

17mm815

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CIVIL ACTION**

Huminski, Scott
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421
Date: **June 29, 2017**
Judge: **Elizabeth V Krier**
Deputy Clerk: **Brenda Horton**
Court Reporter:

MINUTES

Attorney for Plaintiff: **Kevin Sarlo** ☑ Present ☐ Not Present
Attorney for Defendant: **Anthony Kunasck** ☑ Present ☐ Not Present

Hearing Information:

SHOW CAUSE / ARRAIGNMENT PROCEEDING:

-Plea of Not Guilty Entered
-CMC scheduled on 8/15/17 at 1:00 for 10 minutes
-CMC is set to review how the State is proceeding with the case and at that Point we can schedule future hearings. Also to be discussed transfer case From civil to criminal
-Pretrial release without bond / Conditions: Mr. Huminski is to check in with Pretrial officer every 2 weeks, along with the condition to not violate anymore Orders. Only Mr. Huminski's PD or licensed attorney may contact the courts. He must not contact the courts or Sheriff's Department by email

☐ Motion _____ ☐ Granted ☐ Denied ☐ Reserved

Notes:
-Scott Huminski-present
-Copies of orders on file given to Mr. Huminski, Mr. Sarlo, and Mr. Kunasck In court

*Sworn

☐ For additional details refer to Court Reporter transcript ☐ Hearing Cancelled

☐ Waived the 15 day exception rule ☑ Order signed in open court

Order to be prepared by:

☐ Magistrate ☐ Plaintiff's Attorney ☐ Defendant's Attorney

☐ Exhibits Received

*Sworn

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

Vs. CASE NO: 17-MM-815

SCOTT HUMINSKI

_____/

ORDER ON ARRAIGNMENT

THIS CAUSE having come before this Court on 6/29/17 for Arraignment on the Order to Show Cause issued on 6/5/17 and SCOTT HUMINSKI having been served with the Order and having appeared before the Court and the Court having appointed the Public Defender's Office to represent SCOTT HUMINSKI, and being advised of the premises, it is ORDERED and ADJUDGED as follows:

1. SCOTT HUMINSKI was advised of his rights.

2. The Public Defender's Office was appointed to represent SCOTT HUMINSKI.

3. SCOTT HUMINSKI entered a plea of not guilty.

4. The Court ordered pre-trial release for SCOTT HUMINSKI with the conditions set forth below. **Failure to comply with the conditions may result in this pre-trial release being revoked.**

   A. SCOTT HUMINSKI shall check in with the pre-trial release program and thereafter check in with a pre-trial officer every two (2) weeks.;

   B. SCOTT HUMINSKI shall comply with all previously entered orders of the Court in Case number 17-CA-421 including:
      (1) SCOTT HUMINSKI shall not contact the Lee County Sherriff's Office except through their legal counsel, unless said contact is initiated by the Sherriff's office, such as if SCOTT HUMINSKI is arrested or stopped for a traffic violation.

      (2) SCOTT HUMINSKI shall not file anything in the Court file in Case No. 17-CA-421 unless such filing occurs by an attorney licensed in the State of Florida.

(3) SCOTT HUMINSKI shall not contact the Court's office except through an attorney licensed in the State of Florida.

5. This Case is scheduled for case management on 8/15/17 at 1PM. At the time of Case Management, the State shall inform the Court and Defendant whether they will be requesting a sentence less than 60 days that would entitle SCOTT HUMINSKI to a non-jury trial or a greater sentence that would require a jury trial. At the time of case management, the Court will set a trial date.

DONE and ORDERED this 7 day of July, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
SAO
PD
Pre-trial release program, Scott Peckham

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

vs.

SCOTT HUMINSKI

Defendant
_____/

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1ST day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF INCORRECT DOCKETING

NOW COMES, Scott Huminski ("Huminski"), and, notifies that the two attached documents were filed in the collateral civil matter and should be filed in this matter. As the documents authored by the Circuit Court, Judge Krier presiding, this matter existed in the Circuit Court and was never legally transferred to County Court. After the alleged arraignment of 6/29/2017, the State's Attorney never took any action to transfer the case to County Court.

Dated at Bonita Springs, Florida this 30th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 30th day of August, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO VACATE ARRAIGNMENT

NOW COMES Scott Huminski (Huminski) and moves to vacate the arraignment in this matter as the Circuit Courts have no jurisdiction over misdemeanors. The Circuit Court was without jurisdicition. The arraignment was void.

Judge Krier should have referred the matter to the state's attorney to allow the drafting of a proper charging instrument for prosecution in the County Court.

Dated at Bonita Springs, Florida this 16th day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was e-filed and electronically served, or hand delivered or mailed via First Class Mail , prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 16th day of August, 2017.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION FOR CHANGE OF VENUE - ENTRAPMENT

NOW COMES Scott Huminski (Huminski) and moves to for change of venue because he has to have contact with the LCSO at security screening and in the courtroom which is a forbidden crime under the protective orders issued in this case.

In the alternative, this case should be dismissed as the protective orders are wildly over-broad and are not narrowly-tailored as required by the First Amendment.

Dated at Bonita Springs, Florida this 16th day of August 2017.

-/s/- Scott Huminski

_____

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was e-filed and electronically served, or hand delivered or mailed via First Class Mail , prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 16th day of August, 2017.

-/s/- Scott Huminski

_____

Scott Huminski

IN AND FOR LEE COUNTY, FLORIDA

CASE NUMBER(S): 17-000815MM

STATE OF FLORIDA vs.

Huminski, Scott Alan
Defendant / Minor Child

APPLICATION FOR CRIMINAL INDIGENT STATUS

☒ I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER

OR

☐ I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENCE STATUS FOR COSTS

Notice to Applicant: The provision of a public defender / court appointed lawyer and costs / due process services are not free. A judgement and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for whom you are making this application. There is a $50.00 fee for each application filed. If the application fee is not paid to the Clerk of the Court within 7 days, it will be added to any costs that may be assessed against you at the conclusion of the case. If you are a parent / guardian making this affidavit on behalf of a minor or tax-dependent adult, the information contained in this application must include your income and assets.

1. **I have 0 dependants.** *(Do not include children not living at home and do not include a working spouse or yourself)*
2. **I have a take home income of $0.00** paid ( ) weekly ( ) bi-weekly (X) monthly ( ) yearly
   *(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similiar payments, **minus** deductions required by law and other court ordered support payments)*
3. **I have other income** paid ( ) weekly ( ) bi-weekly (X) monthly ( ) yearly: *(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")*

Social Security benefits	Yes X	$1,467.00	No	Veterans' benefit	Yes	$0.00	No X
Unemployment compensation	Yes	$0.00	No X	Child support or other regular support from family members / spouse	Yes	$0.00	No X
Union Funds	Yes	$0.00	No X				
Workers compensation	Yes	$0.00	No X	Rental income	Yes	$0.00	No X
Trusts or gifts	Yes	$0.00	No X	Dividends or interest	Yes	$0.00	No X
Retirement / pensions	Yes	$0.00	No X	Other kinds of income not on the list	Yes	$0.00	No X

4. **I have other assets**: *(Circle "yes" and fill in the of the property, otherwise circle "No")*

Cash	Yes	$0.00	No X	Savings	Yes	$0.00	No X
Bank account(s)	Yes X	$200.00	No	Stocks / bonds	Yes	$0.00	No X
Certificate of deposit or money market account(s)	Yes	$0.00	No X	*Equity in homestead real estate	Yes	$0.00	No X
*Equity in Motor vehicle(s)	Yes X	$1,500.00	No	*Equity in non-homestead real estate *include expectency of an interest in such property	Yes	$0.00	No X
*Equity in boats / other tangible property	Yes	$0.00	No X				

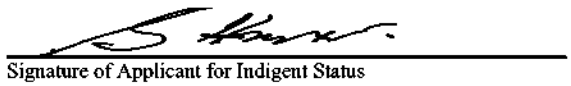
5. **I have a total amount of liabilities and debts in the amount of $0.00**
6. **I receive:** *(Circle "Yes" or "No")*

Temporary Assistance for Need;y Families-Cash Assistance	Yes	$0.00	No X
Poverty- related veterans' benefits	Yes	$0.00	No X
Supplemental Security income (SSI)	Yes	$0.00	No X

7. **I have been released on bail in the amount of $0.00** ☐ Cash ☐ Surety **Posted by:** ☐ Self ☐ Family ☐ Other

A person who knowingly provides false information to the clerk of the court in seeking a determination of indigent status under s. 27.52, F.S. commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S. **I attest that the information provided on this Application is true and accurate.**

09/01/2017
Signed on


Signature of Applicant for Indigent Status

12/01/1959
Date of Birth

Print full name: Scott Alan Huminski

Address: 24544 Kingfish Street, Bonita Springs, FL 34134

9176
Last four digits of Driver's License or ID Number

Phone: (239) 300-6656 Cell Phone: (239) 300-6656

Email Address:

CLERK'S DETERMINATION

Based on the information in the Application, I have determined the applicant to be ☒ **Indigent** ☐ **Not Indigent**

☒ The Public Defender is hereby appointed to the case listed above until relieved by the Court.

Dated this: September 01, 2017

Clerk of the Circuit Court

This form was completed with the assistance of :

/ Alice Colon /
Alice Colon
Clerk/Deputy Clerk/Other authorized person

APPLICANTS FOUND NOT INDIGENT MAY SEEK REVIEW BY ASKING FOR A HEARING TIME. Sign here if you want the Judge to review the clerk's decision of not indigent. _____

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	09/01/2017	

Attorney: PD Public Defender

APPEARANCE
____ Failed to Appear
____ Present w/o Attorney
X Present w/ Attorney
____ Present by Attorney
____ Present w/ Interpreter
____ Interpreter Services Requested
Language _____
____ Victim/Other _____

PLEA
____ Guilty
X Not Guilty
____ Nolo Contender
____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
____ Withheld by Judge
____ Adjudicated Guilty
____ Withheld by Clerk
_____

VERDICT
____ Guilty by Judge
____ Not Guilty by Judge
____ Guilty by Jury
____ Not Guilty by Jury
____ Mistrial
_____

DISPOSITION
____ Acquitted
____ Nolle Pros
____ No Information
____ Dismissed
____ Adm.Dismissed
____ Merge & Dismiss

SENTENCE
____ Probation Reporting _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ One Time Cost $_____ Waive COS $_____
____ Report to Probation Today or Upon Release Within _____
____ Probation may terminate early when conditions are met
____ May Transfer Probation to _____
____ May Report to Probation and/or Instruct by Mail
____ Ignition Interlock Device _____ DD/MM/YY
____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
____ Statutory Exception to Vehicle Impound
____ Does Not Own Vehicle ____ Shared Vehicle
____ Other_____
____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
____ No Possession or Consumption of Alcohol or Illicit Substances
____ DUI School - Follow recommendations/Phase ____ I ____ II
____ School to Determine which Phase
____ Sign up w/in _____ days
____ Traffic School 4 Hr / 8Hr / 12 Hr
____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
____ Sign up for Batterer's Intervention Program w/in 30 Days
____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
____ Attend & Complete Program_____
____ DNA Testing Collected ____ in Court ____ at LCJ
____ Other Testing ____ HIV ____ STD _____
____ Defendant Advised of Habitual and/or Felony Status

____ Jail Time _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ Weekend Time Fri 6pm to Sun 6pm
____ Beginning _____
____ Day Work Program* _____ Days
___ Minimum ___ day(s) a week ___ consecutive weeks
____ Credit Time Served _____DD/MM/YY
____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
____ Defendant Remanded ____ Sentence Suspended
____ DL Suspended/Revoked _____ DD/MM/YY
____ Spec. Conditions - Drive for Work/Business purposes
____ Show Valid Driver's License within _____
____ Produced Valid Driver's License in Court
____ Community Service _____ Hours and/or Pay $_____
____ Must complete _____ hours of community service before buyout
____ Show Proof of Com. Service to Clerk w/in _____
____ Stay Away from arrest location _____
____ No Contact with victim _____
____ State Orally Amends Charge in Open Court
____ Formal Filing of Information is Waived
____ Information Filed in Open Court
____ Successfully Completed Pretrial Diversion Program
____ Judicial Warning
____ Defendant Accepted DV Diversion
____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to 9-22-17

MANDATORY COURT APPEARANCE

For _____ AR X DS _____ TR _____ DA _____ DD _____ DT _____ RH

Time 8:30 (AM) PM Court Room 2A ____ Speedy Trial Waived ____ Speedy Trial Tolled

(JRA) ____ HAS ____ MEG ____ ZMG ____ DSG ____ JMG ____ TPP ____ ABH _____

X Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** 8/6/17

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

ORDER / COMMITMENT FORM | **COUNTY COURT, LEE COUNTY, FLORIDA**

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	09/01/2017	

FINE ASSESSMENTS (statutes indicated)
____ Fine $_____ (775.083)
____ 5% Surcharge $_____ (938.04)

MANDATORY ASSESSMENTS
____ Court Costs (Include Crime Stoppers & Crime Prevention) (318.18 / 775.083 / 938.01 / 938.03 / 938.05 / 938.06 / 939.185)
___ $220.00 ___ Other $_____
If Ordered Under - Reason:
_____
____ $33.00 Certain Traffic Offense Court Cost (318.17 / 318.18)
____ $135.00 DUI Court Costs (938.07)
____ $70.00 Reckless Driving Court Costs (318.18 / 316.192)
____ $65.00 Racing Court Costs (318.18)
____ $5.00 Leaving the Scene Court Costs (316.061)
____ $195.00 BUI Court Costs (938.07 / 327.35)
____ $201.00 Domestic Violence Trust Fund (938.08)
____ $151.00 Rape Crisis Trust Fund (938.085)
____ $151.00 Crimes Against Minors (938.10)
____ $5000.00 Civil Penalty (796.07)
____ $40.00 Contested By Nonprevailing Party Fee (34.045)

DISCRETIONARY ASSESSMENTS
____ $100.00 FDLE Trust Fund/Statewide Crime Lab (938.25)
____ Investigative Fee $_____ to
to ___ FDLE ___ FMP ___ LCSO ___Statewide Pros.
___ Other _____ (938.27)
____ Worthless Check Diversion Fee $_____ (832.08)
____ Diversion Cost of Supervision $_____ (948.09)

Pay Within _____ DD/MM/YY
_____
_____
____ Upon release from In-Custody

MOTION HEARINGS
____ Revoke Bond ____ Reinstate Bond
____ Set/Reduce/Increase Bond to _____
____ Suppress ____Dismiss ____Continue
____ Expunge/Seal (Outstanding monetary obligations must be addressed in court and the $42.00 fee must be paid to the Clerk's office before the case is officially expunged/sealed.)
____ Withdraw Plea
____ Withdraw as Counsel
____ Modify No Contact Order ____ Lift No Contact Order
____ Other _____
Motion Result (Circle One): Granted Denied Reserves Ruling

____ State & Defense Stipulate to Suppress the Breath Test Results
____ State Amends Information from BAL of .15 or Above to .08
____ Clerk to Update Case w/ Defendants Information Listed

ATTORNEY FEES & SURCHARGES
____ $50.00 Cost of Prosecution (938.27)
____ $50.00 Public Def Application Fee (27.52) &
Additional Application Fees $_____
(Must be addressed on the record)
____ Defense Attorney Costs at Conviction (938.29)
___ $50.00 ___ Other $_____

RESTITUTION
____ Minimum Payment of $_____ per Month
to _____
___ As a Condition of Probation
____ Restitution Ordered $_____ to
_____
____ Restitution Reduced to Judgment
____ Court Orders Restitution - Reserves on Amount

DISPOSITION OF MONETARY OBLIGATIONS
____ May Convert Fine/Cost _____ All or In Part to Community Service at $10 per Hour
___ Defendant Advised of Notary Requirement for Community Service (For Non-Probationary Sentences)
____ Credit Time Served for Fines/Costs/Fees _____
____ Monetary Obligations Referred to Clerk of Court Collections
____ Monetary Obligations Reduced to Judgment ___ Previous Only
____ Monetary Obligations (VOP) ___ Carried Forward
____ Defendant to sign up for Payment Plan
____ First Payment Due within 30 Days
____ Waive all Additional Mandatory Costs

WARRANTS/BONDS
____ BW/D6 Ordered Balance $_____
____ Issue Bench Warrant _____ MM/DD/YYYY
____ Bond Estreature $_____
____ Non-Compliance/Non-Appearance $_____
____ Set Aside BW/D6 $_____
____ Set Aside Estreature $_____
____ Cash Bond to pay Fine/Cost including _____
____ Return Cash Bond to Depositor
_____
____ Conflicting Appearance Date Addressed in Court

REVOCATION HEARINGS
____ Defendant Pleas Guilty/Admits Allegations
____ Defendant Pleas Not Guilty/Denies Allegations
____ Adjudicated Guilty ____ Adjudication Withheld
____ Probation Reinstated _____
____ Probation Modified _____
____ Same Terms and Conditions to Apply
____ Probation Revoked & Terminated ____ Probation Terminated
____ COS Fees Due & Owing in the amount $_____

STATE WILL PROCEED IN A NON-JURY CAPACITY.

Pre-sentence Investigation/Sentencing _____ Full/Partial

If probation has not been imposed, you must pay your financial obligation within the time allowed by the Judge or sign up for the payment plan option offered by the Clerk of Court. If sentenced to Probation, you must adhere to standards as directed.
Failure to comply with any part of this order may result in a suspension of your driver license privilege and/or warrant being issued for your arrest (322.245) .
Unpaid financial obligations still remaining 90 days after payment due date will be referred by the Clerk of Court to a collection agency and an additional fee of up to 40% of the outstanding balance owed will be added at that time (28.246).
Mandatory assessments are imposed and shall be included in the judgment without regard to whether the assessment was announced in open court.

Asst. State Attorney S. VITALE / A. KUNKEL Bar No. 118480 / 26999 Date _____

Judge James R Adams _____ Date _____

Rev.05/05/2017

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO.
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

OPPOSITION TO MOTION TO STRIKE – MOTION IS MOOT

NOW COMES, Scott Huminski ("Huminski"), and, notwithstanding his objection that this Court has no jurisdiction and without waiving jurisdictional issues, OPPOSES the motion to strike as all paperwork regarding this matter authored by Judge Krier is captioned in the Circuit Court and signed by the Judge in her capacity as a Circuit Judge. This is a Circuit Court case, the filing of a document in a non-existent case is moot.

The Circuit Court, Judge Krier, specifically states via the minute entry of 6/29/2017 that,

"CMC is set to review how the State is proceeding with the case and at that point we can schedule future hearings. Also to be discussed transfer of the case from civil to criminal"

As the Circuit Court emphasized, this case needed to be transferred to County Criminal Court. An act which never occurred and verified by the documents authored by Judge Krier through 8/2/2017 clearly captioned as a Circuit Court case signed by a Circuit Court judge.

The public defender has erred in captioning this case in County Court, contrary to all documents authored by Judge Krier. The conduct of the public defender has prejudiced Huminski by falsely adding legitimacy to a County Court case that was not legally initiated in the County Court.

Huminski disavows any contention by the public defender that this matter exists in the County Court and strongly contests such an opinion as do the writings of Judge Krier.

Huminski incorporates as if more fully set forth herein his **NOTICE OF PENDENCY OF THIS MATTER IN CIRCUIT COURT, NOT COUNTY COURT** dated 8/26/2017 and filed in this matter. A true and correct copy of the notice is attached hereto.

Dated at Bonita Springs, Florida this 4th day of September 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Service

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF PENDENCY OF THIS MATTER IN CIRCUIT COURT, NOT COUNTY COURT

NOW COMES, Scott Huminski ("Huminski"), and, notifies that this matter remains in Circuit Court, not County Court.

Attached hereto are all documents in this matter in Circuit Court, Judge Krier presiding, captioned in Circuit Court and signed by Judge Krier in her capacity as a Circuit Judge. Clearly dispositive are the minutes filed on 6/29/2017 stating,

"CMC is set to review how the State is proceeding with the case and at that point we can schedule future hearings. Also to be discussed transfer of the case from civil to criminal"

The very next day, 6/30/2017, State v. Huminski popped up in the County Court online viewer with case initiation listed as 6/30/2017 with no valid charging document in County Court and no arraignment in County Court. Procedurally, this case seeking to take away liberty rights, is exceedingly sloppy and procedurally infirm.

The State has refused to obey the order minutes above by failing to advise as to how it is "proceeding" and to opine as to how it planned to "transfer" the case. The case was never legally transferred. The State is in contempt of the minute

order of 6/29/2017. Huminski should not be held to a higher standard than the sovereign.

The State has acted with unclean hands as to the order/hearing of 6/29/2017 and has engaged in gamesmanship by manipulating the online docket by having the case magically pop up in the County Court online docket without a legal mechanism to accomplish the task. This type of *behind the scenes* manipulation of case dockets should be condemned and is a clear violation of Due Process and indicates corruption on the part of those responsible for illegally causing the docketing in County Court. Cases do not jump from court to court in absence of all legal procedures without covert human intervention.

These irregularities are accompanied by a recusal of Judge Krier from the original matter casting a cloud of suspicion over the entire situation and illegal docket manipulation.

Dated at Bonita Springs, Florida this 26th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 26th day of August, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

CIVIL CASE CAPTION

SCOTT HUMINSKI,
Plaintiff

v.

TOWN OF Gilbert, AZ, et al

Civil Case No.: 17CA421

Criminal Case No. 17-MM-000815

DESCRIPTION OF SCOTT HUMINSKI	
GENDER: Male RACE: Caucasian HEIGHT: approx. 5 ft 10 in. WEIGHT: ? DOB: 12/1/59	EYE COLOR: ? HAIR COLOR: Brown LAST KNOWN ADDRESS: 24544 Kingfish St. Bonita Springs, FL 34134

ORDER TO SHOW CAUSE

This cause comes before the court for review based upon the alleged conduct of SCOTT HUMINSKI for the issuance of an Order to Show Cause directed to SCOTT HUMINSKI for violation of the Orders set forth below copies of which are attached hereto and made a part hereof.

The Orders that SCOTT HUMINSKI is alleged to be in violation of are:

DATE executed by Court	CASE No.	ORDER TITLE
4/19/17	17CA421	Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order (specifically Paragraphs 1, 2 & 7) – attached hereto as Exhibit A
4/19/17	17CA421	Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and

		Other Relief (specifically Paragraph 2) – attached hereto as Exhibit B

COUNT 1: INDIRECT CRIMINAL CONTEMPT
In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically ordered that any further pleadings be signed by a licensed attorney representing the Plaintiff (Paragraph 7). In the Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and Other Relief, SCOTT HUMINSKI was specifically ordered not to file any additional documents or materials of any nature with the Court unless the filing was signed by an attorney and specifically provided that an Order to Show Cause might be entered against him if he did so (Paragraph 2). SCOTT HUMINSKI has continued to file multiple documents in the Court file in contradiction to these Orders as evidenced by the attached composite Exhibit C.

COUNT 2: INDIRECT CRIMINAL CONTEMPT
In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically prohibited from directly contacting, communicating with or otherwise serving materials directly on Sheriff Scott, his agents and employees (see Paragraph 1 & 2). SCOTT HUMINSKI was specifically ordered to direct such contact to counsel for Mike Scott (see Paragraph 2). SCOTT HUMINSKI has repeatedly violated this Order by contacting Sheriff Scott, his agents and employees since the execution of the Court's orders – see the emails attached as composite Exhibit D.

NOW, THEREFORE, you SCOTT HUMINSKI are hereby ORDERED to appear before this court before Judge *KRIER* on **THURSDAY, 6/29/17**, at ***1:30* p.m.**, in Room 4H of the Lee County Courthouse, located at1700 Monroe Street, Ft. Myers, Florida 33901, to be arraigned. THIS IS A CRIMINAL PROCEEDING. A subsequent trial will be scheduled requiring Respondent to show cause why he should not be held in contempt of this court for violation of the above Orders. **Punishment, if imposed, may include a fine and incarceration.** Should the court determine, based on the evidence presented at trial, that the conduct of SCOTT HUMINSKI warrants sanctions for civil contempt in addition to or instead of indirect criminal contempt, the court reserves the right to find him guilty of civil contempt and impose appropriate civil sanctions.

IF YOU FAIL TO APPEAR as set forth above, a warrant for your arrest or a writ of bodily attachment may be issued to effectuate your appearance.

The court hereby appoints the STATE ATTORNEY's OFFICE to prosecute the case.

The Court hereby advises SCOTT HUMINSKI that he is entitled to be represented by counsel and if he can't afford an attorney, that one may be appointed for him in this criminal contempt proceeding ONLY (not in the civil Case). This Court hereby appoints the PUBLIC DEFENDER's OFFICE to provisionally represent SCOTT HUMINSKI at the above Arraignment proceeding pending a determination of indigency. This Court anticipates that SCOTT HUMINSKI will be found to be indigent.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Court Administration at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

IT IS FURTHER ORDERED that the Sheriff of this County serve this **Order to Show Cause** by delivering copies to SCOTT HUMINSKI, with proof of Sheriff's service.

DONE AND ORDERED in Lee County, Florida, on 6/5/17.

Circuit Judge, Elizabeth V. Krier

Copies to:
__✓__ State Attorney's Office
__✓__ Public Defender's Office

6/5/17 BV

S. Douglas Knox & Keely Morton, attorneys for Defendant-City of Glendale at doglas.knox@quarles.com; keely.morton@quarles.com; docketfl@quarles.com
Robert D. Pritt & James D. Fox, Attorneys for City of Surprise, AZ at serve.rpritt@ralaw.com; jfox@ralaw.com; serve.jfox@ralaw.com
Robert Sherman, attorneys for Defendant-Sheriff Mike Scott at Robert.sherman@henlaw.com; Courtney.ward@henlaw.com
Kenneth R. Drake & Doron Weiss, attorneys for SCRIBD, INC. at kendrake@dldlawyers.com; dweiss@dldlawyers.com

17mm815

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CIVIL ACTION**

Huminski, Scott
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421
Date: **June 29, 2017**
Judge: **Elizabeth V Krier**
Deputy Clerk: **Brenda Horton**
Court Reporter:

MINUTES

Attorney for Plaintiff: **Kevin Sarlo** ☑ Present ☐ Not Present
Attorney for Defendant: **Anthony Kunasck** ☑ Present ☐ Not Present

Hearing Information:

SHOW CAUSE / ARRAIGNMENT PROCEEDING:

-Plea of Not Guilty Entered
-CMC scheduled on 8/15/17 at 1:00 for 10 minutes
-CMC is set to review how the State is proceeding with the case and at that Point we can schedule future hearings. Also to be discussed transfer case From civil to criminal
-Pretrial release without bond / Conditions: Mr. Huminski is to check in with Pretrial officer every 2 weeks, along with the condition to not violate anymore Orders. Only Mr. Huminski's PD or licensed attorney may contact the courts. He must not contact the courts or Sheriff's Department by email

☐ Motion _____ ☐ Granted ☐ Denied ☐ Reserved

Notes:
-Scott Huminski-present
-Copies of orders on file given to Mr. Huminski, Mr. Sarlo, and Mr. Kunasck In court

*Sworn

☐ For additional details refer to Court Reporter transcript ☐ Hearing Cancelled

☐ Waived the 15 day exception rule ☑ Order signed in open court

Order to be prepared by:

☐ Magistrate ☐ Plaintiff's Attorney ☐ Defendant's Attorney

☐ Exhibits Received

*Sworn

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

Vs. CASE NO: 17-MM-815

SCOTT HUMINSKI

_____/

ORDER ON ARRAIGNMENT

THIS CAUSE having come before this Court on 6/29/17 for Arraignment on the Order to Show Cause issued on 6/5/17 and SCOTT HUMINSKI having been served with the Order and having appeared before the Court and the Court having appointed the Public Defender's Office to represent SCOTT HUMINSKI, and being advised of the premises, it is ORDERED and ADJUDGED as follows:

1. SCOTT HUMINSKI was advised of his rights.

2. The Public Defender's Office was appointed to represent SCOTT HUMINSKI.

3. SCOTT HUMINSKI entered a plea of not guilty.

4. The Court ordered pre-trial release for SCOTT HUMINSKI with the conditions set forth below. **Failure to comply with the conditions may result in this pre-trial release being revoked.**

   A. SCOTT HUMINSKI shall check in with the pre-trial release program and thereafter check in with a pre-trial officer every two (2) weeks.;

   B. SCOTT HUMINSKI shall comply with all previously entered orders of the Court in Case number 17-CA-421 including:
      (1) SCOTT HUMINSKI shall not contact the Lee County Sherriff's Office except through their legal counsel, unless said contact is initiated by the Sherriff's office, such as if SCOTT HUMINSKI is arrested or stopped for a traffic violation.

      (2) SCOTT HUMINSKI shall not file anything in the Court file in Case No. 17-CA-421 unless such filing occurs by an attorney licensed in the State of Florida.

(3) SCOTT HUMINSKI shall not contact the Court's office except through an attorney licensed in the State of Florida.

5. This Case is scheduled for case management on 8/15/17 at 1PM. At the time of Case Management, the State shall inform the Court and Defendant whether they will be requesting a sentence less than 60 days that would entitle SCOTT HUMINSKI to a non-jury trial or a greater sentence that would require a jury trial. At the time of case management, the Court will set a trial date.

DONE and ORDERED this 7 day of July, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
SAO
PD
Pre-trial release program, Scott Peckham

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

vs.

SCOTT HUMINSKI

Defendant
_____/

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1ST day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF PD INSUFFICIENT KNOWLEDGE OF FEDERAL REMOVAL, BANKRUPTCY LAW AND FEDERAL ABSTENTION

NOW COMES, Scott Huminski ("Huminski"), and, notifies that in his discussions with the public defender assigned to this matter that there does not exist the requisite knowledge in the public defender's office concerning removal under Bankruptcy Rule 9027 and that federal abstention must be plead by the State's Attorney in a motion to remand. Federal abstention is not a self-executing provision of case law, like any other defense to a removal, it must be plead in the bankruptcy court in a motion to remand. Like most areas of law, federal abstention is not automatic and must be brought to the attention of the correct tribunal.

The baseless theory advanced by the public defender that somehow the removal to federal bankruptcy court is void is supported only by the refusal of the public defender to research the issue and negligence. It is not the duty of the public defender's office to argue on behalf of the State's Attorney, especially when there exists no authority supporting a wrongful position on the law. The theory advanced by the public defender's office that federal removal is somehow illegitimate and can be ignored violates the rule of law, in this instance federal law.

Dated at Bonita Springs, Florida this 4th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 4th day of September, 2017 to all parties.

-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
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TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF STATE'S ATTORNEY FAILURE TO ASSERT FEDERAL ABSTENTION DOCTRINES IN DEFENSE TO REMOVAL

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth in the above title. The State's Attorney failed to move for remand in Bankruptcy Court and has waived the right. As such both civil and criminal matters were removed for over a month to federal court, ruling and hearings during this period by the State Court were in the absence of all jurisdiction and are *Void Ab Initio*.

The public defender's assertion that federal abstention is automatic is patently wrong and indicates a lack of familiarity with State/Federal jurisdictional precepts, authority and case law. This opinion of the Public Defender is patently negligent and constitutes ineffective assistance of counsel.

In light of the removal, no valid State criminal case exists, the alleged arraignment is *Void Ab Initio* because of removal and the charging information is Void as it was incorrectly authored in the Circuit Court which has no jurisdiction over misdemeanors. The charging information mystically appeared on a County Court case initiated on 6/30/2017.

The remand order from bankruptcy court is undisputed evidence that the State cases were indeed removed for over a month ***divesting the State Court of all jurisdiction*** during that period.

Dated at Bonita Springs, Florida this 6th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134

(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

_____
Scott Huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, September 13, 2017 3:59 PM
To: Kathleens@pd.cjis20.org; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org; ValerieZ@pd.cjis20.org
Subject: Federal abstention, State v. Huminski 17-mm-815

Your contention that federal abstention is self-executing or otherwise automatic has zero support in case law or other authority. The removal was just that, a valid removal to federal court. The state's attorney had the option to file for remand based upon one of the federal abstention doctrines such as Younger and the like. The state's attorney chose to do nothing. All acts taking place during the removal are void ab intio for want of all jurisdiction.

As the public defender has chosen to rely upon delusional law based upon no valid authority or case law, please forward this case to conflict counsel. A complete lack of understanding of federal abstention requires recusal by the public defender's office.

Also indicated is a complete lack of knowledge of the 11 USC 362 by the public defender. Another issue critical to this case. WITHDRAW YOUR MOTION AND RECUSE.

The public defender does not have basic knowledge of misdemeanor jurisdiction in FL, Circuit Judge Krier had no jurisdiction to hold any misdemeanor proceedings. She should have forwarded the matter to the state's attorney for pursuit in the proper court. All acts of judge krier are void for want of jurisdiction. -- scott huminski

From: Smith, Kathleen A <Kathleens@pd.cjis20.org>
Sent: Thursday, August 24, 2017 11:01 AM
To: 'scott huminski'
Subject: RE: State v. Huminski

So I take this to mean that you are affirmatively requesting my office to proceed as attorney of record and acknowledge that the court's order appointing us and saying that you are responsible for costs associated with representation is valid and acceptable to you.

From: scott huminski [mailto:s_huminski@live.com]

Sent: Thursday, August 24, 2017 10:32 AM

To: Smith, Kathleen A <Kathleens@pd.cjis20.org>

Subject: State v. Huminski

Dear PD,

Please re-file all my motions stricken by the County Court.

Judge Krier had no subject matter jurisdiction over this misdemeanor case. All of her rulings are VOID. The arraignment is VOID. No jurisdiction in Circuit Court to hold a misdemeanor arraignment. See statutory jurisdiction of Circuit/County courts.

Please move to vacate the assignment to county court. The County Judge had no jurisdiction to re-assign a Circuit Court case. Also please move to vacate the order striking motions. The County Court has no jurisdiction, no County charging document, no county arraignment. Judge Krier totally messed up with this case by trying to prosecute it herself by bypassing the State's Attorney. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, September 13, 2017 3:53 PM
To: Smith, Kathleen A; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org
Subject: Federal abstention, State v. Huminski 17-mm-815

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In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF STATE'S ATTORNEY SUPPORT OF TERRORIST DEATH CELL OPERATED BY TREVOR NELSON, DEBRA RIFFEL – *MANDATING RECUSAL OF STATE'S ATTORNEY AND REFERRAL TO FDLE & ATTORNEY GENERAL FOR INVESTIGATION*

NOW COMES, Scott Huminski ("Huminski"), and, notifies as set forth in the above title. Huminski had a conflict with Justin M. Nelson ("Nelson")prior to his move to Florida in 2012. Nelson ended up committing suicide in 2012. See obituary,

http://www.rivernewsonline.com/main.asp?

SectionID=3&SubSectionID=28&ArticleID=57106

In 2013 Nelson's son, Trevor Nelson and the mother of his child Debra Riffel (Glendale, AZ, Scottsdale, AZ) began a campaign of criminal threats, impersonation of police officers and others, obstruction of justice and use of the U.S. Mails to further terrorist activities. Both Trevor Nelson and Debra Riffel have told police they blame Huminski for the suicide of Nelson.

In 2015, 2016 and 2017 Huminski received a series of terrorist death threat letters from the terror cell led by Trevor Nelson and his mother. The terror cell became active in 2013, less than a year after the suicide for which it seeks vengeance. All letters sent via the U.S. Mails to Huminski and others contain forensic information on the self adhesive surfaces confirming that the letters originated in Arizona based upon pollen, dust and other environmental evidence captured upon the self-adhesive surfaces. The letters and other evidence are documented exhaustively at below web site,

https://trevornelsonazglendaleazihs16gcu2020debrariffel.com/

Huminski, in response to the terror death threat cell operating out of Arizona has notified the community of the terrorist activity targeting Lee County. See Huminski video of his home noticing the community of the interstate crimes targeting Lee county. See youtube video,

https://www.youtube.com/watch?v=-dJYlLMBLVk

SEE SOMETHING, SAY SOMETHING – INTERSTATE TERRORISM

This case documents that the terror fighting rule of U.S. law enforcement, *see something – say something*, has been converted to see something, get arrested and prosecuted in Lee County. This policy adopted by the Lee State's Attorney violates public policy and aids and abets a terrorist organization. The last 2017 letter from the terrorists announces the pleasure that the Arizona terrorists enjoyed when they are aided and abetted by law enforcement, exactly what the State's Attorney has chosen to do with regard to Huminski's reports of terrorism emanating from Arizona targeting Florida residents.

Huminski's report of terrorist activities to Sheriff Mike Scott are protected under the First Amendment, but, considered crimes in Florida. This pro-terrorist policy adopted by the State's Attorney must end. When governement starts working with terrorists, the war on terror is lost. The State's Attorney via this litigation seeks to legitimize and further a prior restraint against core protected political expression (criticism of Sheriff Mike Scott). A federal civil rights crime under Title 18, see sections 241, 242 and similar. The State's Attorney also seeks to further the silencing of Huminski concerning his report of crime to local law enforcement, another prior restraint against protected speech.

Huminski's service of Sheriff Mike Scott (removal papers, 11 USC 362 motions) pursuant to Bankruptcy Rule 9027 and Due Process have been obstructed by the orders of Judge Krier. Obstruction of Huminski's service of bankruptcy papers is a felony under State and Federal law. The State's Attorney should never support felony obstruction of justice. The State's Attorney, a participant in these crimes, must RECUSE and forward this matter to the Attorney General's Office for consideration and, in light of the prior restraint barring Huminski's terrorist death threat complaints, this matter should be forwarded to the FDLE for investigation. The corruption surrounding this matter reveals a State's Attorney willing to engage in crime and support domestic terrorists.

United States Postal Inspection Service investigator, Mark Cavic (Fort Myers office) has much of the physical evidence related to this matter including the transmission of a Anthrax-like substance in one of the letters sent by the AZ terror cell.

Dated at Bonita Springs, Florida this 15th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF ORDER PREVENTING HUMINSKI'S REPORT TO LOCAL LAW ENFORCEMENT RE: DISASTER CURFEW VIOLATIONS AND LOOTING and NOTICE OF TAKING OF DEPOSITION OF THE STATE'S ATTORNEY

NOW COMES, Scott Huminski ("Huminski"), and, notifies that the orders issued by Judge Krier and the conduct of the State's Attorney concerning the vastly vague and over-broad prior restraints against reporting crime to local law enforcement has created a lawlessness that now prevents Huminski from reporting disaster curfew violations and looting that Huminski has observed in his neighborhood.

The dearth of authority condemning governmental prior restraints that interfere wih communications to government, in this case law enforcement, sets the bar for a community descending into chaos and lawlessness that is supported by the Lee County State's Attorney. The wisdom of authority and case law contemplates highly illegal results sprouting out of disdain for the rule of law, the First Amendment and the universal condemnation of prior restraints. Here because the State's Attorney believes it to be too onerous for the Sheriff to press the delete key in his email program, the policies of the State's Attorney to silence reporting of crime has led to a moral decline and complete disregard for public safety.

As Huminski has cited in this matter, a prior restraint is the most heinous violation of the Bill of Rights. In this instance, a prior restraint is illustrated to constitute a decline of civilized society and destruction of the rule of law. The State's Attorney's support of prior restraints concerning the reporting of crime mandates his recusal from this matter which requires respect for the rule of law, a concept foreign to the State's Attorneys Office.

A complete disrespect for the rule of law is also demonstrated by the State's Attorneys position on federal abstention, violations of the automatic stay of bankruptcy and participating in these proceedings before a tribunal that had no jurisdiction (no jurisdiction of Circuit Court over misdemeanors) and participation in hearings and proceedings that had been removed to federal court. The rule of law, as set forth in this case, is something the State's Attorney seeks to undermine at all costs. The State's Attorney is unfit to practice law and particularly unfit to prosecute cases on behalf of the sovereign because of his disdain for the Constitution and rule of law. The prosecution of this case is consistent with prosecutors practicing in 1930s Germany. The prior restraints supported by the State's Attorney are indicative of a police state seeking to silence anyone that does not support the corrupt Sheriff and State's Attorney.

The State's Attorney was vastly negligent in failing to filing a prompt motion for remand citing federal abstention in the case after removal to bankruptcy court and completely missed the deadline for filing a motion to retro-actively lift the automatic stay of bankruptcy. The State's Attorney is not only corrupt, but, incompetent as well by failing to file rudimentary motions in the bankruptcy court to preserve the integrity of State court proceedings. Huminski is untrained and uneducated in the law, but, could spot the negligence of the prosecutor a mile away. Unfortunately the Public Defender's office is just as clueless, both entities need to recuse from this case based upon sheer ignorance of the law.

Dated at Bonita Springs, Florida this 15th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

From: scott huminski <s_huminski@live.com>
Sent: Saturday, September 16, 2017 8:53 AM
To: Kathleens@pd.cjis20.org; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org; ValerieZ@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org
Subject: 17-mm-815 PD Recusal Demand

Kevin, see wiki on abstention doctrines. No self executing or automatic doctrines exist. You lied to me. This is the epitome of insufficient/negligent assistance of counsel. I can not believe that Kathleen Smith supports your willingness to lie to clients. This is bad. A defendant having to refer his expert counsel to wikipedia to get the law right. Kathleen, RECUSE, you or your staff do not have the expertise in federal/state jurisdictional issues or in voidness under 11 USC 362. Staying on this case is unethical when you do not have the requisite knowledge to proceed.

The PD doesn't even realize that all acts / orders of Krier were absent jurisdiction as they were captioned in the Circuit Court, signed by Krier in her capacity as a Circuit judge, filed in circuit court and misdemeanors are the exclusive jurisdiction of County Court. All krier's filings are void for want of jurisdiction. Instead of acting as a psuedo-prosecutor, Krier should have forwarded the matter to the State's Attorney, who could have properly brought charges in the correct forum. Now we have this mess because of a frighteningly ignorant jurist.

The arraignment is void, no jurisdiction in the circuit courts for misdemeanors, plus the case was removed and resided in Federal Court after removal on 6/26. The State's Attorney never objected to removal under abstention doctrines - he was negligent. Kevin and Kathleen should be ashamed of participating and attempting to add legitimacy to court proceedings absent ALL JURISDICTION. The PD must not participate in sham court cases except for pointing out the illegality of such proceedings. See wikipedia post below on federal abstention. When a criminal defendant has to educate his own counsel on a legal doctrine, this is a time that counsel MUST RECUSE. I've been dealing with cases whereby federal abstention, federal removal and the automatic stay of bankruptcy were issues for over 20 years. Defense counsel must have a superior knowledge of the law than the client. RECUSE. -- scott huminski

https://en.wikipedia.org/wiki/Abstention_doctrine

In The

United States Bankruptcy Court
For the Middle District of Florida

IN RE,	)
SCOTT ALAN HUMINSKI,	) CASE NO.17-03658-9D7
DEBTOR	)
	) ADV. PROC. NO. 9:17--509-FMD
	) HUMINSIKI V. TOWN OF GILBERT, ET AL

EMERGENCY MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER

NOW COMES, Debtor, Scott Huminski ("Huminski"), moves for an emerrgency temporary restraining order as follows:

1. Despite removal of the State case to this Court, at a State Court hearing on 5/29/2017 in violation of 11 USC 362, the State Court indicated that it would not obey the automatic stay 11 USC 362 and further indicated that Huminski v. Town of Gilbert, the case removed concerning this adversary proceeding, would continue to be litigated in State Court. See attached Affidavit of Scott Huminski.

2. Although this is clearly contempt of this Court and a complete disrespect and disdain for the authority and jurisdiction of the federal Courts, Huminski only seeks a temporary restraining order and believes the State Court will cease its activities if such an order is issued.

3. Debtor is astonished concerning the brazen conduct of the State Court.

WHEREFORE, the Court should issue a TRO enjoining the State Court from continuing to litigate the removed case, Huminski v. Town of Gilbert, and to enjoin further violations of 11 USC 362 related to Huminski v. Town of Gilbert until the removed matter is disposed of in the Bankruptcy Court, in the alternative, the Court should issue a declaratory order addressing these issues.

Dated at Bonita Springs, Florida this 30th day of June, 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656

In The

United States Bankruptcy Court
For the Middle District of Florida

IN RE,	)
SCOTT ALAN HUMINSKI,	) CASE NO.17-03658-9D7
DEBTOR	)
	) ADV. PROC. NO. 9:17--509-FMD
	) HUMINSIKI V. TOWN OF GILBERT, ET AL

AFFIDAVIT OF SCOTT HUMINSKI IN SUPPORT OF TEMPORARY RESTRAINING ORDER

NOW COMES, Debtor, Scott Huminski ("Huminski"), and based upon personal knowledge, under oath, hereby swears, deposes and states as follows:

1. Huminski is over the age of 18 and under no legal disablity.

2. After filing bankruptcy, service in Huminski v. Town of Gilbert was perfomed 3 times by the Lee county sheriff. On 5/2/2017 and 5/10/2017 the Lee Sheriff attempted service upon Huminski unsuccessfully.

3. At hearing in State Court on 6/29/2017, Huminski learned that the Sheriff was attempting to serve a notice of hearing in the State Court on the two occasions in May(despite the automatic stay) and a hearing was held without notice to Huminski in May concerning Huminski v. Town of Gilbert (despite the automatic stay).

4. On 6/13/2017, Huminski was served a Notice of Hearing to be held on 6/29/2017 (despite the automatic stay).

5. At hearing on 6/29/2017 in State Court, I informed the State Judge ("Krier") that the case had been removed and that the State Court was divested of jurisdiction. Krier argued that her cases are exempt from Bankruptcy law and that the case was not removed.

6. At hearing on 6/29/2017 in State Court, I informed Krier that Bankruptcy Rule 9027 effectuated the removal of Huminski v. Town of Gilbert and Krier denied the existence of Rule 9027.

7. At hearing on 6/29/2017 in State Court, Krier continued on with the business of the case discussing pre-trial hearings and trial dates.

8. At hearing on 6/29/2017 in State Court, Huminski continually asserted a lack of jurisdiction and asserted the matter was removed. In response Krier stated that cases can not be

removed from her Court to Bankruptcy Court and that the Bankruptcy Court lacked authority to remove cases and asserted there exists no automatic stay and that a Bankruptcy Court's powers are limited to issuing stays denying an automatic stay of Huminski v. Town of Gilbert.

8. I mentioned to Krier that I would have to pursue this TRO and she responded sarcastically "good luck with that". Krier's disdain for this Court was quite apparent as well her clear position that Bankruptcy Courts are a joke to be ignored.

Dated at Bonita Springs, Lee County, Florida this 30th day of June, 2017.

Scott Huminski, pro se

24544 Kingfish St.
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

SWORN AND SUBSCRIBED to before me this 30th day of June, 2017,

Notary 7-20-21 Exp.

SHANE ROBB
Notary Public - State of Florida
Commission # GG 109292
My Comm. Expires Jul 20, 2021

In The

United States Bankruptcy Court
For the Middle District of Florida

IN RE,	)
SCOTT ALAN HUMINSKI,	) CASE NO.17-03658-9D7
DEBTOR	)
	) ADV. PROC. NO. 9:17--509-FMD
	) HUMINSIKI V. TOWN OF GILBERT, ET AL

NOTIFICATION THAT STATE COURT CONTINUES TO LITIGATE REMOVED CASE, HUMINSKI V. TOWN OF GILBERT

NOW COMES, Debtor, Scott Huminski ("Huminski"), and notifies that the State Court refuses to honor the removal of Huminski v. Town of Gilbert to this tribunal. The State Court believes it is exempt from the automatic stay of 11 USC 362 and exempt from the removal Rule 9027. Only the injunctive relief filed herewith can rectify this jurisdictional conflict.

Litigating the matter in both Courts is absurd, an abuse of judicial economy, not in the interests of justice, violates public policy and is plainly bizarre conduct of the State Court.

Dated at Bonita Springs, Florida this 30th day of June, 2017.

-/s/- Scott Huminskin

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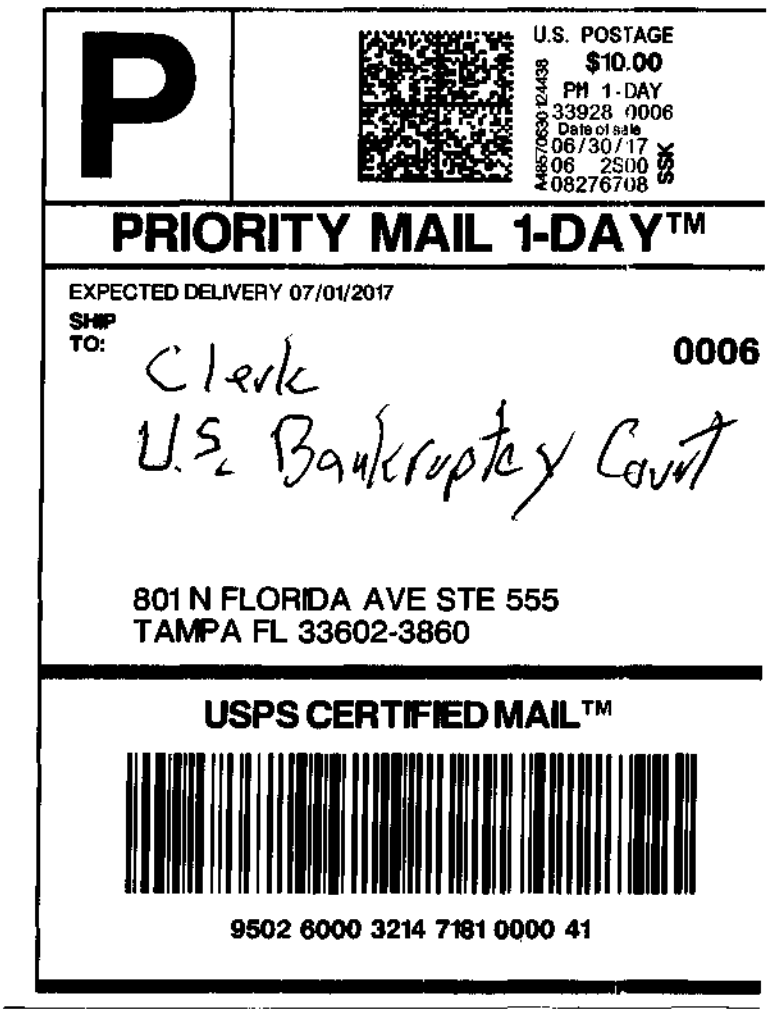
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com



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U.S. Bankruptcy Court

0006

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In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA STATE V. HUMINSKI

NOTICE OF VIOLATION OF SEPARATION OF POWERS

NOW COMES, Scott Huminski ("Huminski"), and, notifies that Judge Krier took on the duties of State Prosecutor and Judge in the early phases of this case violating separation of powers concerning the judiciary and executive branch of Florida government. This matter is VOID for complete disrespect for the separation of powers embraced by the federal and all State governments.

At the alleged arraignment, the State's Attorney was present but acted like a speechless store window mannequin not uttering one argument on behalf of the State and allowing Judge Krier to continue to prosecute the case and impugn the integrity and slander the powers and authority of the U.S. Bankruptcy Court.

At the so-called arraignment, the removed status of the case was discussed and the State's Attorney remained silent during the arguments. All content from the hearing was from Huminski and the quasi-prosecutor Judge Krier. As the docket in the U.S. Bankruptcy Court indicates (and the docket in the instant matter), the case was removed on June 26th and was remanded on the first of August. Proof positive of the removal was the federal order remanding the case to State Court. If there was no legitimate removal, there would have been nothing to remand. The U.S. Bankruptcy Court was 100 percent correct in the handling of a case that was removed, either hear the case or remand it. The arraignment of June 29th is void, no case existed before the State Courts. As are all other State Court acts during the period that the case was removed and pending in the federal courts.

The State's Attorney approvingly remained silent at the alleged arraignment while Judge Krier launched a disrespectful attack upon the jurisdiction, powers and authority of the Federal Courts. At the alleged arraignment the State's Attorney approved the comments contained in Judge Krier's attack upon the integrity of the federal courts, See attacbed. The States Attorney failed to timely move for remand based upon federal abstention. The negligence of the State's Attorney by failing to act promptly caused over a month of State Court activities to become irretrievably **VOID AB INITIO**.

Attached hereto is an affidavit filed in Bankruptcy Court that sets forth the attack impugning the integrity of the federal courts approvingly embraced by the State's Attorney.

Dated at Bonita Springs, Florida this 17th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 17th day of September, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

United States Bankruptcy Court
For the Middle District of Florida

IN RE,	)
SCOTT ALAN HUMINSKI,	) CASE NO.17-03658-9D7
DEBTOR	)
	) ADV. PROC. NO. 9:17--509-FMD
	) HUMINSIKI V. TOWN OF GILBERT, ET AL

AFFIDAVIT OF SCOTT HUMINSKI RE: STATE COURT STATEMENTS ON BANKRUPTCY FROM AUDIO RECORDING

NOW COMES, Debtor, Scott Huminski ("Huminski"), and based upon personal knowledge, under oath, hereby swears, deposes and states as follows:

1. Huminski is over the age of 18 and under no legal disablity.

2. Huminski received an audio disk from the 20th Circuit Court containing the hearing of 6/29/2017 in 17-CA-421, Huminski v. Town of Gilbert, et al., 3 days after removal, and herein are the true and correct statements made by the State Court concerning bankruptcy.

3. On the audio disk at 1:25:10 the State Court opines, "*This case hasn't been removed anyplace Mr. Huminski*".

4. On the audio disk at 1:26:35 the State Court opines, "*Nothing gets removed from this Court to Bankruptcy Court. That doesn't happen - ever.*".

5. On the audio disk at 1:37:10 the Huminski States, "*You will not respect the removal to United States bankruptcy court?*" and the State Court replies "*Again evidence that you do not understand the law, it's not removed to bankruptcy court*".

6. On the audio disk at 1:37:11 the State Court opines, "*It [bankruptcy] might stay a civil proceeding ... Bankruptcy court can stay a civil proceeding*".

7. Upon information and belief and from the aforementioned content and below docket entries, the State Court does not accept the fundamental precept that there exists an automatic stay of bankruptcy intending to give the debtor breathing room during the bankruptcy process. From interaction with the State Court, Huminski believes the State Court mistakenly thinks that a debtor has to file a motion to stay concerning every creditor placing an additional burden on a debtor instead of breathing room provided by the automatic stay. The violations of

stay and removal may also be intentional as the State Court judge has 40 years of experience in the practice of law as an attorney and a judge.

8. Below are true and correct docket entries from the State Court from the date of bankruptcy filing to the present.

04/28/2017	OrderProhibiting Contact Comments: Prohibiting Contact	2
05/02/2017	Motionto Show Cause Comments: to Show Cause	1
05/09/2017	Suggestion of Bankruptcy	5
05/10/2017	Motionto Show Cause Comments: to Show Cause	2
05/11/2017	Notice of Appearance	3
05/12/2017	Return of Service Served	1
05/12/2017	Order to Show Cause Returned Not Served	120
05/12/2017	Motion to Dismiss	9
05/25/2017	Certified Copy of Show Cause Order for Service handed to LCSO	
05/25/2017	Minutes	1
05/25/2017	Order to Show Cause Returned Not Served	120
06/05/2017	Order to Show Cause	3
06/05/2017	Certified Copy of Show Cause Order for Service handed to LCSO	
06/14/2017	Order to Show Cause Returned Served	3
06/26/2017	Notice of Removal to US District CourtBankruptcy Court Comments: Bankruptcy Court	13
06/27/2017	Motionto Allow Service of Sheriff Comments: to Allow Service of Sheriff	16

06/28/2017	Order of Dismissal	3
06/28/2017	Objection	1
06/29/2017	Minutes	2
07/01/2017	Correspondence	15
07/02/2017	Correspondence	28
07/05/2017	Order Setting Case Management Conference(Rescheduled) to 8/15/17 Comments: (Rescheduled) to 8/15/17	1
07/05/2017	Bankruptcy Document	5
07/08/2017	Motion to Dismiss	2
07/09/2017	Notice of Taking Deposition	2
07/09/2017	Notice of Taking Deposition	2
07/11/2017	Bankruptcy Document	2
07/11/2017	Correspondence	3

Dated at Bonita Springs, Lee County, Florida this 24th day of July, 2017.

Scott Huminski, pro se

24544 Kingfish St.

Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

SWORN AND SUBSCRIBED to before me this 24th day of July, 2017,

Notary Exp. Dec 15, 20

HARMONY J. MULLINS
Notary Public - State of Florida
Commission # GG 047913
My Comm. Expires Nov 15, 2020

V# 001004

Tracking # MR017033

Twentieth Judicial Circuit

Electronic Court Reporting

Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901
Phone 239.533-8207 – FAX 239.485.2524

REQUEST FOR DIGITAL RECORDING OF DUE PROCESS PROCEEDING

MAIL REQUEST FORM & PAYMENT TO ELECTRONIC COURT REPORTING AT THE ADDRESS LISTED ABOVE, OR BRING THE FORM TO YOUR LOCAL COURTHOUSE. REQUESTS FOR GLADES & HENDRY COUNTIES MUST BE MAILED TO LEE ECR OFFICE IN FORT MYERS. A CHECK OR MONEY ORDER FOR $25.00US PAYABLE TO *STATE OF FLORIDA* FOR EACH PROCEEDING PER DATE REQUESTED MUST BE RECEIVED BEFORE A REQUEST CAN BE FILLED.

CASE NUMBER: 17-CA-421
JUDGE/MAG/HEARING OFFICER: KRIER **COUNTY:** LEE
CASE NAME/STYLE: Scott Huminski v. Town of Gilbert AZ et al.

TYPE OF PROCEEDING	DATES	TIMES	CHECK NUMBER
Civil Hearing Show Cause	6-29-17	1:30	1004

☐ CRIMINAL ☒ CIVIL ☐ POST-CONVICTION ☐ DELINQUENCY*
☐ DEPENDENCY* ☐ OTHER _____ ☐ APPEAL **

* Court order required for juvenile proceedings outlined in Florida Rules of Juvenile Procedure
** Designation to Court Reporter and Order Approving Transcript required for indigent defendants

REQUESTED BY: Scott Huminski **DATE:** 7/17/2017
EMAIL ADDRESS: S_Huminski@Live.com **COURTHOUSE BOX #:** None
AGENCY/FIRM: Plaintiff pro se

^Order of Appointment must be attached.

☐ Private Atty. ☒ Pro Se ☐ State Atty/ Pub Def/Reg Coun ☐ ^Court Appointed Atty.

ADDRESS: 24544 Kingfish St.
Bonita Springs FL 34134

Electronic Court Recording will only supply a certified copy of recorded proceedings.

DISCLAIMER

The Administrative Office of the courts of the Twentieth Judicial Circuit, Electronic Court Reporting Office, Court Administrator, Judges, State, County and any employees thereof, shall not be held responsible or liable for any errors, omissions, mistakes, negligence, or any other acts committed by or on behalf of the transcriptionist, or committed by or on behalf of any party, person, or entity requesting or utilizing the electronic recording, regardless of whether or not the acts are, or were, committed intentionally, maliciously, or in bad faith. Any party, person or entity requesting a recording of due process proceedings electronically recorded for transcription purposes, or for any other purposes, shall indemnify and hold harmless the Administrative Office of the Courts of the Twentieth Judicial Circuit, Electronic Court Reporting Office, Court Administrator, Judges, State, County and any employees thereof, from any actions or claims which might arise based upon any errors, omissions, mistakes, negligence, or any other acts committed by or on behalf of the transcriptionist, or committed by or on behalf of any party, person, or entity requesting or utilizing the electronic recording, regardless of whether or not the acts are or were committed intentionally, maliciously, or in bad faith.

Requests will be filled within 7-10 days from receipt of full payment.

00:27:20

A1

ACKNOWLEDGEMENT
RELEASE OF AUDIO RECORDING OF COURT PROCEEDING
TO ATTORNEY OF RECORD OR PARTY

CASE STYLE: Scott Huminski v. Town of Gilbert AZ et al.
CASE NO.: 17-CA-421

PROHIBITION AGAINST DISSEMINATION

The audio recording of the above-referenced court proceeding that has been provided to you upon request may contain information that is confidential or exempt from public disclosure by court order or under Florida law. Dissemination of this confidential or exempt information to any other person is strictly prohibited. Violation of this prohibition may subject you to legal action for contempt of court.

Members of the general public may obtain a copy of this recording through a request to the Electronic Court Reporting Office, unless the recording is protected from public disclosure by court order or Florida law. Prior to release of the recording to a member of the general public, the Electronic Court Reporting Office will review the recording for confidential or exempt information, and redact such information from the recording.

I, Scott Huminski, am an attorney of record or a party in the above-referenced court case. I acknowledge that I have received and read the **Prohibition Against Dissemination** and understand that further dissemination of any confidential or exempt information contained on the audio recording provided to me is strictly prohibited and may subject me to legal action for contempt of court. By my signature below, I acknowledge, understand, accept and agree to comply with the **Prohibition Against Dissemination.**

[signature] 7/17/2017
Signature of Requester **Date**

Scott Huminski
Printed Name of Requester

24544 Kingfish St, Bonita Springs FL 34134
Requester's Address

239 300 6656
Requester's Telephone Number

S_Huminski@Live.com

10172014

CourtSmart Tag Report

1:21:15 PM	<<<MR017033 BEGINS>>>
1:21:16 PM	HUMINSKI, SCOTT vs TOWN OF GILBERT AZ 17CA421 SHOW CAUSE / CRIMINAL CONTEMPT Atty KNOX, STEVEN DOUGLAS
1:21:17 PM	APPEARANCES
1:21:21 PM	DISCUSSION
1:21:51 PM	IN RE: BOND/PRETRIAL RELEASE
1:25:01 PM	MR. HUMINSKI SPEAKS
1:25:33 PM	COURT ADVISES MR. HUMINSKI OF HIS RIGHTS
1:26:52 PM	COURT SUGGESTS MENTAL HEALTH EVAL
1:27:30 PM	8/15/17 @ 1PM
1:28:40 PM	COURTS CONCERNS ABOUT PRETRIAL ASPECTS
1:29:31 PM	ARGUMENTS AS TO PRETRIAL
1:30:42 PM	MR. HUMINSKI REQUESTS CLARIFICATION
1:35:10 PM	MR. HUMINSKI INQUIRES ABOUT BEING PRO SE
1:36:56 PM	DISCUSSION OF BANKRUPTCY
1:38:25 PM	COURT ADVISES MR. HUMINSKI TO GET AN ATTORNEY
1:40:35 PM	PLEA OF NOT GUILTY
1:40:41 PM	MR. HUMINSKI OBJECTS TO JURISDICTION OF THE COURT
1:47:35 PM	MR. HUMINSKI DISCUSSES BANKRUPTCY
1:48:35 PM	CONCLUDED
1:48:35 PM	<<<MR017033 ENDS>>>

Twentieth Judicial Circuit
Lee County
Scott Humiinski vs. Town of Gilbert AZ, et al
17-CA-421
Show cause / criminal contempt
Judge Krier
Date: 6-29-17
Length: 00:27:20
MR01703J
I certify that, to the best of my ability, this CD is a true and accurate copy of the original audio recording of the proceedings named below.
Date
7/20/17

From: scott huminski <s_huminski@live.com>
Sent: Monday, September 18, 2017 9:11 AM
To: Kathleens@pd.cjis20.org; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org; ValerieZ@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org
Subject: 17-mm-815 issue subpoena and schedule deposition of state's attorney

PD, Issue a subpoena for all documents mentioning scott huminski, trevor nelson, justin m. nelson or debra riffel to the City of Surprise Arizona. I have already paid the $55 public records fee they requested, but, they refuse to comply with my FOIA. This is related to the defenses of duress, necessity and self defense related to the terrorist murder threats that now hang over our heads. I used a third party, the muckrock foundation of someville MA to send the initial fOIA to this municipality. All correspondence is online.

Set up deposition of the State's Attorney to answer to irregularities in the bringing of this prosecution. Why it was brought in the Circuit Court instead of County Court, how that SA achieved the transfer to County Court or were the dockets manipulated by others, State's Attorney legal reasoning to ignore the removal to federal court, SA reason to not file a motion for remand in fed court, reason for SA to not file retro-active relief from stay in bankruptcy court and other irregularities concerning this matter including why Judge Krier has not been prosecuted for obstruction of justice concerning obstructing service of Sheriff in bankruptcy. How are the Krier orders constitutionally narrowly-tailored, not overbroad and not vague. and similar issues.

We need the deposition and subpoena done ASAP. Submit and schedule these events prior to the friday hearing. Negligent assistance of counsel will not be tolerated.

-- scott huminski

[redacted] COMMITMENT FORM **COUNTY COURT, LEE COUNTY, FLORIDA**

[redacted]-MM-000815 (17MM815) **State of Florida vs Huminski, Scott A**

_____ Previously FTA for assigned Judge _____
_____ Felony Reduction _____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	09/18/2017	

Attorney: PD Public Defender

APPEARANCE
_____ Failed to Appear
_____ Present w/o Attorney
X Present w/ Attorney
_____ Present by Attorney
_____ Present w/ Interpreter
_____ Interpreter Services Requested
Language _____
_____ Victim/Other _____

PLEA
_____ Guilty
_____ Not Guilty
_____ Nolo Contender
_____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
_____ Withheld by Judge
_____ Adjudicated Guilty
_____ Withheld by Clerk
_____

VERDICT
_____ Guilty by Judge
_____ Not Guilty by Judge
_____ Guilty by Jury
_____ Not Guilty by Jury
_____ Mistrial
_____

DISPOSITION
_____ Acquitted
_____ Nolle Pros
_____ No Information
_____ Dismissed
_____ Adm.Dismissed
_____ Merge & Dismiss

SENTENCE
_____ Probation Reporting _____ DD/MM/YY
_____ Consecutive/Concurrent with _____
_____ One Time Cost $_____ Waive COS $_____
_____ Report to Probation Today or Upon Release Within _____
_____ Probation may terminate early when conditions are met
_____ May Transfer Probation to _____
_____ May Report to Probation and/or Instruct by Mail
_____ Ignition Interlock Device _____ DD/MM/YY
_____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
_____ Statutory Exception to Vehicle Impound
____ Does Not Own Vehicle ____ Shared Vehicle
____Other_____
_____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
_____ No Possession or Consumption of Alcohol or Illicit Substances
_____ DUI School - Follow recommendations/Phase ____ I ____ II
____ School to Determine which Phase
____ Sign up w/in _____ days
_____ Traffic School 4 Hr / 8Hr / 12 Hr
_____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
_____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
_____ Sign up for Batterer's Intervention Program w/in 30 Days
_____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
_____ Attend & Complete Program_____
_____ DNA Testing Collected _____ in Court _____ at LCJ
_____ Other Testing _____ HIV _____ STD _____
_____ Defendant Advised of Habitual and/or Felony Status

_____ Jail Time _____ DD/MM/YY
_____ Consecutive/Concurrent with _____
_____ Weekend Time Fri 6pm to Sun 6pm
_____ Beginning _____
_____ Day Work Program* _____ Days
___ Minimum ___ day(s) a week ___ consecutive weeks
_____ Credit Time Served _____DD/MM/YY
_____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
_____ Defendant Remanded _____ Sentence Suspended
_____ DL Suspended/Revoked _____ DD/MM/YY
_____ Spec. Conditions - Drive for Work/Business purposes
_____ Show Valid Driver's License within _____
_____ Produced Valid Driver's License in Court
_____ Community Service _____ Hours and/or Pay $_____
_____ Must complete _____ hours of community service before buyout
_____ Show Proof of Com. Service to Clerk w/in _____
_____ Stay Away from arrest location _____
_____ No Contact with victim _____
_____ State Orally Amends Charge in Open Court
_____ Formal Filing of Information is Waived
_____ Information Filed in Open Court
_____ Successfully Completed Pretrial Diversion Program
_____ Judicial Warning
_____ Defendant Accepted DV Diversion
_____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to _____

For _____ AR _____ DS _____ TR _____ DA _____ DD _____ DT _____ RH

Time _____ AM / PM Court Room _____ _____Speedy Trial Waived _____ Speedy Trial Tolled
_____JRA _____ HAS _____MEG _____ZMG _____DSG _____JMG _____TPP _____ABH _____
_____ Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** _____

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

ORDER / COMMITMENT FORM — **COUNTY COURT, LEE COUNTY, FLORIDA**

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	09/18/2017	

FINE ASSESSMENTS (statutes Indicated)
_____ Fine $_____ (775.083)
_____ 5% Surcharge $_____ (938.04)

MANDATORY ASSESSMENTS
_____ Court Costs (Include Crime Stoppers & Crime Prevention) (318.18 / 775.083 / 938.01 / 938.03 / 938.05 / 938.06 / 939.185)
___ $220.00 ___ Other $ _____
If Ordered Under - Reason:
_____
_____ $33.00 Certain Traffic Offense Court Cost (318.17 / 318.18)
_____ $135.00 DUI Court Costs (938.07)
_____ $70.00 Reckless Driving Court Costs (318.18 / 316.192)
_____ $65.00 Racing Court Costs (318.18)
_____ $5.00 Leaving the Scene Court Costs (316.061)
_____ $195.00 BUI Court Costs (938.07 / 327.35)
_____ $201.00 Domestic Violence Trust Fund (938.08)
_____ $151.00 Rape Crisis Trust Fund (938.085)
_____ $151.00 Crimes Against Minors (938.10)
_____ $5000.00 Civil Penalty (796.07)
_____ $40.00 Contested By Nonprevailing Party Fee (34.045)

DISCRETIONARY ASSESSMENTS
_____ $100.00 FDLE Trust Fund/Statewide Crime Lab (938.25)
_____ Investigative Fee $_____ to
to ___ FDLE ___ FMP ___ LCSO ___ Statewide Pros.
___ Other _____ (938.27)
_____ Worthless Check Diversion Fee $_____ (832.08)
_____ Diversion Cost of Supervision $_____ (948.09)

Pay Within _____ DD/MM/YY
_____
_____
_____ Upon release from In-Custody

MOTION HEARINGS
_____ Revoke Bond _____ Reinstate Bond
_____ Set/Reduce/Increase Bond to _____
_____ Suppress ____Dismiss ____Continue
_____ Expunge/Seal (Outstanding monetary obligations must be addressed in court and the $42.00 fee must be paid to the Clerk's office before the case is officially expunged/sealed.)
_____ Withdraw Plea
_____ Withdraw as Counsel
_____ Modify No Contact Order _____ Lift No Contact Order
X Other Strike Order Appointing Public Defender
Motion Result (Circle One): Granted Denied Reserves Ruling

_____ State & Defense Stipulate to Suppress the Breath Test Results
_____ State Amends Information from BAL of .15 or Above to .08
_____ Clerk to Update Case w/ Defendants Information Listed
_____
Motion Withdrawn - Moot

ATTORNEY FEES & SURCHARGES
_____ $50.00 Cost of Prosecution (938.27)
_____ $50.00 Public Def Application Fee (27.52)
Additional Application Fees $_____
(Must be addressed on the record)
_____ Defense Attorney Costs at Conviction (938.29)
___ $50.00 ___ Other $_____

RESTITUTION
_____ Minimum Payment of $_____ per Month
to _____
___ As a Condition of Probation
_____ Restitution Ordered $_____ to
_____
_____ Restitution Reduced to Judgment
_____ Court Orders Restitution - Reserves on Amount

DISPOSITION OF MONETARY OBLIGATIONS
_____ May Convert Fine/Cost _____ All or In Part to Community Service at $10 per Hour
___ Defendant Advised of Notary Requirement for Community Service (For Non-Probationary Sentences)
_____ Credit Time Served for Fines/Costs/Fees _____
_____ Monetary Obligations Referred to Clerk of Court Collections
_____ Monetary Obligations Reduced to Judgment ___ Previous Only
_____ Monetary Obligations (VOP) ___ Carried Forward
_____ Defendant to sign up for Payment Plan
_____ First Payment Due within 30 Days
_____ Waive all Additional Mandatory Costs

WARRANTS/BONDS
_____ BW/D6 Ordered Balance $_____
_____ Issue Bench Warrant _____ MM/DD/YYYY
_____ Bond Estreature $_____
_____ Non-Compliance/Non-Appearance $_____
_____ Set Aside BW/D6 $_____
_____ Set Aside Estreature $_____
_____ Cash Bond to pay Fine/Cost including _____
_____ Return Cash Bond to Depositor
_____
_____ Conflicting Appearance Date Addressed in: Court

REVOCATION HEARINGS
_____ Defendant Pleas Guilty/Admits Allegations
_____ Defendant Pleas Not Guilty/Denies Allegations
_____ Adjudicated Guilty _____ Adjudication Withheld
_____ Probation Reinstated _____
_____ Probation Modified _____
_____ Same Terms and Conditions to Apply
_____ Probation Revoked & Terminated _____ Probation Terminated
_____ COS Fees Due & Owing in the amount $_____

Pre-sentence Investigation/Sentencing _____ Full/Partial

If probation has not been imposed, you must pay your financial obligation within the time allowed by the Judge or sign up for the payment plan option offered by the Clerk of Court. If sentenced to Probation, you must adhere to standards as directed.
Failure to comply with any part of this order may result in a suspension of your driver license privilege and/or warrant being issued for your arrest (322.245) .
Unpaid financial obligations still remaining 90 days after payment due date will be referred by the Clerk of Court to a collection agency and an additional fee of up to 40% of the outstanding balance owed will be added at that time (28.246).
Mandatory assessments are imposed and shall be included in the judgment without regard to whether the assessment was announced in open court.

Asst. State Attorney S Wittke K-Worcester Bar No. 18480/24831 Date _____

Judge James R Adams Adams Date _____

Rev.05/05/2017

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA
vs.
SCOTT ALAN HUMINSKI

CASE NO. 17-000815MM (JRA)

NOTICE OF APPEARANCE; WAIVER OF ARRAIGNMENT; WRITTEN PLEA OF NOT GUILTY; NOTICE OF DISCOVERY AND INITIAL DISCLOSURE

The Public Defender hereby enters this notice of appearance.

The Defendant, pursuant to Rule 3.160(a), Florida Rules of Criminal Procedure and files this Written Plea of Not Guilty to the charge(s) pending in the above-entitled cause.

The Defendant, pursuant to Fla.R.Crim.P.3.220, files written notice of said Defendant's election to participate in discovery.

The Defendant, pursuant to Fla. R. Crim. P. 3.220(d), has no disclosures or witnesses other than those that will be disclosed by the State pursuant to Fla. R. Crim. P. 3.220(b). Should the Defendant discover additional witnesses or materials subject to disclosure, the Defendant will promptly provide such to the State pursuant to Fla. R. Crim. P. 3.220(j).

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished electronically to the Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor , Fort Myers FL 33901; on this 20th day of September, 2017.

KATHLEEN A. SMITH
Public Defender
2000 Main Street
Fort Myers, Florida 33901

By:_____
Of Counsel - Kevin John Sarlo
Florida Bar No. 0126369
KevinS@pd.cjis20.org

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	Criminal No. 17-MM-815
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

EMERGENCY MOTION TO VACATE PROTECTIVE ORDERS THAT HAVE RESULTED IN FELONY OBSTRUCTION OF JUSTICE OF U.S. BANKRUTPCY COURT MATTERS and OBSTRUCT COUNTY COURT MATTERS

NOW COMES, Scott Huminski ("Huminski"), and, moves to vacate the protective orders in this matter as they criminalize Huminski's attendance at a hearing in County Court scheduled for 9/22/2017 and have obstructed justice concerning Huminski's duty to serve Sheriff Mike Scott with a U.S. Bankruptcy Court "Notice of Removal" and two bankruptcy Court motions requesting relief under 11 USC 362. These State Court orders have undermined service requirements federal court and the federal court rules and statutes governing Bankruptcy proceedings and are void under the Supremacy Clause and prior restraints under the First Amendment and violate Sheriff Mike Scott's Due Process rights to receive bankruptcy court correspondences. Sheriff Scott is listed as a pro se litigant in the Bankruptcy Court.

Huminski is forced to appear at County Court on 9/22/2017, at which time he has to interact with and communicate with the Lee County Sheriff's Office at security screening. Huminski has bilateral hip replacement which he must explain to deputies in violation of the protective order and placing himself at risk of criminal prosecution.

Dated at Bonita Springs, Florida this 20th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se

24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 20th day of September, 2017.

-/s/- Scott Huminski

_____
Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/ Division -

SCOTT HUMINSKI, FOR HIMSELF	)	Criminal No. 17-MM-815
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF SUPPORT OF EMERGENCY MOTION – EMBEZZLEMENT OF STATE FUNDS

NOW COMES, Scott Huminski ("Huminski"), and, notifies that on 9/19/2017 my wife visited motor vehicles with myself in Bonita Springs and paid for two years of car registration for $91. She gave the clerk a $100 bill and received her change of $9 (amounts rounded). On 9/20/2017 motor vehicles left a voice message stating that the $100 bill disappeared and the registration would be revoked.

A State employee pocketed the bill and it constitutes embezzlement of State funds whereby, Huminski a prime witness and victim was unable to call public safety to report the crime. Notably, motor vehicles admitted the shortage of $100 for 9/19 which should have been $109 is one believes the story of the missing $100 bill.

Huminski was prohibited from calling local law enforcement concerning the embezzlement by a State employee by the orders of Judge Krier and earlier in the week was prohibited from reporting violations of the hurricane Irma curfew and looting.

Vastly over-broad orders promote crime (official corruption) and undermine the function of public safety such as we have here. An inmate in State prison has more rights than Huminski as far as reporting crime to an appropriate authority. The protective orders constitute a form of summary punishment in violation of Due Process whereby it becomes "open season" to commit crimes against Huminski without fear of consequences from public safety and law enforcement. Orders preventing the reporting of crime constitute the breakdown of civilized society.

Dated at Bonita Springs, Florida this 20th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 20th day of September, 2017.

-/s/- Scott Huminski

Scott Huminski

Corresponces re 17-mm-815, 17-CA-421

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, September 20, 2017 11:05 AM
To: Harkey, Sandy; KevinS@pd.cjis20.org; Smith, Kathleen A; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; KatherineT@pd.cjis20.org
Subject: Re: 17-CA-421 emergency motion re 17-mm-815

Hi Sandy, please forward the below to the JA of Judge McHugh if that is not you. I have no power or phone here and only internet when I go to a store. As the hearing that is being obstructed by the protective orders of Judge Krier is Friday, I do not have much time. Without hearing concerning this motion, I could either face a bench arrest warrent for not appearing, or face arrest for contempt for violation of Judge Krier's patently unconstitutional orders. Either way a criminal matter may be spawned if we don't hear back on the Emergency Motion. Thank you. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, September 20, 2017 10:50 AM
To: Harkey, Sandy; KevinS@pd.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org
Subject: 17-CA-421 emergency motion re 17-mm-815

Hi Sandy, Just filed an emergency motion in the 421 case you just referred to.

The protective orders in the civil case prevent me from going to a county court hearing on friday. I have bi-lateral hip replacements and i must communicate with LCSO at the security screening. THe order pending in the Circuit Court prohibits any contact or communication with the LCSO - no exceptions. Need emergency action on this issue as orders of the Circuit Court in 17-ca-421 have made it a crime for me to attend a county court hearing on friday.

You can respond to me via email of directly with the attorney in the County Case, Kevin S in the above recipient list.-- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, September 20, 2017 10:36 AM
To: Kathleens@pd.cjis20.org; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org; ValerieZ@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org

Subject: 17-mm-815 EMERGENCY FILING Huminski can not appear in County Court until Circuit Court permits him to

Emergency motion to allow my attendance in 17-mm-815 on friday. As filed in court today, see below service notice and docket.
I do not have power or phone service yet, Kevin please call the JA to the Circuit Judge to get a determination on my violation of a court order on friday and the criminal liability I may incur for attending. We don't need more contempt prosecutions. The Circuit Court must intervene in an emergency fashion.

Kevin, my interactions and communications with the LCSO at screening per se violates the plain language of Krier's fascist orders and puts myself at risk for more criminal proceedings and charges. I refuse to appear, asserting my 5th amendment right against self incrimination as merely saying hello to a LCSO deputy is potentially a crime.

The rules of statutory construction and interpretation apply equally to court orders. Zero tailoring by Krier in violation of the first amendment.

The motion i filed in the circuit court is an "emergency" motion, please follow up and provide me with permission from either the Circuit Court or County Court to appear on Friday.

Krier's orders have zero tailoring in compliance with the first amendment and the language therein is not narrowly-tailored in any respect. No phone- email me. I will agree to meet with you outside the courthouse at 8 am, but i will not violate the police state orders of judge krier. As Krier presides in a higher court, i do not believe the county court has the power or authority to amend or narrowly-tailor this order.

Please seek whatever extraordinary relief is appropriate in florida as we have a county judge ordering that i disobey a circuit judge. This is why statutes and court orders must comply with rigorous first amendment standards.

Please inform Judge Adams of this rudimentary conflict we are having between Kriers orders and judge adams ability to do his job without interference from a circuit court. If we were in circuit court, like we should be, that judge would have the authority to overrule kriers wildly over broad orders. I see nothing in the law that would allow a county judge to overrule an order of the circuit judge.

I will probably file an emergency motion to consolidate the cases tomorrow as one court is controlling my behavior in another court. Pure chaos, conduct prejudicial to the administration of justice and a burden on multiple courts in violation of judicial economy.

Please read krier's order to judge adams. Interaction and communication with the LCSO is strictly forbidden without exception.

-- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, September 20, 2017 9:07 AM
To: Kathleens@pd.cjis20.org; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org; ValerieZ@pd.cjis20.org
Subject: Re: 17-mm-815 2nd draft motion - change of venue

Attached is some case law i added to the draft motion. I have no electricity, otherwise i would have assembled the authorities in a more brief-like manner.

IMPORTANT- because of my bi-lateral hip replacements i am forced to disclose this to the LCSO at security screening. This is a violation of Krier's vastly over-broad and zero-tailored order and subject me to further criminal prosecutions for contempt.

Venue must be changed or i should be allowed to appear telephonic-ally. My telephone works over the internet, i have no power and no phone at this point. Venue must be changed.

Krier's order is patently unconstitutionally vague and over-broad, the side effects of such draconian governmental conduct are obvious.

see new case law. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, September 19, 2017 9:28 AM
To: Kathleens@pd.cjis20.org; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org; ValerieZ@pd.cjis20.org
Subject: Re: 17-mm-815 subpoena

Please subpoena all documents from the court and the state's attorney concerning how the case magically popped up on the County Court docket after it was a circuit court case.

Also request documents concerning the termination of the Circuit Court criminal case and how this bizarre transfer from Circuit court to county court occurred. Something is procedurally corrupt.

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, September 19, 2017 9:21 AM
To: Kathleens@pd.cjis20.org; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org; ValerieZ@pd.cjis20.org
Subject: Re: 17-mm-815 change of venue

Please file for a change of venue. If it is indeed contempt and a crime for me to have any contact or communication with the LCSO, I am forced to break the law at every hearing at the security screening. I have to tell the sheriffs that i have double hip replacements. This is another illustration to how wildly vague and over-broad under the first amendment Krier's orders are

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO DISMISS - NO VALID ARRAIGNMENT FILED IN NOTICE

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss as no arraignment was filed in this case as of 9/19/2017, something ended up being filed by a person other than Judge Krier on 9/20/2017 in this case far to late to be considered valid and not filed by Judge Krier or her judicial assistant.

An arraignment took place in the Circuit Court, never in this matter. There is no legal method in Florida to transfer the arraignment existing in 17-CA-421 in Circuit Court to the instant matter in County Court. This case is procedurally infirm. Huminski never pled to anything in County Court and there exists no County Court charging document.

The arraignment filed on 9/20 but dated months earlier took place while all State Court matters were removed to federal court and are void for want of all jurisdiction.

Judge Krier recused on 8/1/2017 (while the case was still in federal court), as it is a violation of judicial ethical precepts to participate in these matters, she did not file anything on 9/20/2017 as such an act would be cause for ethical sanctions and loss of her law license.

Dated at Bonita Springs, Florida this 21st day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

1

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-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO DISMISS - NO VALID CHARGING DOCUMENT

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss as no arraignment was filed in this case. Only a Circuit Court charging document exists captioned in Circuit Court and signed by Judge Krier in her capacity as a Circuit Judge.

There is no legal mechanism in Florida to have a Circuit Court case magically disappear and re-materialize in County Court. Under the contempt statute this proceeding was valid in the Circuit Court, it has not been properly brought upon the oath of the State's Attorney in the County Court. Charging documents simply can not appear and disappear in various courts with complete absence of any statute or court rule that would allow this game of case ping pong.

Dated at Bonita Springs, Florida this 21st day of September 2017.

-/S/- Scott Huminski

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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION FOR CHANGE OF VENUE

NOW COMES, Scott Huminski ("Huminski"), and, moves to change venue as attendance of hearings at 1700 Mornoe street force Huminski to have contact and communication with the LCSO security screeners at the courthouse in violation of the Circuit Court order that is at the heart of this matter. Mandating violation of the Circuit Court order is contrary to the purpose of this litigation – to enforce and prevent violation of Judge Krier's vastly over-broad attack upon the First Amendment.

The prosecution's goal of this litigation is 24/7 violation of the orders of Judge Krier by placing Huminski in the custody of the LCSO in violation of Judge Krier's no contact order. This litigation is frivolous, vexatious, unconstitutional and forces Huminski's to violate Judge Krier;s orders. It places Huminski in the position of violating Judge Krier's order by having contact with the LCSO at hearings or to violate this Court's authority by not attending hearings to obey Judge Krier. This is an untenable and illegal scenario as whatever decision Huminski makes he is in jeopardy of criminal liability and is violating an order of either the Circuit Court or County Court. First Amendment requirements such as narrowly-tailoring court orders to a specific governmental interest would have avoided this litigation. Threatening Huminski with arrest for attending court hearings is not a legitimate governmental interest.

Dated at Bonita Springs, Florida this 21st day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se

24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

_____
Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF STATE'S ATTORNEY FAILURE TO MOVE TO RETRO-ACTIVELY LIFT AUTOMATIC STAY – ALL ACTS TAKEN IN VIOLATION OF AUTOMATIC STAY IRRETRIEVABLY *VOID*

NOW COMES, Scott Huminski ("Huminski"), and, notifies as set forth in the above title. The prosecution has failed to move for retro-active lifting of the stay prior to closure of the bankruptcy case on 8/24/2017. The State's Attorney is time barred from seeking to retro-actively lift the stay and acts of the State Courts in violation of 11 U.S.C. 362 are irretrievably **VOID**. Federal case law strongly disfavors retro-active lifting of the automatic stay, had it not been time-barred, as the automatic stay is an integral component of federal bankruptcy law allowing the debtor breathing space and preserving the bankruptcy estate.

Dated at Bonita Springs, Florida this 14th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

[Doclose] [Order Closing]

ORDERED.

Dated: August 24, 2017

Caryl E. Delano
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION
www.flmb.uscourts.gov

In re:

Case No. 9:17−bk−03658−FMD
Chapter 7

Scott Alan Huminski

Debtor* /

ORDER APPROVING ACCOUNT, DISCHARGING TRUSTEE, CANCELING BOND, AND CLOSING ESTATE

The Court finds that the Trustee in the above−captioned case has completed all disbursements, if any, as required, has rendered a full and complete account thereof, and has performed all duties required for the administration of this estate. Accordingly, it is

ORDERED:

1. The account of the Trustee is approved and allowed, the estate is fully administered, and the estate is closed.

2. The Trustee is discharged from and relieved of the trust, the bond of the Trustee is canceled, and the surety or sureties thereon are released from further liability thereunder, except any liability which may have accrued during the time such bond was in effect.

3. All motions/objections/applications that have not been resolved are denied as moot.

4. The Clerk shall dispose of any exhibits left unclaimed in any matter or proceeding unless notified by the appropriate party within 30 days.

*All references to "Debtor" shall include and refer to both the debtors in a case filed jointly by two individuals.

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	09/22/2017	

Attorney: PD Public Defender X

APPEARANCE
____ Failed to Appear
____ Present w/o Attorney
X Present w/ Attorney
____ Present by Attorney
____ Present w/ Interpreter
____ Interpreter Services Requested
Language _____
____ Victim/Other _____

PLEA
____ Guilty
____ Not Guilty
____ Nolo Contender
____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
____ Withheld by Judge
____ Adjudicated Guilty
____ Withheld by Clerk
_____

VERDICT
____ Guilty by Judge
____ Not Guilty by Judge
____ Guilty by Jury
____ Not Guilty by Jury
____ Mistrial
_____

DISPOSITION
____ Acquitted
____ Nolle Pros
____ No Information
____ Dismissed
____ Adm.Dismissed
____ Merge & Dismiss

SENTENCE
____ Probation Reporting _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ One Time Cost $_____ Waive COS $_____
____ Report to Probation Today or Upon Release Within _____
____ Probation may terminate early when conditions are met
____ May Transfer Probation to _____
____ May Report to Probation and/or Instruct by Mail
____ Ignition Interlock Device _____ DD/MM/YY
____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
____ Statutory Exception to Vehicle Impound
____ Does Not Own Vehicle ____ Shared Vehicle
____ Other_____
____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
____ No Possession or Consumption of Alcohol or Illicit Substances
____ DUI School - Follow recommendations/Phase ____ I ____ II
____ School to Determine which Phase
____ Sign up w/in _____ days
____ Traffic School 4 Hr / 8Hr / 12 Hr
____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
____ Sign up for Batterer's Intervention Program w/in 30 Days
____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
____ Attend & Complete Program_____
____ DNA Testing Collected _____ in Court _____ at LCJ
____ Other Testing _____ HIV _____ STD _____
____ Defendant Advised of Habitual and/or Felony Status

____ Jail Time _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ Weekend Time Fri 6pm to Sun 6pm
____ Beginning _____
____ Day Work Program* _____ Days
___ Minimum ___ day(s) a week ___ consecutive weeks
____ Credit Time Served _____DD/MM/YY
____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
____ Defendant Remanded _____ Sentence Suspended
____ DL Suspended/Revoked _____ DD/MM/YY
____ Spec. Conditions - Drive for Work/Business purposes
____ Show Valid Driver's License within _____
____ Produced Valid Driver's License in Court
____ Community Service _____ Hours and/or Pay $_____
____ Must complete _____ hours of community service before buyout
____ Show Proof of Com. Service to Clerk w/in _____
____ Stay Away from arrest location _____
____ No Contact with victim _____
____ State Orally Amends Charge in Open Court
____ Formal Filing of Information is Waived
____ Information Filed in Open Court
____ Successfully Completed Pretrial Diversion Program
____ Judicial Warning
____ Defendant Accepted DV Diversion
____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to 10.27.17 MANDATORY COURT APPEARANCE

For _____ AR X DS _____ TR _____ DA _____ DD _____ DT _____ RH

Time 8:30 (AM) PM Court Room 1A X Speedy Trial Waived ____ Speedy Trial Tolled

(JRA) ____ HAS ____ MEG ____ XMG ____ DSG ____ JMG ____ TPP ____ ABH _____

____ Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** 9/22/17

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF HUMINSKI BANISHMENT FROM COUNTY COURT ON 9/22 FOR OBEYING LCSO GAG ORDER

NOW COMES, Scott Huminski ("Huminski"), and, notices that he was ordered out of a County Court hearing in his case for obeying the order of Circuit Court preventing the communication with the LCSO for the rest of his life. This banishment constitutes obstruction of justice.

Dated at Bonita Springs, Florida this 22nd day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
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TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE STATE'S ATTORNEY SHOULD NOT BE FOUND IN CONTEMPT FOR SUPPORTING THE ORDER BANISHING HUMINSKI FROM THE 20TH CIRCUIT AND COUNTY COURTS and AIDING AND ABETTING OBSTRUCTION OF JUSTICE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because the State's Attorney has fully supported the protective orders of Judge Krier which forbid Huminski's contact and communication with the LCSO making attendance at Court hearings impossible, are contempt and crimes in a deliberate effort by the State's Attorney to obstruct justice.

Dated at Bonita Springs, Florida this 22nd day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
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(239) 300-6656
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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
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TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

NOTICE OF APPEARANCE PRO SE CO-COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, hereby appears as pro se co-counsel and requests a hearing on his Motion for Change of Venue.

The prohibition against contact and communication with the LCSO that have to screen Huminski and who evicted his from his hearing on 9/22 for obeying the LCSO no-contact, no communication order of the Circuit Court demands that under Due Process, the First Amendment and equal enforcement and protection of the laws a change of venue is mandated.

Dated at Bonita Springs, Florida this 22nd day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION REQUESTING HEARING RE: CHANGE OF VENUE

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves as set forth above. As Huminski's ejection from the courtroom today at hearing in his case, it is apparent that proceedings can not be held in a courthouse with a forbidden LCSO presence. Huminski is facing a criminal prosecution for First Amendment contact and communication with the LCSO and this courthouse banishment is supported by the State's Attorney in violation of Huminski's rights against courthouse banishment. The Second Circuit has held that the public's right implies that particular individuals may not be summarily excluded from court. *Huminski v. Corsones*, 396 F.3d 53, 83-84 (2d Cir. 2005). Meaningless law in Florida.

Dated at Bonita Springs, Florida this 22nd day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

KS/SK

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA CASE NO. 17-MM-000815 JRA

vs.

SCOTT ALAN HUMINSKI

_____/

STIPULATED MOTION TO MODIFY CONDITIONS OF PRETRIAL RELEASE

COMES NOW, the Defendant, by and through the Office of the Public Defender, and the State Attorney and jointly stipulate that the Defendant's pretrial release conditions be modified, and states the following as grounds:

1. On June 29, 2017, Mr. Huminski was placed on pretrial supervision as part of indirect criminal contempt proceedings.
2. Mr. Huminski's conditions included (but were not limited to) no contact with the Lee County Sherriff's Office "except through their legal counsel, unless said contact is initiated by the Sherriff's Office, such as if SCOTT HUMINSKI is arrested or stopped for a traffic violation." Order on Arraignment, dated July 7, 2017.
3. The Lee County Sherriff's Office provides security for the Lee County Justice Center and is the default law enforcement agency in the City of Bonita Springs, where Mr. Huminski lives.
4. Mr. Huminski's conditions should be modified so that he shall not have any contact with the Lee County Sherriff's Office except through their legal counsel unless said contact:
    a. is initiated by the Sherriff's Office, such as if Mr. Huminski is arrested or stopped for a traffic violation;
    b. is made in the process of attending and participating in court dates for his criminal case; or
    c. is necessary to report a crime or other emergency normally referred to the Lee County Sherriff's Office.

DATED this 20th day of September, 2017.

STEPHEN B. RUSSELL
State Attorney

Anthony W. Kunasek
Assistant State Attorney
Florida Bar No. 0026999

KATHLEEN A. SMITH
Public Defender

Kevin John Sarlo
Assistant Public Defender
Florida Bar No. 0126369

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; to the Honorable Kathleen A. Smith, Public Defender, P. O. Drawer 1980; to Scott Huminski, 24544 Kingfish Street, Bonita Springs, FL 34134 dated this 22nd day of September, 2017.

Linda Doggett
Clerk of the County Court

By: _____
Deputy Clerk

KS/SK

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA CASE NO. 17-MM-000815 (JRA)

vs.

SCOTT ALAN HUMINSKI

_____/

ORDER

THIS CAUSE having come for consideration upon the Stipulation between Defense counsel and State Attorney and the Court being duly advised in the premises, it is thereupon:

ORDERED AND ADJUDGED that the Stipulated Motion to Modify Conditions of Pretrial Release is hereby:

✓ GRANTED

_____ DENIED

DONE AND ORDERED, this 22 day of September, 2017.

James R. Adams
Judge of the County Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; to the Honorable Kathleen A. Smith, Public Defender, Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida; to Scott Huminski, 24544 Kingfish Street, Bonita Springs, FL 34134 dated this 22nd day of September, 2017.

Linda Doggett
Clerk of the County Court

By: J. Garcia
Deputy Clerk

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO STRIKE ORDER TO STRIKE OF 8/22

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves as set forth above. Huminski has held that he wished to proceed as pro se co-counsel at all times in this matter and his appearance as such on 9/22/2017 is a confirmation of that status.

Huminski's ejection from the courtroom on 9/22 and the looming threat of prosecution posed by the protective order prohibiting contact with the LCSO violates Huminski's First Amendment and Due Process rights concerning litigation of this matter. Huminski requests an immediate hearing concerning change of venue which would mitigate his constitutional injury related to the LCSO protective orders and allow him to defend himself unfettered by the illegal and unconstitutional orders related to the LCSO. Huminski's ouster from is own hearing on 9/22 was the last unconstitutional straw. Venue must be changed.

Dated at Bonita Springs, Florida this 23rd day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 23rd day of September, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO FORWARD OBSTRUCTION OF JUSTICE CHARGES TO STATE'S ATTORNEY

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves as set forth above that the LCSO deputy that ejected Huminski from his hearing on 9/22 should be forward to the State's Attorney for charging for felony obstruction of justice. This is a serious crime indicating internal corruption in the LCSO.

Dated at Bonita Springs, Florida this 23rd day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION FOR ORDER TO SHOW CAUSE AS TO WHY THE LCSO DEPUTY WHO EJECTED HUMINSKI FROM THE 9/22 HEARING SHOULD NOT BE HELD IN CONTEMPT OF THIS COURT

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves as set forth above concerning the LCSO deputy that ejected Huminski from his hearing on 9/22.

Huminski is facing contempt charges for simply reporting crime and criticizing the LCSO activities protected under the First Amendment. The criminal deputy engaged in obstruction of justice, a felony and misdemeanor contempt. As this conduct is endorsed by the State's Attorney, the State's Attorney should be held in contempt and his criminal conduct should be referred to the Attorney General and FDLE for investigation.

Ordinaryily, Huminski would serve a copy of this paper upon the LCSO pursuant to Due Process, however that act of serving any LCSO personnel is contempt and a crime under bizarre theories propagated by the State's Attorney. Similarly, the State's Attorney has engaged in obstruction of justice regarding the service of LCSO in U.S. Bankruptcy Court. The State's Attoney's zeal to obstruct justice in federal and state courts is beyond dispute and the conduct of the State's Attorney regarding Huminski's ejection from the 9/22 courtroom reveals the criminal agenda of the prosecutor.

Dated at Bonita Springs, Florida this 23rd day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134

(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

_____
Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO FORWARD COMPLAINT FOR ASSAULT AND TRESPASSING TO STATE'S ATTORNEY FOR PROSECUTION

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves as set forth above concerning the the trespasing and dumping/damage to my property that occurred on 9/23/2017 at 12:15 p.m. by a resident of 24555 Kingfish Street tags:FL 286 OJL, MS REQ 444 and their neighbor from across the street, Dana, at 24556 Kingfish Street owners of car(s) licensed in Florida 44GIG and 014YTX. When confronted with the crimes, an older gentleman threatened to assault Huminski for asserting his rights against trespass, the assaulting party is associated with 24556 Kingfish Street and tag # Y59 JMM.

This prosecution and the protective orders it is predicated upon deprive Huminski of public safety services and criminalize the reporting of crime to the only local law enforcement agency with jurisdiction where Huminski resides in Bonita Springs, FL. For filing in both civil and criminal matters. Targeting Huminski for crime with a Circuit Court order that proclaims open season on Huminski is incredible corrupt, violates Due Process, Equal Protection and violates the First Amendment right to report crime to local law enforcement.

Dated at Bonita Springs, Florida this 23rd day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-mm-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

EMERGENCY MOTION FOR PROTECTIVE ORDER AGAINST LCSO ENTRAPMENT SCHEMES

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because he was threatened with arrest at approximately 6:00 p.m. on 9/23/2017 by an LCSO deputy who read the protective order issued in this case and insisted on confronting Huminski concerning his earlier report of trespass and assault where he specifically told 911 that contact with LCSO was prohibited by order of Judge Krier. The LCSO deputy commented that the case was an Arizona case revealing that complex court orders should not be issued when interpretation is left to a deputy. This is the danger of unconstitutionally vague and over-broad restrictions on speech given to law enforcement to interpret with zero tailoring to a governmental interest.

Dated at Bonita Springs, Florida this 23rd day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO VACATE ASSIGNMENT ORDER

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves to vacate the assignment order as follows:

1. This case existed in the Circuit Court and the Circuit Court adminstrative Circuit Court judge had exclusive authority to re-assign this case. The County Court assignment is void.

2. There was no procedural transfer to County Court which would have been accomplished by the State's Attorney dismissing the Circuit Court case and re-filing in County Court. No other "transfer" exists under Florida law.

3. This case was transferred without a recusal filed in the Circuit Court or County Court, the administrative judge had no jurisdiction to transfer a case prior to recusal and no jusidiction to remove a case from the Circuit Court. Any transfer was premature without a valid filing of a recusal.

4. Judge Krier never filed her recusal motion in any Court, it appears that after two months someone in the clerk's office filed the recusal without permission from Judge Krier. Judge Krier was barred by judicial ethics from revisiting the case in September and erroneously filing papers in the County Court. The filing of the Circuit Court arraignment in September is VOID.

5. Judge Krier's recusal was captioned in the Circuit Court, signed in he capacity as a Circuit Court judge and was intended to be filed in Circuit Court as she did not preside over any case in the County Court. Even after a County Court case mysteriously appeared on 6/30/2017, Judge Krier continued to caption her filings in Circuit Court, sign the filings in her capacity as a Circuit Court Judge and file documents in Circuit Court, not County Court.

6. This case falls under the two exceptions to the *collateral bar rule* in that the protective orders require surrender of a constitutional right and the orders are transparently unconstitutional (vague and over broad under the First Amendment) and are not narrow-tailored to a legitimate governmental purpose. As such, Huminski can mount an attack upon the orders as a defense to this case, an activity that is more property pursued in the issuing Court which is why Judge Krier maintained the prosecution in the Circuit Court even after the existence of a case in County Court as she realized the problem with the *collateral bar rule*.

7. The charging document and arraignment are both Circuit Court documents filed in Circuit Court. There exists no valid arraignment or charging document in the County Court.

Dated at Bonita Springs, Florida this 25th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION TO STIKE WAIVER OF ARRAIGNMENT AND PLEA

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves to strike the waiver of arraignment and written plea filed by counsel in this matter as this was done without consulting Huminski, without his knowledge and there has already been an arraignment in this matter which Huminski seeks to attack as invalid and void. Defense counsel conduct directly undermines the welfare and rights of Huminski and was an attempt by defense counsel to invalidate Huminski's defense that the Circuit Court arraignment is invalid and that no valid arraignment exists.

The desire of defense counsel to perfect and legitimize these proceedings was not authorized and is in direct violation of the best interests of Huminski.

Dated at Bonita Springs, Florida this 25th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

WITHDRAWAL OF PLEA AND WAIVER OF ARRAIGNMENT

NOW COMES, Scott Huminski ("Huminski"), and, hereby withdraws his plea and has never authorized co-counsel to waive arraignment or file a plea as there exists no valid charging document in the case. An illegal and faulty plea and arraignment took place before Judge Krier and the public defender was present on 6/29/2017 and will be under attack in this matter and any appeal.

Huminski strongly opposes the faulty, false and prejudicial filing of a second plea and waiver of a second arraignment. Faulty arraignment and charging information is one of Huminski's planned defenses to this matter and the conduct of defense counsel sabotaged Huminski's defense. Also a defense of Huminski is the illegal assignment order to County Court without the filing of the recusal order of Judge Krier. Had Judge Krier filed her recusal, the Circuit Court administrative judge would have ruled on a new assignment to Circuit Court. This case is procedurally infirm.

Dated at Bonita Springs, Florida this 25th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO. ~~18-MM-815-~~
	)	17-MM-000815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY KEVIN SARLO

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves to disqualify Kevin Sarlo, esq. because he has advised Huminski to violate Sheriff Scott's protective order concerning contact and communication with the LCSO. Advising Huminski to engage in crimes, and the very same alleged crime that is this prosecution is based upon, is contrary to the interests of the defendant.

Huminski was ejected from the courthouse at the last hearing in the case because he refused to violate the protective orders of Sheriff Scott and ordered by Judge Krier. Contact with the LCSO at security screening or in the courtroom is forbidden under the plain language of the protective order which contains zero language narrowly-tailoring the order as required by the First Amendment and Due Process.

Advising Huminski to engage in the very same crime alleged by the State is negligent and ineffective assistance of counsel.

Dated at Bonita Springs, Florida this 26th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 26th day of September, 2017 to all parties.

-/s/- Scott Huminski

_____

Scott Huminski

KS/ZV

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA CASE NO. 17-MM-000815 (JRA)

vs.

SCOTT ALAN HUMINSKI

_____/

CERTIFICATION OF CONFLICT

COMES NOW, Kathleen A. Smith, Public Defender, and pursuant to Valle v. State, 763 So.2d 1175 (Fla. 4th DCA 2000) and certifies to this Honorable Court the following:

The Public Defender has been appointed to represent the Defendant, Scott Alan Huminski.

After a careful investigation and weighing of the facts of this case, the Public Defender has conclusively determined that the interests of Scott Alan Huminski are so adverse and hostile to those of another client and/or an attorney within the Office of the Public Defender that a conflict of interest exists.

As a result of this conflict of interest, the Public Defender cannot adequately or ethically continue to represent the Defendant.

WHEREFORE, the Public Defender certifies to this Honorable Court that the Office of the Public Defender can no longer represent the Defendant due to this conflict of interest and requests that a Regional Counsel be appointed pursuant to 27.53(3), Florida Statutes (1995) and Babb v. Edwards, 412 So.2d 859 (Fla. 1982).

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; this 27th day of September, 2017.

KATHLEEN A. SMITH
Public Defender
2000 Main Street
Fort Myers, FL 33902-1980
(239) 533-2911

By: _____
Of Counsel - Kevin John Sarlo
Florida Bar No. 0126369

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION FOR ORDER TO CLERK TO MAKE ALL DOCUMENTS FILED IN THIS CASE PUBLIC

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above because he has no access to documents filed in this case listed as "VOR". He requested copies of various documents from the public defender and his request was denied. These documents should be made available to Huminski and the public under Fla. Stat. sec. 119.01 et. seq.

Dated at Bonita Springs, Florida this 27th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	**Correct Case # 17-MM-815**
PLAINTIFF	)	
v.	)	DOCKET NO. ~~18-MM-815~~
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

EMERGENCY MOTION TO SCHEDULE MOTIONS HEARING and TO FORWARD FELONY OBSTRUCTION OF JUSTICE BY LCSO TO FDLE

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves for a hearing on all pending motions including the one's stricken by the Court as the judicial assistant has refused to respond to Huminski's request for hearing, Huminski must now move for a hearing in writing.

Huminski also notes that he was ejected from the last hearing in this matter after he obeyed the protective order that forms the basis for this case and refused to speak with LCSO as set forth in the protective order. A LCSO deputy then ordered him out of the courtroom. Huminski also runs afoul of the Sheriff Scott's protective order when confronted by security screeners at the courthouse. Venue must be changed to allow these matters to proceed in compliance with substantive and procedural Due Process and the First Amendment. This matter should proceed without the looming threats of consequences from the Sheriff.

Huminski's counsel has advised him to violate the protective order and face more criminal proceedings. This is unacceptable, unwise and unlawful. Intervention by the Court is needed to revive this floundering case whereby Huminski's own counsel refuses to set up depositions with LCSO's Brian Allen and the United States Postal Inspection Service, Mark Cavic and refused to subpoena documents from the same organizations/persons related to interstate terrorist death threats received in the U.S. Mails by Huminski which are the basis for his self-defense, duress and necessity defenses.

Dated at Bonita Springs, Florida this 26th day of September 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

KS/ZV

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA CASE NO. 17-MM-000815 (JRA)

vs.

SCOTT ALAN HUMINSKI

_____/

ORDER ALLOWING PUBLIC DEFENDER TO WITHDRAW AS COUNSEL BASED UPON CONFLICT OF INTEREST AND APPOINTMENT OF REGIONAL COUNSEL

THIS CAUSE having come on to be heard on the Public Defender's Certification of Conflict and the Court being duly advised in the premises, it is hereby:

ORDERED AND ADJUDGED as follows:

1. That the Public Defender's Certification of Conflict is granted.

That Office of Regional Conflict Counsel, whose business address is 2101 McGregor Boulevard, Fort Myers, FL 33901, (239) 208-6925, is hereby appointed as Counsel for the Defendant in this cause.

2. Defendant is to call and make an appointment with the Office of Regional Conflict Counsel at (239) 208-6925 within 7 days of this order.

DONE AND ORDERED this 29 day of September, 2017.

James R. Adams
Judge of the County Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; to the Honorable Kathleen A. Smith, Public Defender, P. O. Drawer 1980, Fort Myers, Florida 33902-1980; to the Justice Administrative Commission, Post Office Box 1654, Tallahassee, Florida 32302; to the Regional Counsel Office, 2000 West Main Street, Suite 500, Fort Myers, FL 33901; and to the Defendant (C/O: 24544 Kingfish Street, Bonita Springs, FL 34134) this 29th day of September, 2017.

Linda Doggett
Clerk of the County Court

By: J Garcia
Deputy Clerk

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE PRE-TRIAL ORDER and PROTECTIVE ORDERS AS UNCONSTITUTIONAL per STIPULATION

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves to vacate and/or to strike the pre-trial order and the charging orders of 4/20/2017 ("Protective Orders") that form the basis of this prosecution because they are patently unconstitutional as follows:

1. The stipulation and order of 9/22/2017 recognizes that the pre-trial order trespassed upon bedrock constitutional rights enumerated below.

2. The pre-trial order and Protective Orders violated Huminski's First Amendment right to report crime to the LCSO.

3. The pre-trial order and Protective Orders, even after stipulation, violate Huminski's core protected political speech to criticize the sheriff.

4. The pre-trial order and Protective Orders violated Huminski's First Amendment right to attend courthouse proceedings. See **Huminski v. Corsones, 396 F.3d 53 (2d Cir. 2005)**

5. The pre-trial order and Protective Orders violated Huminski's Due Process rights to attend his own court hearings and interfere with his meaningful participation of his own defense.

6. The pre-trial order and Protective Orders violated Huminski's rights to public safety in violation of equal protection and enforcement of the laws.

7. The pre-trial and Protective Orders are unconstitutionally vague under the First Amendment.

8. The pre-trial and Protective Orders are unconstitutionally over-broad and not narrowly-tailored as mandated by the First Amendment. The Protective Orders contain zero tailoring to a legitimate government purpose.

9. The stipulation and order that addressed some of the aforementioned constitutional transgressions did not address the Protective Orders which are **more** violative of the First Amendment, Due Process and Equal Protection and Enforcement of the laws than the pre-trial order.

10. The stipulation constitutes an admission by parties, approved by the Court, that the pre-trial orders and their sweepingly over-broad predecessor, the Protective Orders, require surrender of constitutional rights and are transparently unconstitutional and over-broad. This constitutes defenses to this matter under two exceptions to the *collateral bar rule*.

11. The Protective Orders prevented the service of removal papers and motions filed in bankruptcy court upon the Sheriff and Scribd, Inc. The orders constitute ongoing obstruction of justice and undermine Title 11 of the United States Code and the federal bankruptcy rules which mandated that the sheriff and Scribd, Inc. should have been served. The protective orders violate the Supremacy Clause as they obstruct and interfere with federal law and have obstructed Huminski's ability to comply with federal law and interfered with Due Process notice concerning the sheriff and scribd's right to notice in federal court proceedings.

Dated at Bonita Springs, Florida this 2nd day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE STATE OF FLORIDA
IN AND FOR LEE COUNTY

STATE OF FLORIDA

vs. CASE NO. 2017-MM-815

Scott Alan Huminski
_____/

NOTICE OF APPEARANCE, WAIVER OF ARRAIGNMENT, WRITTEN PLEA OF NOT GUILTY, AND DEMAND FOR DISCOVERY

COMES NOW, Zachary P Miller, Office of Criminal Conflict and Civil Regional Counsel, and hereby enters an appearance on behalf of Scott Alan Huminski.

WAVIER OF ARRAIGNMENT. The Defendant, by and through the undersigned attorney, hereby waives the arraignment and requests a jury trial in the above styled action.

WRITTEN PLEA OF NOT GUILTY. The Defendant enters a written plea of Not Guilty pursuant to Rules 3.160(a) and 3.170(a), Fla.R.Crim.P.

DEMAND FOR DISCOVERY. The Defendant demands discovery pursuant to Rule 3.220, Fla.R.Crim.P.

I HEREBY CERTIFY that the original of the foregoing has been furnished to the parties listed below on 10/03/2017:

Office of the State Attorney

/s/ Zachary Miller

Zachary Miller, FL Bar No.118339
Office of Criminal Conflict & Civil Regional Counsel
2101 McGregor Blvd Ste 101
Fort Myers, FL 33901
(239) 208-6925
zmiller@flrc2.org

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

WITHDRAWAL OF WAIVER OF ARRAIGNMENT AND PLEA

NOW COMES, Scott Huminski ("Huminski"), and, hereby withdraws the waiver of arraignment and plea as that hearing occurred before Judge Krier on 6/29/2017. Problems with the arraignment and plea of 6/29/2017 are under direct attack in this case. Huminski was never consulted by counsel concerning the waiver of arraignment and plea and he opposes this strategy as not in his best interests and hereby withdraws the aformentioned.

Dated at Bonita Springs, Florida this 3rd day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

17-MM-815

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, October 3, 2017 5:28 PM
To: zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org
Subject: Re: State v. Huminski 17-MM-815

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, October 3, 2017 11:54 AM
To: zmiller@flrc2.org
Subject: State v. Huminski

Do not waive arraignment. Arraignment took place before judge krier on june 29. The case was removed to U.S. bankruptcy court on june 26 and remanded back to state court on Aug 4.

The arraignment is Void Ab Initio as are all acts of Krier while the case was in federal court for a little over a month, late june to early august. The County Court case was initiated on June 30 by mystically appearing on the docket while the matter was removed to fed court. The initiation ("transfer")of the case is void ab initio. No such thing as a transfer without the participation of the state's attorney.

If we can not get the protective orders amended to comply with my rights to attend court proceedings and other First Amendment rights, we can File a Petition for writ of mandamus/prohibition in the appellate court and request a stay while the district court of appeals considers the writ. The case can not move forward while the protective orders forbidding contact with LCSO and thus attendance at court proceedings are pending. -- scott huminski

Thanks -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, October 3, 2017 11:30 AM
To: zmiller@flrc2.org
Subject: State v. Huminski

Hi
I assume you are defense counsel on this case. Please request a hearing for the motions filed today and yesterday. Assert my notice of pendency in Circuit Court in support of this as well. see attached thanks

There are loads of jurisdictional / procedural issues with this case.

It was transferred from Circuit Court to County Court. No legal mechanism exists in FL to "transfer" cases between courts. The State needed to dismiss the Circuit Case and re-file in County Court, if that is where they wished to proceed.

Pursuant to the April Protective Orders of Judge Krier, I am not to have contact or communication with the LCSO. I can't legally go thru the security screening or speak to any deputies in the courthouse. I was ejected from the last hearing for refusing to speak with LCSO to comply with Krier's no contact order.

Judge Adams already ordered the pre trial order of Krier amended to comply with the First Amendment/Due Process. We need the Protective Orders modified as well to allow my access to the courts without threats of arrest. Everybody and the judge agreed the pre trial order was patently over-broad, the protective orders are worse, zero narrowly-tailored.

The courthouse banishment that was ordered by Krier is similar to my case

See **Huminski v. Corsones**, 396 F.3d 53 (2d Cir. **2005**) **-- scott huminski**

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	Correct Case # 17-MM-815
v.	)	DOCKET NO. ~~18-MM-815~~
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE RECUSAL ORDER AS ILLEGITIMATE

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves to vacate the recusal order of Judge Krier as follows:

1. On 8/1/2017 two orders were authored by Judge Krier for a civil case and a criminal case both pending BEFORE THE CIRCUIT COURT; 17-CA-421 & 17-MM-815.

2. Attached hereto as Exhibit "A" is a true and correct copy memorializing the filing of the original recusal order in 17-CA-421 on 8/2/2017. This filing is legitimate and proper in all respects, the same is not true about the jurisdiction-ally convoluted 17–MM-815.

3. The recusal order in 17-MM-815 was never filed in the CIRCUIT COURT and the original fails to exist.

4. In late September a copy, **not the original**, of the recusal order in 17-MM-815 mysteriously appeared on the docket in COUNTY COURT and it is clearly marked as a copy and not filed on August 2nd like Exhibit "A" but back-dated and allegedly filed on 8/14/2017 and the original is lost.

5. Every paper authored by Judge Krier in the aforementioned two cases was captioned in the CIRCUIT COURT, signed by Judge Krier in her capacity as a CIRCUIT COURT judge and filed in the CIRCUIT COURT, except for the lost recusal order.

6. Similarly, Judge Krier's order to show cause dated 6/5/2017 and filed in CIRCUIT COURT also mysteriously appeared in the COUNTY COURT on 6/30/2017 when the document was always clearly a CIRCUIT COURT charging instrument; captioned in the Circuit Court, filed in the Circuit Court and authored by Judge Krier in her Circuit Court capacity and filed on the same day it was authored in the CIRCUIT COURT.

7. The COUNTY COURT criminal case also mysteriously appeared and was initiated on the Docket on 6/30/2017 with a mysterious re-filing of the CIRCUIT COURT show cause order dated 6/5/2017. Only the State's Attorney can initiate a new case in the COUNTY COURT.

8. Huminski searched Florida authority and found none that would support the ping-pong filing of duplicitous copies of documents in various State Courts without direction of the parties. The State's Attorney, not some novel acts of the court clerk, had the power to dismiss the Circuit Court case and re-file in County Court. However, this would violate the intentions of Judge Krier who treated all the aforementioned matters as CIRCUIT COURT cases.

9. Huminski searched all authority in Florida and found no cases whereby judicial orders were not filed on the same day of authoring or within a few days later. The fast and loose treatment of court filings in this matter is unprecedented. The transfer procedure mentioned in the minutes of the 6/29/2017 hearing does not exist in Florida. This is why filings mysteriously appeared without any acts of the Plaintiff. How and where to prosecute this matter is a right reserved exclusively for the Plaintiff, the State's Attorney, not court personnel.

Dated at Bonita Springs, Florida this 3rd day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 3rd day of October, 2017 to all parties.

-/s/- Scott Huminski

_____

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

SCOTT HUMINSKI

Plaintiff

CASE NO: 17-CA-421

vs.

TOWN OF GILBERT, AZ, et al

Defendant

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski, pro se Plaintiff at s_huminski@live.com
Kenneth R. Drake, attorney for Scribd, Inc at kendrake@dldlawyers.com; dweiss@dldlawyers.com
S. Douglas Knox & Keely Morton, attorneys for City of Glendale at douglas.knox@quarles.com; keely.morton@quarles.com; docketfl@quarles.com
Robert D. Pritt & James D. Fox, attorneys for City of Surprise AZ at serve.rpritt@ralaw.com; jfox@ralaw.com; serve.jfox@ralaw.com
Robert C. Sherman, attorneys for Lee County Sheriff at Robert.shearman@henlaw.com; Courtney.ward@henlaw.com

(31) 8/4/17

COURT ADMINISTRATION

17-MM-815

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, October 4, 2017 9:46 AM
To: zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; scott.huminski@gmail.com
Subject: Re: State v. Huminski 17-MM-815

Hi Zach,

We need a motions hearing scheduled as I pointed out in prior emails.

This case was never properly transferred to County Court. This is the defense position. Please draft any papers to reflect this procedural flaw. All my papers are correctly captioned in the Circuit Court. After the arraignment of 6/29 where it was discussed that the matter needed to be transferred to criminal, the State's Attorney did nothing to legally accomplish this task. Nothing was transferred in a legal manner, the clerk sua sponte filing papers in various court matters without directions from the plaintiff far exceed the duties of court clerks. Clerks can not initiate criminal cases by simply shuffling around court filings without proper filings from the state's attorney.

As Judge Krier admits the 6/29 hearing (see minutes) was civil, that arraignment is VOID AB INITIO as the matter was removed from state court to federal court.

THERE EXISTS NO PROCEDURALLY VALID CASE IN COUNTY COURT. THIS IS THE DEFENSE POSITION. -- scott huminski

17-MM-815

From: scott huminski on behalf of scott huminski <scott.huminski@gmail.com>
Sent: Thursday, October 5, 2017 7:35 AM
To: zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org
Subject: State v. Huminski 17-MM-815 - Schedule Motions hearing

Z. Miller,
Please schedule a motions hearing as specified in my emails ASAP. Time is of the essence. We have a great deal of procedural and jurisdictional issues to present. Waste of time can prejudice me by; loss of evidence, dimming of memories and other factors that weigh against unnecessary delay that prejudices the defense. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, October 4, 2017 9:46 AM
To: zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; scott.huminski@gmail.com
Subject: Re: State v. Huminski 17-MM-815

Hi Zach,

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THERE EXISTS NO PROCEDURALLY VALID CASE IN COUNTY COURT. THIS IS THE DEFENSE POSITION. -- scott huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

DEMAND FOR JURY TRIAL

NOW COMES, Scott Huminski ("Huminski"), and, notifies of his jury trial demand.

Dated at Bonita Springs, Florida this 5th day of October, 2017.

-/S/- Scott Huminski

_____

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the courts efiling system on this 5th day of October, 2017 to all parties.

-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – DEFENSE COUNSEL REFUSES TO PARTICIPATE

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss this case as his defense counsel Z. Miller, esq. refuses to communicate with Huminski violating his right to counsel. This prosecution is unconstitutional and void absent participation of defense counsel.

Dated at Bonita Springs, Florida this 6th day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the courts efiling system on this 6th day of October, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – OBSTRUCTIVE PROTECTIVE ORDERS – WITNESS INTIMIDATION AND TAMPERING

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss this case as the April protective orders that this case is predicated upon forbid Huminski's attendance at court hearings in this matter and forbid his participation in the depositions of B. Allen and Sheriff Scott of the LCSO, violating the First Amendment and Due Process.

The protective orders, forbidding any contact or communication with the LCSO without exception constitute Obstruction of Justice, witness tampering and witness intimidation with regard to Huminski's participation in this case. This is why all federal and state authority demand that restrictions on speech can not be vague or over-broad. The wisdom of the Bill of Rights and interpreting State and Federal case law recognize the depraved "police state" conditions that sprout from reckless sweeping deprivations related to the First Amendment and Due Process that can be the result of reckless and draconian judicial restrictions on core rights. In this instance the wildly sweeping protective orders are clearly criminal with regard to this case initiated by Judge Krier.

Judge Krier's recusal from all cases concerning Huminski because of improper judicial bias, animus and hatred clearly explain the war Judge Krier declared upon the Bill of Rights with regard to Huminski. Huminski would testify in this matter if it was not made a crime by the criminal threats of Judge Krier. Court orders obstructing this matter demand dismissal.

As explained above, the protective orders are criminal and motivated by the criminal intent of Judge Krier. This case can not proceed with the crimes of Judge Krier influencing the outcome. As well as the aforementioned State crimes, the protective orders are criminal

violations of civil rights statutes under Title 18 of the United States Code and the obvious plethora of State crimes. Huminski is being prosecuted for allegedly violating orders that are crimes in themselves. Judicial orders issued by a judge that clearly was on the warpath that are criminal do not require respect or adherence under exceptions to the *collateral bar rule*.

Dated at Bonita Springs, Florida this 6th day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the courts efiling system on this 6th day of October, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE STATE OF FLORIDA
IN AND FOR LEE COUNTY

STATE OF FLORIDA

vs. CASE NO. 2017-MM-815

Scott Alan Huminski
_____/

NOTICE OF APPEARANCE, WAIVER OF ARRAIGNMENT, WRITTEN PLEA OF NOT GUILTY, AND DEMAND FOR DISCOVERY

COMES NOW, Zachary P Miller, Office of Criminal Conflict and Civil Regional Counsel, and hereby enters an appearance on behalf of Scott Alan Huminski.

WAVIER OF ARRAIGNMENT. The Defendant, by and through the undersigned attorney, hereby waives the arraignment and requests a jury trial in the above styled action.

WRITTEN PLEA OF NOT GUILTY. The Defendant enters a written plea of Not Guilty pursuant to Rules 3.160(a) and 3.170(a), Fla.R.Crim.P.

DEMAND FOR DISCOVERY. The Defendant demands discovery pursuant to Rule 3.220, Fla.R.Crim.P.

I HEREBY CERTIFY that the original of the foregoing has been furnished to the parties listed below on 10/03/2017:

Office of the State Attorney

/s/ Zachary Miller

Zachary Miller, FL Bar No.118339
Office of Criminal Conflict & Civil Regional Counsel
2101 McGregor Blvd Ste 101
Fort Myers, FL 33901
(239) 208-6925
zmiller@flrc2.org

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

WITHDRAWAL OF WAIVER OF ARRAIGNMENT AND PLEA and Appearance as pro se co-counsel

NOW COMES, Scott Huminski ("Huminski"), and, hereby withdraws the waiver of arraignment and plea as that hearing occurred before Judge Krier on 6/29/2017. Problems with the arraignment and plea of 6/29/2017 are under direct attack in this case. Huminski was never consulted by counsel concerning the waiver of arraignment and plea and he opposes this strategy as not in his best interests and hereby withdraws the aforementioned.

The waiver of arraignment and plea filed on 11/9/2017 is hereby withdrawn as are any waivers and pleas except those originating at the arraignment and plea hearing of 6/29/2017. Huminski notes his appearance as pro se co-counsel.

Dated at Bonita Springs, Florida this 9th day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 9th day of October, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS FOR WANT OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves to dismiss as the looming arrest threats emanating from Sheriff Scott's protective order deny Huminski procedural and substantive Due Process as the looming threats criminalize Huminski's attendance at court hearings and prohibit the deposition of Sheriff Scott and other LCSO employees critical to Huminski's defenses of duress, necessity and self-defense to the murder scheme pending.

Attached hereto is Huminski's complaint to Florida's commission on ethics which Huminski asserts in support of dismissal. The ethics complaint also exists at,

http://web.archive.org/web/20171014141949/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/merged-ethics-sheriff-w-attach-notarized.pdf

Dated at Bonita Springs, Florida this 14th day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 14th day of October, 2017 to all parties.

-/s/- Scott Huminski

_____

Scott Huminski

Florida Commission on Ethics

P. O. Drawer 15709, Tallahassee, Florida 32317-5709
"A Public Office is a Public Trust"

COMPLAINT

1. PERSON BRINGING COMPLAINT:

Name: Scott Huminski Telephone Number: 239 300-6656

Address: 24544 Kingfish Street

City: Bonita Springs County: Lee State: FL Zip Code: 34134

2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

Use a separate complaint form for each person you wish to complain against:

Name: Sheriff Mike Scott Telephone Number: 239 477-1000

Address: 14750 Six Mile Cypress Hwy.

City: Fort Myers County: FL Zip Code: 33912

Title of office or position held or sought: Sheriff

3. STATEMENT OF FACTS:

Please provide a full explanation of your complaint, describing the facts and the actions of the person named above and why you believe he or she violated the law. Include relevant dates and the names and addresses of persons whom you believe may be witnesses. Please do not submit more than 15 pages, including this form. Please do not submit video or audio tapes, CDs, DVDs, flash drives or other electronic media; such material will not be considered part of the complaint and will be returned.

4. OATH

HARMONY J. MULLINS
Notary Public - State of Florida
Commission # GG 047913
My Comm. Expires Nov 15, 2020

I, the person bringing this complaint, do swear or affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief.

SIGNATURE OF COMPLAINANT

STATE OF Florida

COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 13th day of October, 20 17, by Scott Huminski.

(name of person making statement)

(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ✓ OR Produced Identification ___

Type of Identification Produced: _____

CE FORM 50—Effective January 9, 2017
Incorporated by reference in Rule 34-7.010(1)(b), F.A.C.

ETHICS COMPLAINT LEE SHERIFF MIKE SCOTT
ABUSE OF POWER
CRIMINAL OBSTRUCTION OF JUSTICE/WITNESS TAMPERING/INTIMIDATION
REFUSAL TO PROVIDE PUBLIC SAFETY SERVICES

Complainant: Scott Huminski
Respondent: Sheriff Mike Scott, LCSO 10/13/2017

Scott Huminski is a citizen-reporter and activist residing in Bonita Springs, Florida. See Generally, Huminski v. Corsones, 396 F.3d 53 (2d Cir. 2005). His writings criticize Sheriff Mike Scott and Huminski had emailed his writings to prospective candidates for Sheriff who are LCSO employees and likely to run for office as is the custom for sheriff candidates in Florida (to be deputies prior to seeking office). The Sheriff silenced criticism of himself by requesting and obtaining a gag order concerning Huminski's reportage to political opponents of the Sheriff. An abuse of power to wrongfully gain advantage in his political goals.

Sheriff Scott chose to silence Huminski's criticism and to deny Huminski of all public safety services in retaliation for Huminski's core protected political speech. Sheriff Scott applied for a court protective order which forbids "contact and communication" with the Sheriff and all employees of the LCSO. The Sheriff's request for a protective order was granted by Judge Krier in April, 2017. See attached. Huminski can not report a crime to the only police agency with jurisdiction in Bonita Springs. This is evidenced in 911 tapes on 9/23 and 9/24 when Huminski was the victim of property crimes and assault. Withholding service is another technique of the Sheriff to retaliate against his critics for political gain.

The protective order crafted by the Sheriff is absolute and has zero exemptions to its sweeping effectiveness, silencing critic Huminski and denying him public safety services.

Huminski is a witness in matters pending before the Circuit and County courts in Fort Myers. The Sheriff's protective order forbids Huminski's participation in court matters as Huminski must contact and interact with security screeners that are LCSO employees and courthouse deputies stationed at the courtrooms. Sheriff Scott's obtaining a protective order prohibiting Huminski's participation as a witness constitutes criminal obstruction of justice, witness intimidation and witness tampering. Huminski is prohibited from attending hearings that he is a party to - also obstruction of justice. These crimes under State and Federal law are related to corrupt manipulation of the courts by the Sheriff to advance his political agenda and gain advantage in elections.

Silencing dissent to fix elections and further political ambitions is conduct typical of unethical conduct usually associated with a police state.

Sheriff Scott was served by the federal court with a Notice of Commencement of Bankruptcy on or about 4/30/2017, In Re: Scott Huminski, and his status as "pro se" in the case was noticed by the federal court.

The conduct of Sheriff Scott constitutes criminal obstruction of justice, witness intimidation and tampering in violation of State and Federal criminal codes. Specifically, the order obtained by Sheriff Scott forbade service of the Sheriff in a matter pending before the U.S. Bankruptcy Court and specified by Bankruptcy Rule 9027. Sheriff Scott was listed as "pro se" in the bankruptcy proceedings. Under Rule 9027, Huminski was mandated to serve the Sheriff with federal removal papers. Because of the

Sheriff's protective order, Huminski's service of the Sheriff under federal court rules was criminally obstructed by the shield erected by the Sheriff set forth in his protective order. Sheriff Scott's order makes him litigation-proof to further his political ambitions and at the same time excludes Huminski from the Lee County Courthouse regarding matters not related to the Sheriff and those related to the Sheriff.

Huminski and the 20th Circuit State's Attorney stipulated to narrowly-tailor another order of Judge Krier that was not requested by Sheriff Scott although it did contain the same draconian terms as the Sheriff's protective order and Chief County Judge Hon. James Adams signed that order. The identical order requested by Sheriff Scott still exists and is active per order of Sheriff Scott. See Attached.

Access to public safety for Huminski constitutes the crime of criminal contempt, a charge Huminski is facing at this time for merely reporting crime to the LCSO and Sheriff Scott. Being charged with a crime for simply reporting a crime to Sheriff Scott exemplifies the complete denial of public safety services engineered by the Sheriff.

The Sheriff's desire to undermine federal Bankruptcy law with knowledge of a matter pending where he was listed as pro se constitutes clear intent to obstruct federal law and federal court proceedings. A State Sheriff can not endeavor to undermine laws and court rules enacted by the United States congress. This is not only abuse of power, in the context of Huminski's Bankrupcty case, it is criminal. Huminski also filed 2 motions for orders to show cause against the Sheriff in bankruptcy court whereby service upon Sheriff Scott was obstructed by his protective orders.

The threats of arrest/prosecution embodied in the Sheriff's protective order obstructs and prevents Huminski from meaningful participation in cases he has pending in Circuit Court and County Court in Lee County. This interference, intimidation, tampering and obstruction by Sheriff Scott is criminal.

The abuse of the power of his office to make himself litigation-proof is an item of great pecuniary value. Leverage of his position to influence the courts to enter rulings of great monetary value to the Sheriff is an abuse of power. Denial of public safety services to Huminski in retaliation for criticism is similarly corrupt.

Submitted by Scott Huminski.

Attachments:
Protective Order
Bankruptcy Commencement and Service by Court
Bankruptcy Rule 9027
Stipulation and order

Rule 9027. Removal

(a) NOTICE OF REMOVAL.

(1) Where Filed; Form and Content. A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings.

(2) Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code. If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under §362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

(3) Time for filing; civil action initiated after commencement of the case under the Code. If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

(b) NOTICE. Promptly after filing the notice of removal, the party filing the notice shall serve a copy of it on all parties to the removed claim or cause of action.

(c) FILING IN NON-BANKRUPTCY COURT. Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.

(d) REMAND. A motion for remand of the removed claim or cause of action shall be governed by Rule 9014 and served on the parties to the removed claim or cause of action.

(e) PROCEDURE AFTER REMOVAL.

(1) After removal of a claim or cause of action to a district court the district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.

(2) The district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may require the party filing the notice of removal to file with the clerk

copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.

(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.

(f) PROCESS AFTER REMOVAL. If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued pursuant to Part VII of these rules. This subdivision shall not deprive any defendant on whom process is served after removal of the defendant's right to move to remand the case.

(g) APPLICABILITY OF PART VII. The rules of Part VII apply to a claim or cause of action removed to a district court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within 21 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 21 days following the service of summons on such initial pleading, or within seven days following the filing of the notice of removal, whichever period is longest.

(h) RECORD SUPPLIED. When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in the removed civil action or proceeding, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be had in the court, and all process awarded, as if certified copies had been filed.

(i) ATTACHMENT OR SEQUESTRATION; SECURITIES. When a claim or cause of action is removed to a district court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the court.

KS/SK

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA CASE NO. 17-MM-000815 JRA

vs.

SCOTT ALAN HUMINSKI

_____/

STIPULATED MOTION TO MODIFY CONDITIONS OF PRETRIAL RELEASE

COMES NOW, the Defendant, by and through the Office of the Public Defender, and the State Attorney and jointly stipulate that the Defendant's pretrial release conditions be modified, and states the following as grounds:

1. On June 29, 2017, Mr. Huminski was placed on pretrial supervision as part of indirect criminal contempt proceedings.
2. Mr. Huminski's conditions included (but were not limited to) no contact with the Lee County Sherriff's Office "except through their legal counsel, unless said contact is initiated by the Sherriff's Office, such as if SCOTT HUMINSKI is arrested or stopped for a traffic violation." Order on Arraignment, dated July 7, 2017.
3. The Lee County Sherriff's Office provides security for the Lee County Justice Center and is the default law enforcement agency in the City of Bonita Springs, where Mr. Huminski lives.
4. Mr. Huminski's conditions should be modified so that he shall not have any contact with the Lee County Sherriff's Office except through their legal counsel unless said contact:
    a. is initiated by the Sherriff's Office, such as if Mr. Huminski is arrested or stopped for a traffic violation;
    b. is made in the process of attending and participating in court dates for his criminal case; or
    c. is necessary to report a crime or other emergency normally referred to the Lee County Sherriff's Office.

DATED this 20th day of September, 2017.

STEPHEN B. RUSSELL
State Attorney

Anthony W. Kunasek
Assistant State Attorney
Florida Bar No. 0026999

KATHLEEN A. SMITH
Public Defender

Kevin John Sarlo
Assistant Public Defender
Florida Bar No. 0126369

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; to the Honorable Kathleen A. Smith, Public Defender, P. O. Drawer 1980; to Scott Huminski, 24544 Kingfish Street, Bonita Springs, FL 34134 dated this 22nd day of September, 2017.

Linda Doggett
Clerk of the County Court

By: _____
Deputy Clerk

KS/SK

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA CASE NO. 17-MM-000815 (JRA)

vs.

SCOTT ALAN HUMINSKI

_____/

ORDER

THIS CAUSE having come for consideration upon the Stipulation between Defense counsel and State Attorney and the Court being duly advised in the premises, it is thereupon:

ORDERED AND ADJUDGED that the Stipulated Motion to Modify Conditions of Pretrial Release is hereby:

✓ GRANTED

_____ DENIED

DONE AND ORDERED, this 22 day of September, 2017.

James R. Adams
Judge of the County Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; to the Honorable Kathleen A. Smith, Public Defender, Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida; to Scott Huminski, 24544 Kingfish Street, Bonita Springs, FL 34134 dated this 22nd day of September, 2017.

Linda Doggett
Clerk of the County Court

By: J. Macia
Deputy Clerk

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

SCOTT HUMINSKI,

Plaintiff,

v. CASE NO. 17-CA-000421

TOWN OF GILBERT, AZ, et al.

Defendants.
_____/

ORDER ON DEFENDANT MIKE SCOTT'S MOTION TO DISMISS AND MOTION FOR PROTECTIVE ORDER

This matter having come before the Court on the following motions from Defendant Mike Scott, as Sheriff of Lee County (i) Motion to Dismiss, and (ii) Motion to prohibit Plaintiff from Directly Contacting, Communicating With, or Otherwise Serving Materials Directly upon Sheriff Scott, his Agents Servants and Employees, and the Court having reviewed the file, considered the arguments of all parties present, and being otherwise advised of the governing law, it is

ORDERED AND ADJUDGED as follows:

1. Defendant Mike Scott's Motion to prohibit Plaintiff from Directly Contacting, Communicating With, or Otherwise Serving Materials Directly upon Sheriff Scott, his Agents Servants and Employees is GRANTED.

2. Plaintiff shall directed all pertinent correspondence, communications, and/or pleadings involving this case solely to counsel for Defendant Mike Scott.

3. Defendant Mike Scott's Motion to Dismiss is GRANTED without prejudice.

4. Plaintiff's complaint fails to comply with Fla. R. Civ. P. 1.110(b)(2), which requires that a pleading "contain . . . a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." Id.

5. Plaintiff's complaint starts with a nearly incoherent diatribe of facts regarding death threats and a purported murder. Sprinkled amongst these paragraphs are references to public records requests, physical abuse, and alleged "human rights deprivations." These confusing and conclusory allegations fall far below Florida's pleading requirements. See Horowitz v. Laske, 855 So. 2d 169, 173 (Fla. 5th DCA 2003) ("[A]t the outset of a suit, litigants must state their pleadings with sufficient particularity for a defense to be prepared." (citation omitted)).

6. As pled, the complaint deprives Defendant Mike Scott of an opportunity to properly answer or prepare a defense. See Dawson v. Blue Cross Ass'n, 293 So. 2d 90, 92 (Fla. 1st DCA 1974) ("The allegations must, of course, be sufficient to inform the defendant of the nature of the cause against him.").

7. The Court further finds that Plaintiff is a vexatious litigant under Fla. Stat. § 68.093 based upon the numerous frivolous lawsuits Plaintiff has filed in Florida and elsewhere, of which this Court took judicial Notice, and the Court therefore orders that any further pleading Plaintiff files in this case shall be signed by a licensed attorney representing the Plaintiff.

8. As part of the Court's ruling that Plaintiff is a vexatious litigant, it takes judicial notice of the numerous court cases cited in the parties' papers, which include: Huminski v. State of Vermont, Md. Fla. Case No. 2:13-cv-692; Huminski v. State of Vermont, S.D. Fla. Case No. 1:13-cv-23099; and Huminski v. Connecticut, D. Conn. Case No. 3:14-cv-1390.

9. Plaintiff is granted 45 days to file an amended complaint in this matter, and consistent with the Court's rule that he is a vexatious litigant, any amended complaint must be signed by a licensed attorney.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 19 day of April, 2017.

The Honorable Elizabeth K. Krier
Circuit Court Judge

Copies furnished to:

All counsel of record

Scott Huminski
24544 Kingfish Street
Bonita Springs, FL 34134
Pro se Plaintiff
s_huminski@live.com

4/19/17

United States Bankruptcy Court
Middle District of Florida

In re:
Scott Alan Huminski
Debtor

Case No. 17-03658-FMD
Chapter 7

CERTIFICATE OF NOTICE

District/off: 113A-9 User: hjeff Page 1 of 1 Date Rcvd: Apr 28, 2017
Form ID: 309A Total Noticed: 12

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Apr 30, 2017.

db +Scott Alan Huminski, 24544 Kingfish Street, Bonita Springs, FL 34134-7112
26901917 ++BANKRUPTCY CLERK TAX DIVISION, CITY OF PHOENIX TAX DIVISION, 251 W WASHINGTON ST 3RD FL, PHOENIX AZ 85003-2245
(address filed with court: City of Phoenix, 200 Washington St, Phoenix, AZ 85003)
26901916 +City of Glendale, 5850 Glendale Ave, Glendale, AZ 85301-2599
26901918 +City of Surprise, 16000 N Civic Center Plaza, Surprise, AZ 85374-7470
26901923 +Dana Huminski, 24544 Kingfish St, Bonita Springs, FL 34134-7112
26901915 +Johnsoton Spinal Care, 10651 Tamiami Trail, North Naples, FL 34108-1915
26901919 +Scribd Inc, dba Scribd.com, 333 Bush St 2400, San Francisco, CA 94104-2806
26901920 +Sheriff Mike Scott/Lee County FL, 14750 Six Mile Cypress Hwy, Fort Myers, FL 33912-4406
26901921 +Town of Gilbert, 55 E Civic Center Dr, Gilbert, AZ 85296-3468

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

tr +EDI: QLERIVERAII.COM Apr 28 2017 22:48:00 Luis E Rivera, II, Henderson Franklin Starnes & Holt PA, Post Office Box 280, 1715 Monroe Street, Fort Myers, FL 33901-3081
ust +E-mail/Text: ustpregion21.tp.ecf@usdoj.gov Apr 28 2017 22:55:58 United States Trustee - FTM7/13, Timberlake Annex, Suite 1200, 501 E Polk Street, Tampa, FL 33602-3949
26901922 +EDI: RMSC.COM Apr 28 2017 22:48:00 Care Credit, Po Box 960061, Orlando, FL 32896-0061

TOTAL: 3

***** BYPASSED RECIPIENTS *****
NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

Addresses marked '++' were redirected to the recipient's preferred mailing address pursuant to 11 U.S.C. 342(f)/Fed.R.Bank.PR.2002(g)(4).

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number [redacted] the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Apr 30, 2017 Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on April 28, 2017 at the address(es) listed below:

Luis E Rivera, II trustee.rivera@henlaw.com, lrivera@ecf.epiqsystems.com;jodi.payne@henlaw.com
United States Trustee - FTM7/13 USTPRegion21.TP.ECF@USDOJ.GOV

TOTAL: 2

Information to identify the case:

Debtor 1	**Scott Alan Huminski** First Name Middle Name Last Name	Social Security number or ITIN [redacted] EIN __-_____
Debtor 2 (Spouse, if filing)	First Name Middle Name Last Name	Social Security number or ITIN ____ EIN __-_____
United States Bankruptcy Court	**Middle District of Florida**	Date case filed for chapter **7** **4/28/17**
Case number:	**9:17-bk-03658-FMD**	

Official Form 309A (For Individuals or Joint Debtors)

Notice of Chapter 7 Bankruptcy Case -- No Proof of Claim Deadline 12/15

For the debtors listed above, a case has been filed under chapter 7 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

The debtors are seeking a discharge. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 9 for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

		About Debtor 1:	About Debtor 2:
1.	**Debtor's full name**	Scott Alan Huminski	
2.	**All other names used in the last 8 years**		
3.	**Address**	24544 Kingfish Street Bonita Springs, FL 34134	
4.	**Debtor's attorney** Name and address	None	
5.	**Bankruptcy Trustee** Name and address	Luis E Rivera II Henderson Franklin Starnes & Holt PA Post Office Box 280 1715 Monroe Street Fort Myers, FL 33902-0280	Contact phone (239) 344-1104

Notice is further given that effective on the date of the Petition, the United States Trustee appointed the above named individual as interim trustee pursuant to 11 USC § 701.

For more information, see page 2 >

Debtor **Scott Alan Huminski** Case number **9:17-bk-03658-FMD**

6. Bankruptcy Clerk's Office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov.	801 N. Florida Ave. Suite 555 Tampa, FL 33602-3899	Hours open: Monday - Friday 8:30 AM - 4:00PM Contact phone 813-301-5162 Date: April 28, 2017
7. Meeting of creditors Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so. You are reminded that Local Rule 5073-1 restricts the entry of personal electronic devices into the Courthouse.	**May 30, 2017 at 02:30 PM** The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket. ***** Debtor(s) must present Photo ID and acceptable proof of Social Security Number at § 341 meeting. *****	Location: **United States Courthouse Federal Bldg., 2110 First Street 2-101, Fort Myers, FL 33901**
8. Presumption of abuse If the presumption of abuse arises, you may have the right to file a motion to dismiss the case under 11 U.S.C. § 707(b). Debtors may rebut the presumption by showing special circumstances.	Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.	
9. Deadlines The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.	**File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:** **You must file a complaint:** • if you assert that the debtor is not entitled to receive a discharge of any debts under any of the subdivisions of 11 U.S.C. § 727(a)(2) through (7), or • if you want to have a debt excepted from discharge under 11 U.S.C § 523(a)(2), (4), or (6). **You must file a motion:** • if you assert that the discharge should be denied under § 727(a)(8) or (9).	**Filing deadline:** July 31, 2017
	Deadline to object to exemptions: The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.	**Filing deadline:** 30 days after the *conclusion* of the meeting of creditors
10. Proof of claim Please do not file a proof of claim unless you receive a notice to do so.	No property appears to be available to pay creditors. Therefore, please do not file a proof of claim now. If it later appears that assets are available to pay creditors, the clerk will send you another notice telling you that you may file a proof of claim and stating the deadline.	
11. Creditors with a foreign address	If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.	
12. Exempt property	The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at www.pacer.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 9.	
13. Voice Case Info. System (McVCIS)	McVCIS provides basic case information concerning deadlines such as case opening and closing date, discharge date and whether a case has assets or not. McVCIS is accessible 24 hours a day except when routine maintenance is performed. To access McVCIS toll free call 1-866-222-8029.	

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY Z. Miller, Esq.

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves to disqualify Z. Miller, esq. because he has advised Huminski to violate Sheriff Scott's protective order concerning contact and communication with the LCSO. Advising Huminski to engage in crimes, and the very same alleged crime that is this prosecution is based upon, is contrary to the interests of the defendant.

Huminski was ejected from the courthouse at the last hearing in the case because he refused to violate the protective orders requested by Sheriff Scott and ordered by Judge Krier. Contact with the LCSO at security screening or in the courtroom is forbidden under the plain language of the protective order which contains zero language narrowly-tailoring the order as required by the First Amendment and Due Process.

As set forth in Huminski's motion to dismiss grounded upon his complaint to the Florida Commission on Ethics, see immediately prior docket entry/filing, the protective order possessed by Sheriff Scott is a crimes as it obstructs justice and manipulates and interferes with the instant litigation. It also constitutes witness intimidation and tampering and has obstructed federal (bankruptcy) court proceedings. The Sheriff has now been alerted to the criminal nature of his protective order and criminal intent exists concerning the Sheriff's obstruction of State and Federal court matters. The obstruction and threats from the Sheriff are prosecutable under the *continuing criminal offense doctrine* as each day a new crime is spawned by the Sheriff.

Advising Huminski to engage in the very same crime alleged by the State is negligent and ineffective assistance of counsel.

Huminski notifies that the third judge has recused from the collateral civil matter whereby the protective order of the Sheriff was granted. No judge presides at the moment. Instead of creating the situation at Bar, the Sheriff could have merely pressed the delete key in his email program instead of creating this controversy and waste of judicial resources.

The State in this case seeks to address the alleged crime of contact with Sheriff Scott by mandating contact with Sheriff Scott in this litigation. The prosecution is frivolous. To address the alleged crime of contact with Sheriff Scott, the State seeks to force Huminski to have 24-7 contact with the Sheriff. The motive of the State is dubious.

Dated at Bonita Springs, Florida this 18th day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 18th day ofOctober, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

17-MM-815

From: scott huminski on behalf of scott huminski <scott.huminski@gmail.com>
Sent: Monday, October 16, 2017 1:57 PM
To: zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org
Subject: Re: State v. Huminski 17-MM-815 - Schedule Motions hearing

Hello Mr. Miller,

Your advise that I violate Sheriff Scott's protective order is reckless. This is the allegation that the State is prosecuting. This has nothing to do with the pre-trial order. 2 separate orders.

I must move for disqualification if it is your position that I violate the protective order and have contact / communication with the LCSO at the courthouse. Note that I have filed an ethics complaint against Sheriff Scott as the order he procured constitutes criminal obstruction of justice, witness intimidation/tampering with regard to this case.

Even with the stipulation concerning the pre-trial order, that order criminally obstructed justice of matters before the U.S. Bankruptcy Court even with the narrow-tailoring currently in place. Courts must carefully craft orders that impinge upon first amendment rights to avoid vagueness and over-breadth. This situation doesn't merely present civil rights violations, the orders are criminal. Please advise ASAP. Time is of the essence.

-- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Thursday, October 12, 2017 10:49 AM
To: scott huminski; zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org
Subject: Re: State v. Huminski 17-MM-815 - Schedule Motions hearing

We need a motions hearing scheduled and another stipulation vacating the protective orders. They have obstructed my service of the Sheriff and Scribd in U.S. Bankruptcy Court. The Sheriff and Scribd were both listed as pro se in the bankruptcy court matter, which is now closed. The orders are criminal, have obstructed justice and need not be obeyed.

-- scott huminski

From: scott huminski on behalf of scott huminski <scott.huminski@gmail.com>
Sent: Monday, October 9, 2017 9:03 AM
To: zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen

A; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org
Subject: Re: State v. Huminski 17-MM-815 - Schedule Motions hearing

Z.Miller, I need a motions hearing scheduled. Need the protective orders vacated or narrowly tailored. As the pre trial order was stipulated by Florida and narrowly-tailored (it is still illegal as it did obstruct the bankruptcy court matter), the even more draconian protective orders need to be vacated. I was ejected from the last hearing for obeying the Sheriff's protective order.

Important to note that the Sheriff requested the protective order that is now obstructing justice, tampering and intimidation of a witness (me). These are crimes that are far worse than any allegation against me. Thank you _- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Friday, October 6, 2017 9:10 AM
To: scott huminski; zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org
Subject: Re: State v. Huminski 17-MM-815 - Schedule Motions hearing

Defense counsel has not responded. The right to an attorney has been violated in this case. Dismissal is required as the constitution has been thrown out the door with regard to this case.

I remind the parties that the April protective orders prevent my meaningful participation in my own defense as it is a crime for me to attend court hearings and the depositions with B. Allen and Sheriff Scott of the LCSO.

I request another stipulation with the State to narrowly-tailor the April protective orders to allow this matter to proceed in compliance with the First Amendment and Due Process. A looming arrest threat for merely defending one's self is constitutionally infirm. -- scott huminski

From: scott huminski on behalf of scott huminski <scott.huminski@gmail.com>
Sent: Thursday, October 5, 2017 7:35 AM
To: zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org
Subject: State v. Huminski 17-MM-815 - Schedule Motions hearing

Z. Miller,
Please schedule a motions hearing as specified in my emails ASAP. Time is of the essence. We have a great deal of procedural and jurisdictional issues to present. Waste of time can prejudice me by; loss of evidence, dimming of memories and other factors that weigh against unnecessary delay that prejudices the defense. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, October 4, 2017 9:46 AM
To: zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; scott.huminski@gmail.com
Subject: Re: State v. Huminski 17-MM-815

Hi Zach,

We need a motions hearing scheduled as I pointed out in prior emails.

This case was never properly transferred to County Court. This is the defense position. Please draft any papers to reflect this procedural flaw. All my papers are correctly captioned in the Circuit Court. After the arraignment of 6/29 where it was discussed that the matter needed to be transferred to criminal, the State's Attorney did nothing to legally accomplish this task. Nothing was transferred in a legal manner, the clerk sua sponte filing papers in various court matters without directions from the plaintiff far exceed the duties of court clerks. Clerks can not initiate criminal cases by simply shuffling around court filings without proper filings from the state's attorney.

As Judge Krier admits the 6/29 hearing (see minutes) was civil, that arraignment is VOID AB INITIO as the matter was removed from state court to federal court.

THERE EXISTS NO PROCEDURALLY VALID CASE IN COUNTY COURT. THIS IS THE DEFENSE POSITION. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, October 3, 2017 9:15 PM
To: zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org
Subject: Re: State v. Huminski 17-MM-815

Zach, Please schedule the two motions I noted for hearing and alert the ASA to the problem with this case continuing in light of the April protective orders of Krier that are more draconian than the pre trial order which has been partially narrowly tailored to comply with the 1st amendment. My attendance at hearings in the matter violate krier's protective orders and subject me to criminal liability.

Kevin Sarlo found a statute allowing county judges to act as circuit judges and visa versa. If we need that capability.

One thing is clear by the instant case, that the SA will prosecute for further violations of the protective orders. This issue must be addressed as a priority. Enduring more charges for violation of the patently unconstitutional orders of krier prejudices the defense and prevents my meaningful participation in my own defense. This entire scenario is an entrapment scheme dreamed up by the state. Make Huminski appear at court and each time he commits an additional offense of contempt. Won't do this. Entrapment is illegal.

The amendment made to the pre trial order still constitutes witness intimidation and tampering for the service I needed to accomplish in the bankruptcy matter. That crime is complete and will constitute more obstruction of justice in my next federal lawsuit. When it will once again obstruct justice. --- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, October 3, 2017 5:28 PM
To: zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org
Subject: Re: State v. Huminski 17-MM-815

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, October 3, 2017 11:54 AM
To: zmiller@flrc2.org
Subject: State v. Huminski

Do not waive arraignment. Arraignment took place before judge krier on june 29. The case was removed to U.S. bankruptcy court on june 26 and remanded back to state court on Aug 4.

The arraignment is Void Ab Initio as are all acts of Krier while the case was in federal court for a little over a month, late june to early august. The County Court case was initiated on June 30 by mystically appearing on the docket while the matter was removed to fed court. The initiation ("transfer")of the case is void ab initio. No such thing as a transfer without the participation of the state's attorney.

If we can not get the protective orders amended to comply with my rights to attend court proceedings and other First Amendment rights, we can File a Petition for writ of mandamus/prohibition in the appellate court and request a stay while the district court of appeals considers the writ. The case can not move forward while the protective orders forbidding contact with LCSO and thus attendance at court proceedings are pending. -- scott huminski

Thanks -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, October 3, 2017 11:30 AM
To: zmiller@flrc2.org
Subject: State v. Huminski

Hi
I assume you are defense counsel on this case. Please request a hearing for the motions filed today and yesterday. Assert my notice of pendency in Circuit Court in support of this as well. see attached thanks

There are loads of jurisdictional / procedural issues with this case.

It was transferred from Circuit Court to County Court. No legal mechanism exists in FL to "transfer" cases between courts. The State needed to dismiss the Circuit Case and re-file in County Court, if that is where they wished to proceed.

Pursuant to the April Protective Orders of Judge Krier, I am not to have contact or communication with the LCSO. I can't legally go thru the security screening or speak to any deputies in the courthouse. I was ejected from the last hearing for refusing to speak with LCSO to comply with Krier's no contact order.

Judge Adams already ordered the pre trial order of Krier amended to comply with the First Amendment/Due Process. We need the Protective Orders modified as well to allow my access to the courts without threats of arrest. Everybody and the judge agreed the pre trial order was patently over-broad, the protective orders are worse, zero narrowly-tailored.

The courthouse banishment that was ordered by Krier is similar to my case

See **Huminski v. Corsones**, 396 F.3d 53 (2d Cir. **2005**) **-- scott huminski**

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER STRIKING PRO SE PLEADINGS

THIS CAUSE comes before the Court on the Defendant's pro se pleadings filed since August 18, 2017. The Court notes that Defendant is represented by appointed counsel. Generally, pleadings filed by a criminal defendant who is represented by counsel are treated as a nullity. Lewis v. State, 766 So. 2d 288, 289 (Fla. 4th DCA 2000). Further pro se pleadings filed by Defendant will be stricken automatically without further order of the Court. It is

ORDERED AND ADJUDGED that Defendant's pro se pleadings are STRICKEN, as a nullity, without prejudice for counsel to act on behalf of Defendant.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 18 day of October, 2017.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; Zachary Miller, Office of Regional Counsel, 2101 McGregor Blvd., Ste. 101, Ft. Myers, FL 33901; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 19th day of October, 2017.

LINDA DOGGETT
Clerk of Court

By: J. Garcia
Deputy Clerk

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE PRE-TRIAL AND PROTECTIVE ORDERS THAT CONSTITUTE OBSTRUCTION OF JUSTICE RE; FEDERAL COURT PROCEEDINGS

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves as set forth above as the two orders have obstructed justice in U.S. Bankruptcy Court by forbidding service upon Sheriff Scott and Scribd, Inc. both listed as pro se in the bankruptcy court. See Attached. Huminski was also pro se in the federal proceedings.

Huminski plans to re-open the Bankruptcy Case and service in the federal court matter will again be obstructed by the two aforementioned orders. The orders' obstruction of justice is criminal and far more criminal than the State's position that Huminski must obey criminal court orders intending to obstruct justice and violate the constitution.

Any restrictions on speech must not be vague and must be narrowly-tailored under First Amendment precepts, requirements ignored by the two aforementioned orders. Huminski was ignored by his defense counsel at the time of the stipulated pre trial order, thus, he was unable to point out this unconstitutional deprivation embodied in the stipulation. His current counsel has likewise ignored Huminski's position on this issue.

Dated at Bonita Springs, Florida this 18th day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134

(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 18th day ofOctober, 2017 to all parties.

-/s/- Scott Huminski

_____
Scott Huminski

U.S. Bankruptcy Court
Middle District of Florida (Ft. Myers)
Adversary Proceeding #: 9:17-ap-00509-FMD

Assigned to: Caryl E. Delano
Lead BK Case: 17-03658
Lead BK Title: Scott Alan Huminski
Lead BK Chapter: 7
Show Associated Cases

Date Filed: 06/26/17
Date Terminated: 08/24/17
Date Removed From State: 06/26/17

Demand:
Nature[s] of Suit: 01 Determination of removed claim or cause

Plaintiff

Scott Alan Huminski
24544 Kingfish Street
Bonita Springs, FL 34134
239-300-6656
SSN / ITIN: [redacted]

represented by **Scott Alan Huminski**
PRO SE

V.

Defendant

Town of Gilbert, AZ

represented by **Town of Gilbert, AZ**
PRO SE

Defendant

Gilbert Police Department

represented by **Gilbert Police Department**
PRO SE

Defendant

Ryan Pillar

represented by **Ryan Pillar**
PRO SE

Defendant

Stephanie Ameiss

represented by **Stephanie Ameiss**
PRO SE

Defendant

City of Surprise, AZ

represented by **City of Surprise, AZ**
PRO SE

Defendant

City of Phoenix, AZ

represented by **City of Phoenix, AZ**
PRO SE

Defendant

Phoenix Police Department

represented by **Phoenix Police Department**
PRO SE

Defendant

Heather Ard

represented by **Heather Ard**
PRO SE

Defendant

Scribd, Inc.

represented by **Scribd, Inc.**
PRO SE

Defendant

Jason Bentley

represented by **Jason Bentley**
PRO SE

Defendant

Lee County, Florida

represented by **Lee County, Florida**
PRO SE

Defendant

Lee County Sheriff's Office

represented by **Lee County Sheriff's Office**
PRO SE

Defendant

Sheriff Mike Scott

represented by **Sheriff Mike Scott**
PRO SE

Defendant

Brian Allen

represented by **Brian Allen**
PRO SE

Defendant

City of Glendale, AZ

represented by **City of Glendale, AZ**
PRO SE

Defendant

Glendale Police

represented by **Glendale Police**
PRO SE

Defendant

Tracey Wood

represented by **Tracey Wood**
PRO SE

Defendant

Filing Date	#	Docket Text
06/26/2017	1 (95 pgs; 4 docs)	Notice of Removal by Scott Alan Huminski against Town of Gilbert, AZ, Gilbert Police Department, Ryan Pillar, Stephanie Ameiss, City of Surprise, AZ, Surprise Police Department, City of Phoenix, AZ, Phoenix Police Department, Heather Ard, Scribd, Inc., Jason Bentley, Lee County, Florida, Lee County Sheriff's Office, Sheriff Mike Scott, Brian Allen, City of Glendale, AZ, Glendale Police, Tracey Wood. Filing Fee Not Required. Nature of Suit: [01 (Determination of removed claim or cause)]. (Attachments: # 1 Exhibit Verified Complaint - Lee County 17-CA-421 # 2 Exhibit Notice of Appeal of Judgment, et al, CT USDC 3-14-cv-01390-MPS # 3 Exhibit LCSO Polygraph Report) (Deanna) Modified on 6/27/2017 (Deanna). (Entered: 06/27/2017)
06/26/2017	2 (2 pgs)	Motion to Vacate *State Orders of Judge Krier* Filed by Plaintiff Scott Alan Huminski. (Deanna) (Entered: 06/27/2017)
06/26/2017	3 (5 pgs)	Motion to Vacate *Protective Orders as Void Ab Initio or Void and for Declaratory Relief* Filed by Plaintiff Scott Alan Huminski. (Deanna) (Entered: 06/27/2017)
06/26/2017	4 (1 pg)	Motion for Order to Show Cause *as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and*, Motion for Protective Order *Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees* Filed by Plaintiff Scott Alan Huminski (Deanna) (Entered: 06/27/2017)
06/26/2017	5 (2 pgs)	Second Motion for Order to Show Cause *as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and*, Motion for Protective Order *Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees* Filed by Plaintiff Scott Alan Huminski (related document(s)4). (Deanna) (Entered: 06/27/2017)
06/28/2017	6 (8 pgs)	Summons issued on Town of Gilbert, AZ, Gilbert Police Department, Ryan Pillar, Stephanie Ameiss, City of Surprise, AZ, Surprise Police Department, City of Phoenix, AZ, Phoenix Police Department, Heather Ard, Scribd, Inc., Jason Bentley, Lee County, Florida, Lee County Sheriff and

		#039;s Office, Sheriff Mike Scott, Brian Allen, City of Glendale, AZ, Glendale Police, Tracey Wood along with Local Rule 7001-1 - Adversary Proceedings - Procedures. Answer Due 07/28/2017. If one or more defendants are the United States or an officer or agency thereof, add an additional five days to the Answer Due date. A copy of this summons must be included when filing proof of service of this summons. (ADIclerk) (Entered: 06/28/2017)
06/29/2017	7 (1 pg)	Service Executed of Complaint, on Clerk, 20th Judicial Circuit Court, Lee County Filed by Plaintiff Scott Alan Huminski (related document(s)6). (Susan M.) (Entered: 07/03/2017)
06/29/2017	10 (2 pgs)	Motion *for Ex Parte Order to Allow Service of Sheriff Mike Scott* Filed by Plaintiff Scott Alan Huminski. (Susan M.) (Entered: 07/05/2017)
07/03/2017	8 (4 pgs)	Emergency Motion *for ex parte Temporary Restraining Order* Filed by Plaintiff Scott Alan Huminski. (Ryan S.) (Entered: 07/03/2017)
07/03/2017	9 (2 pgs)	Order Abating Motion *for ex parte Temporary Restraining Order* (Related Doc # 8). Service Instructions: Clerks Office to serve. (Ryan S.) (Entered: 07/03/2017)
07/05/2017	11 (2 pgs)	Notice of Pretrial/ Status Conference. . Pre-Trial Conference set for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) Additional attachment(s) added on 7/5/2017 (Susan M.). (Entered: 07/05/2017)
07/05/2017	12 (2 pgs)	Service of Previously Entered Order/Notice via Bankruptcy Noticing Center. Title of Previously Entered Document: Notice of Pretrial/ Status Conference Entered on the Docket July 5, 2017 (related document(s)11). (Susan M.) (Entered: 07/05/2017)
07/05/2017	13 (2 pgs)	Notice of Preliminary Hearing on Motion to Vacate State Orders of Judge Krier Filed by Plaintiff Scott Alan Huminski. (related document(s)2). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)
07/05/2017	14 (2 pgs)	Notice of Preliminary Hearing on Motion to Vacate Protective Orders as Void Ab Initio or Void and for Declaratory Relief Filed by Plaintiff Scott Alan

		Huminski (related document(s)3). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)
07/05/2017	15 (2 pgs)	Notice of Preliminary Hearing on Motion for Order to Show Cause as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and, Motion for Protective Order Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees Filed by Plaintiff Scott Alan Huminski (related document(s)4). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)
07/05/2017	16 (2 pgs)	Notice of Preliminary Hearing on Second Motion for Order to Show Cause as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and, Motion for Protective Order Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees Filed by Plaintiff Scott Alan Huminski (related document(s)5). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)
07/05/2017	17 (1 pg)	Order Vacating *Order Abating Motion for ex parte Temporary Restraining Order* (related document(s)9). Service Instructions: Clerks Office to serve. (Susan M.) Additional attachment(s) added on 7/5/2017 (Susan M.). (Entered: 07/05/2017)
07/05/2017	18 (1 pg)	Service of Previously Entered Order/Notice via Bankruptcy Noticing Center. Title of Previously Entered Document: Order Vacating Order Abating Motion for ex parte Temporary Restraining Order Entered on the Docket July 5, 2017 (related document(s)17). (Susan M.) (Entered: 07/05/2017)
07/05/2017	19 (2 pgs)	Notice of Preliminary Hearing on Emergency Motion for ex parte Temporary Restraining Order Filed by Plaintiff Scott Alan Huminski (related document(s)8). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)
07/05/2017	20	Notice of Preliminary Hearing on Motion for Ex Parte Order

	(2 pgs)	to Allow Service of Sheriff Mike Scott Filed by Plaintiff Scott Alan Huminski (related document(s)10). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Susan M.) (Entered: 07/05/2017)
07/05/2017	21 (3 pgs)	BNC Certificate of Mailing - Order (related document(s) (Related Doc # 9)). Notice Date 07/05/2017. (Admin.) (Entered: 07/06/2017)
07/07/2017	22 (2 pgs)	Certificate of Service Re: *Emergency Motion for ex parte Temporary Restraining Order Filed by Plaintiff Scott Alan Huminski* Filed by Plaintiff Scott Alan Huminski (related document(s)8). (Susan M.) (Entered: 07/07/2017)
07/07/2017	23 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 13)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	24 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 14)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	25 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 15)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	26 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 16)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	27 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 19)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	28 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 20)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	29 (3 pgs)	BNC Certificate of Mailing - PDF Document. (related document(s) (Related Doc # 12)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)
07/07/2017	30 (2 pgs)	BNC Certificate of Mailing - PDF Document. (related document(s) (Related Doc # 18)). Notice Date 07/07/2017. (Admin.) (Entered: 07/08/2017)

07/10/2017	31 (8 pgs)	Motion *to Hold Service and Answer Dates in Abeyance While State Court Continues to Claim Jurisdiction* Filed by Plaintiff Scott Alan Huminski. (Deborah K.) (Entered: 07/10/2017)
07/13/2017	32 (2 pgs)	Notice of Preliminary Hearing on Motion to Hold Service and Answer Dates in Abeyance While State Court Continues to Claim Jurisdiction (related document(s)31). Hearing scheduled for 7/28/2017 at 09:30 AM at Ft. Myers, FL - Room 4-117, Courtroom E, United States Courthouse, 2110 First Street, Ft. Myers, FL. (Deborah K.) (Entered: 07/13/2017)
07/13/2017	33 (1 pg)	Notice *of Compliance with F.R.C.P. 65(b)(1)(A), 65(b)(1)(B), RE: Ex Parte TRO* Filed by Plaintiff Scott Alan Huminski. (Ryan S.). Related document(s) 8. Modified on 7/13/2017 (Ryan S.). (Entered: 07/13/2017)
07/15/2017	34 (3 pgs)	BNC Certificate of Mailing - Notice of Hearing (related document(s) (Related Doc # 32)). Notice Date 07/15/2017. (Admin.) (Entered: 07/16/2017)
07/28/2017	35 (2 pgs)	Hearing Proceeding Memo: Hearing Held - **APPEARANCES:** Scott Huminski **WITNESSES: EVIDENCE: RULING:** (1) Pretrial Conference on Notice of Removal - **Remand back to state court O/law clerk** (2) Motion to Vacate State Orders of Judge Krier Filed by Plaintiff Scott Alan Huminski; Doc #2 (3) Motion to Vacate Protective Orders as Void Ab Initio or Void and for Declaratory Relief Filed by Plaintiff Scott Alan Huminski; Doc #3 (4) Motion for Order to Show Cause as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and, Motion for Protective Order Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees Filed by Plaintiff Scott Alan Huminski; Doc #4 - **Denied, stay would prohibit creditors from collecting prepetition debts O/law clerk** (5) Second Motion for Order to Show Cause as to why Sheriff Mike Scott Should not be Held in Violation of the 11 U.S. Code 362 and, Motion for Protective Order Enjoining Contact with Debtor Arising from any Civil Case by Sheriff MIke Scott, His Agents or Employees Filed by Plaintiff Scott Alan Huminski (related document(s)4); Doc #5 - **Denied, stay would prohibit creditors from collecting prepetition debts O/law clerk** (6) Motion for Ex Parte Order to Allow Service of Sheriff Mike Scott Filed by Plaintiff Scott Alan Huminski; Doc #10 (7) Emergency Motion for ex parte Temporary Restraining Order Filed by Plaintiff Scott Alan Huminski;

		Doc #8 *(8) Motion to Hold Service and Answer Dates in Abeyance While State Court Continues to Claim Jurisdiction Filed by Plaintiff Scott Alan Huminski. (Kerkes, Deborah) (Doc #31) -Notice of Compliance with F.R.C.P. 65(b)(1)(A), 65(b)(1)(B), RE: Ex Parte TRO Filed by Plaintiff Scott Alan Huminski. (Scanlon, Ryan). Related document(s) 8. (Doc #33) Proposed Orders, if applicable, should be submitted within three days after the date of the hearing - Local Rule 9072-1(c). **This docket entry/document is not an official order of the Court**. (Dkt) (Entered: 07/28/2017)
08/01/2017	36 (2 pgs)	Order *Denying Motions for Violation of Automatic Stay without Prejudice.* (related document(s)4, 5). Service Instructions: Clerks Office to serve. (Laura G.) (Entered: 08/01/2017)
08/02/2017	37 (2 pgs)	Order *Remanding Case to State Court - Circuit Court of the Twentieth Judicial Circuit, in and for Lee County, Florida, Case No. 17-CA-241* (related document(s)1, 35). Service Instructions: Clerks Office to serve. (Brenton) (Entered: 08/02/2017)
08/03/2017	38 (3 pgs)	BNC Certificate of Mailing - PDF Document. (related document(s) (Related Doc # 36)). Notice Date 08/03/2017. (Admin.) (Entered: 08/04/2017)
08/04/2017	39 (3 pgs)	BNC Certificate of Mailing - PDF Document. (related document(s) (Related Doc # 37)). Notice Date 08/04/2017. (Admin.) (Entered: 08/05/2017)
08/24/2017		Adversary Case 9:17-ap-509 Closed. (Ryan S.) (Entered: 08/24/2017)

PACER Service Center

Transaction Receipt

10/19/2017 22:01:35

PACER Login:	mollydog123:5271502:0	Client Code:	
Description:	Docket Report	Search Criteria:	9:17-ap-00509-FMD Filed or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Headers: included Format: html Page counts for documents: included

Billable Pages:	5	Cost:	0.50

17-MM-815

From: scott huminski <s_huminski@live.com>
Sent: Monday, October 23, 2017 10:39 AM
To: scott huminski; zmiller@flrc2.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org
Subject: Re: State v. Huminski 17-MM-815 - depositions

We need to depose sheriff scott and judge krier concerning the protective order at the heart of this case. I need to participate as pro se co-counsel because I will ask the questions that clearly place the sheriff and judge as criminals.

Prior to depositions, I need the protective order re: sheriff and LCSO taken care of. The protective order exists with absolutely zero tailoring or exemptions. It's intent is to criminally obstruct justice. The sheriff and krier both knew that a prosecution would require deposition of sheriff scott. Criminal intent exists for both the judge and the sheriff. This is also true of Scribd, Inc..

Krier knowingly brought this matter with her order in place constituting obstruction of justice to the defense of her patently unconstitutional order. This is the crime worthy of prosecution, felony obstruction of justice by a circuit court judge.

See below link concerning the crimes of judge krier. -- scott huminski

https://judgeelizabethvkrierleecountyflcorruption.wordpress.com/

Judge Elizabeth V. Krier corruption, alleged crimes 20th ...

judgeelizabethvkrierleecountyflcorruption.wordpress.com

Obstructs service of sheriff Mike Scott in federal court, litigates a case removed to fed. court absent all jurisdiction

ORDER / COMMITMENT FORM | **COUNTY COURT, LEE COUNTY, FLORIDA**

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	10/27/2017	

Attorney: AT Miller, Zachary P.A.

APPEARANCE
____ Failed to Appear
____ Present w/o Attorney
X Present w/ Attorney
____ Present by Attorney
____ Present w/ Interpreter
____ Interpreter Services Requested
Language _____
____ Victim/Other _____

PLEA
____ Guilty
____ Not Guilty
____ Nolo Contender
____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
____ Withheld by Judge
____ Adjudicated Guilty
____ Withheld by Clerk
_____

VERDICT
____ Guilty by Judge
____ Not Guilty by Judge
____ Guilty by Jury
____ Not Guilty by Jury
____ Mistrial
_____

DISPOSITION
____ Acquitted
____ Nolle Pros
____ No Information
____ Dismissed
____ Adm.Dismissed
____ Merge & Dismiss

SENTENCE
____ Probation Reporting _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ One Time Cost $_____ Waive COS $_____
____ Report to Probation Today or Upon Release Within _____
____ Probation may terminate early when conditions are met
____ May Transfer Probation to _____
____ May Report to Probation and/or Instruct by Mail
____ Ignition Interlock Device _____ DD/MM/YY
____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
____ Statutory Exception to Vehicle Impound
____ Does Not Own Vehicle ____ Shared Vehicle
____ Other _____
____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
____ No Possession or Consumption of Alcohol or Illicit Substances
____ DUI School - Follow recommendations/Phase ____ I ____ II
____ School to Determine which Phase
____ Sign up w/in _____ days
____ Traffic School 4 Hr / 8Hr / 12 Hr
____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
____ Sign up for Batterer's Intervention Program w/in 30 Days
____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
____ Attend & Complete Program _____
____ DNA Testing Collected _____ in Court _____ at LCJ
____ Other Testing _____ HIV _____ STD _____
____ Defendant Advised of Habitual and/or Felony Status

____ Jail Time _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ Weekend Time Fri 6pm to Sun 6pm
____ Beginning _____
____ Day Work Program* _____ Days
____ Minimum ___ day(s) a week ___ consecutive weeks
____ Credit Time Served _____ DD/MM/YY
____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
____ Defendant Remanded _____ Sentence Suspended
____ DL Suspended/Revoked _____ DD/MM/YY
____ Spec. Conditions - Drive for Work/Business purposes
____ Show Valid Driver's License within _____
____ Produced Valid Driver's License in Court
____ Community Service _____ Hours and/or Pay $_____
____ Must complete _____ hours of community service before buyout
____ Show Proof of Com. Service to Clerk w/in _____
____ Stay Away from arrest location _____
____ No Contact with victim _____
____ State Orally Amends Charge in Open Court
____ Formal Filing of Information is Waived
____ Information Filed in Open Court
____ Successfully Completed Pretrial Diversion Program
____ Judicial Warning
____ Defendant Accepted DV Diversion
____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to 11-17-17

MANDATORY COURT APPEARANCE

For _____ AR X DS _____ TR _____ DA _____ DD _____ DT _____ RH

Time 8:30 (AM) / PM Court Room 2A X Speedy Trial Waived ____ Speedy Trial Tolled
(JRA) ____ HAS ____ MEG ____ ZMG ____ DSG ____ JMG ____ TPP ____ ABH _____
____ Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** 11/27/17

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF APPEARANCE AS PRO SE CO-COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, notifies of his appearance as pro se co-counsel as he has already notified on 10/09/2017 and earlier dates.

Huminski has not had the benefit of effective counsel since the inception of this matter and he is the only consistent element of the defense. Furthermore, the crimes of Sheriff Mike Scott perpetrated in this matter and in federal matters, obstruction of justice, witness tampering, witness intimidation, have created too much controversy for all counsel assigned to Huminski to date. As filed in this matter, investigations exist against Sheriff Scott for his conduct against Huminski which tend to scare off counsel with the official corruption related to this matter. Huminski still needs the assistance of counsel.

Dated at Bonita Springs, Florida this 28th day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 28th day of October, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MEMORANDUM IN SUPPORT OF WITHDRAWAL OF CONFLICT COUNSEL Z. MILLER, ESQ.

NOW COMES, Scott Huminski ("Huminski"), and, agrees with conflict counsel that the exact same conflict of interest that prohibited defense of Huminski by the Public Defender's office exists with conflict counsel.

The conflict of interest that exists with conflict conflict counsel and the Public Defender is privileged and part of attorney/client work product.

WHEREFORE, conflict counsel has properly noticed of the conflict of interest and new defense counsel should be assigned consistent with the right to counsel.

Dated at Bonita Springs, Florida this 29th day of October, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 29th day of October, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA

v. **CASE NO: 36-2017-MM-000815**

SCOTT ALAN HUMINSKI

REGIONAL COUNSEL'S MOTION TO WITHDRAW
AND REQUEST FOR THE APPOINTMENT OF PRIVATE ATTORNEY

Comes the undersigned attorney on behalf of defendant who moves the court to withdraw as counsel for defendant on account of a conflict of interest. The basis of the conflict is as follows:

☐ This defendant is expected to be called as a state's witness in another case in which ORC is already counsel of record for the other party;

☐ A state's witness in this case is a former client of the ORC and an aspect of the witness' character may be at issue;

☐ The ORC interviewed this defendant and obtained confidential information before discovering a conflict of interest affecting an existing client of the ORC;

☐ The ORC is representing a co-defendant and joint representation is not possible;

☒ Other: Defendant has given ORC cause to anticipate adverse future litigation against ORC.

Pursuant to Section 27.5303(1)(e), Florida Statutes, the undersigned certifies that there is no viable alternative to withdrawal from representation, and that the ORC or his designee has approved in writing the filing of this motion to withdraw.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by e-mail to the Office of the State Attorney ServiceSAO-Lee@sao.cjis20.org on October 27, 2017.

_/s/ Zachary Miller_____
By: Zachary Miller
Assistant Regional Counsel
Fla. Bar No. 118339
2101 McGregor Blvd Ste 101
Fort Myers, FL 33901
Tel. (239) 208-6925
Fax (207) 554-1128

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA CASE NO: 17-MM-815

vs.

SCOTT HUMINSKI

NOTICE OF INTENT TO SEEK COMPULSORY JUDICIAL NOTICE

COMES NOW the STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, pursuant to F.S. 90.202 and F.S. 90.203, hereby serves notice of its intent to seek compulsory judicial notice of the following:

1. Contents of the Lee County, Twentieth Judicial Circuit, Civil Court File # 17CA421, including, but not limited to, all pleadings, all filings, all orders.

STEPHEN B. RUSSELL
STATE ATTORNEY

BY: /s/ Anthony W. Kunasek
Anthony W. Kunasek
Assistant State Attorney
FL Bar No. 0026999
Post Office Box 399
Fort Myers, Florida 33902
(239) 533-1000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to Zachary Miller, Office of Criminal Conflict & Civil Regional Counsel, Attorney for Defendant, 2101 McGregor Blvd., Ste 101, Fort Myers, Florida 33901 by United States Mail/Florida Courts eFiling Portal this 2nd day of November, 2017.

/s/ Anthony W. Kunasek
Anthony W. Kunasek
Assistant State Attorney

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	11/13/2017	

Attorney: AT Miller, Zachary P.

APPEARANCE
____ Failed to Appear
____ Present w/o Attorney
X Present w/ Attorney
____ Present by Attorney
____ Present w/ Interpreter
____ Interpreter Services Requested
Language _____
____ Victim/Other _____

PLEA
____ Guilty
____ Not Guilty
____ Nolo Contender
____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
____ Withheld by Judge
____ Adjudicated Guilty
____ Withheld by Clerk
_____

VERDICT
____ Guilty by Judge
____ Not Guilty by Judge
____ Guilty by Jury
____ Not Guilty by Jury
____ Mistrial
_____

DISPOSITION
____ Acquitted
____ Nolle Pros
____ No Information
____ Dismissed
____ Adm.Dismissed
____ Merge & Dismiss

SENTENCE
____ Probation Reporting _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ One Time Cost $_____ Waive COS $_____
____ Report to Probation Today or Upon Release Within _____
____ Probation may terminate early when conditions are met
____ May Transfer Probation to _____
____ May Report to Probation and/or Instruct by Mail
____ Ignition Interlock Device _____ DD/MM/YY
____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
____ Statutory Exception to Vehicle Impound
____ Does Not Own Vehicle ____ Shared Vehicle
____ Other _____
____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
____ No Possession or Consumption of Alcohol or Illicit Substances
____ DUI School - Follow recommendations/Phase ____ I ____ II
____ School to Determine which Phase
____ Sign up w/in _____ days
____ Traffic School 4 Hr / 8Hr / 12 Hr
____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
____ Sign up for Batterer's Intervention Program w/in 30 Days
____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
____ Attend & Complete Program _____
____ DNA Testing Collected ____ in Court ____ at LCJ
____ Other Testing ____ HIV ____ STD _____
____ Defendant Advised of Habitual and/or Felony Status

____ Jail Time _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ Weekend Time Fri 6pm to Sun 6pm
____ Beginning _____
____ Day Work Program* _____ Days
___ Minimum ___ day(s) a week ___ consecutive weeks
____ Credit Time Served _____ DD/MM/YY
____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
____ Defendant Remanded ____ Sentence Suspended
____ DL Suspended/Revoked _____ DD/MM/YY
____ Spec. Conditions - Drive for Work/Business purposes
____ Show Valid Driver's License within _____
____ Produced Valid Driver's License in Court
____ Community Service _____ Hours and/or Pay $_____
____ Must complete _____ hours of community service before buyout
____ Show Proof of Com. Service to Clerk w/in _____
____ Stay Away from arrest location _____
____ No Contact with victim _____
____ State Orally Amends Charge in Open Court
____ Formal Filing of Information is Waived
____ Information Filed in Open Court
____ Successfully Completed Pretrial Diversion Program
____ Judicial Warning
____ Defendant Accepted DV Diversion
____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to _____

For _____ AR _____ DS _____ TR _____ DA _____ DD _____ DT _____ RH

Time _____ AM / PM Court Room _____ ____Speedy Trial Waived ____ Speedy Trial Tolled
____JRA ____ HAS ____MEG ____ZMG ____DSG ____JMG ____TPP ____ABH _____
_____ Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** _____

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

ORDER / COMMITMENT FORM | **COUNTY COURT, LEE COUNTY, FLORIDA**

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge ____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	11/13/2017	

FINE ASSESSMENTS (statutes indicated)
____ Fine $____ (775.083)
____ 5% Surcharge $____ (938.04)

MANDATORY ASSESSMENTS
____ Court Costs (Include Crime Stoppers & Crime Prevention) (318.18 / 775.083 / 938.01 / 938.03 / 938.05 / 938.06 / 939.185)
___ $220.00 ___ Other $____
If Ordered Under - Reason: ____
____ $33.00 Certain Traffic Offense Court Cost (318.17 / 318.18)
____ $135.00 DUI Court Costs (938.07)
____ $70.00 Reckless Driving Court Costs (318.18 / 316.192)
____ $65.00 Racing Court Costs (318.18)
____ $5.00 Leaving the Scene Court Costs (316.061)
____ $195.00 BUI Court Costs (938.07 / 327.35)
____ $201.00 Domestic Violence Trust Fund (938.08)
____ $151.00 Rape Crisis Trust Fund (938.085)
____ $151.00 Crimes Against Minors (938.10)
____ $5000.00 Civil Penalty (796.07)
____ $40.00 Contested By Nonprevailing Party Fee (34.045)

DISCRETIONARY ASSESSMENTS
____ $100.00 FDLE Trust Fund/Statewide Crime Lab (938.25)
____ Investigative Fee $____ to
to ___ FDLE ___ FMP ___ LCSO ___ Statewide Pros.
___ Other ____ (938.27)
____ Worthless Check Diversion Fee $____ (832.08)
____ Diversion Cost of Supervision $____ (948.09)

Pay Within ____ DD/MM/YY

____ Upon release from In-Custody

MOTION HEARINGS
____ Revoke Bond ____ Reinstate Bond
____ Set/Reduce/Increase Bond to ____
____ Suppress ____ Dismiss ____ Continue
____ Expunge/Seal (Outstanding monetary obligations must be addressed in court and the $42.00 fee must be paid to the Clerk's office before the case is officially expunged/sealed.)
____ Withdraw Plea
X Withdraw as Counsel
____ Modify No Contact Order ____ Lift No Contact Order
____ Other ____
Motion Result (Circle One): Granted (Denied) Reserves Ruling
____ State & Defense Stipulate to Suppress the Breath Test Results
____ State Amends Information from BAL of .15 or Above to .08
____ Clerk to Update Case w/ Defendants Information Listed

ATTORNEY FEES & SURCHARGES
____ $50.00 Cost of Prosecution (938.27)
____ $50.00 Public Def Application Fee (27.52)
Additional Application Fees $____
(Must be addressed on the record)
____ Defense Attorney Costs at Conviction (938.29)
___ $50.00 ___ Other $____

RESTITUTION
____ Minimum Payment of $____ per Month to ____
___ As a Condition of Probation
____ Restitution Ordered $____ to ____
____ Restitution Reduced to Judgment
____ Court Orders Restitution - Reserves on Amount

DISPOSITION OF MONETARY OBLIGATIONS
____ May Convert Fine/Cost ____ All or In Part to Community Service at $10 per Hour
___ Defendant Advised of Notary Requirement for Community Service (For Non-Probationary Sentences)
____ Credit Time Served for Fines/Costs/Fees ____
____ Monetary Obligations Referred to Clerk of Court Collections
____ Monetary Obligations Reduced to Judgment ___ Previous Only
____ Monetary Obligations (VOP) ___ Carried Forward
____ Defendant to sign up for Payment Plan
____ First Payment Due within 30 Days
____ Waive all Additional Mandatory Costs

WARRANTS/BONDS
____ BW/D6 Ordered Balance $____
____ Issue Bench Warrant ____ MM/DD/YYYY
____ Bond Estreature $____
____ Non-Compliance/Non-Appearance $____
____ Set Aside BW/D6 $____
____ Set Aside Estreature $____
____ Cash Bond to pay Fine/Cost including ____
____ Return Cash Bond to Depositor
____ Conflicting Appearance Date Addressed in Court

REVOCATION HEARINGS
____ Defendant Pleas Guilty/Admits Allegations
____ Defendant Pleas Not Guilty/Denies Allegations
____ Adjudicated Guilty ____ Adjudication Withheld
____ Probation Reinstated ____
____ Probation Modified ____
____ Same Terms and Conditions to Apply
____ Probation Revoked & Terminated ____ Probation Terminated
____ COS Fees Due & Owing in the amount $____

Pre-sentence Investigation/Sentencing ____ Full/Partial

If probation has not been imposed, you must pay your financial obligation within the time allowed by the Judge or sign up for the payment plan option offered by the Clerk of Court. If sentenced to Probation, you must adhere to standards as directed.
Failure to comply with any part of this order may result in a suspension of your driver license privilege and/or warrant being issued for your arrest (322.245).
Unpaid financial obligations still remaining 90 days after payment due date will be referred by the Clerk of Court to a collection agency and an additional fee of up to 40% of the outstanding balance owed will be added at that time (28.246).
Mandatory assessments are imposed and shall be included in the judgment without regard to whether the assessment was announced in open court.

Asst. State Attorney M. Hadden / A. Kuwasov Bar No. 1003007/26999 Date ____

Judge James R Adams [signature] Date ____

Rev.05/05/2017

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY CONFLICT COUNSEL ZACHARY MILLER, ESQ. And Motion to Dismiss

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves to disqualify defense counsel as the exact same conflict exists that was claimed by the public defender, which was discovered by Huminski in privileged conversations and incorporated in privileged attorney/client work product. Private counsel should be appointed.

Huminski is unable to meaningfully participate in his own defense pursuant to the sheriff's protective order, prohibiting all contact and communication with Sheriff Scott or any LCSO personnel. As the Sheriff is the proposed victim in this matter, he needs to be deposed and Huminski needs to be involved in the deposition which would involve the forbidden contact and communication with the Sheriff as set forth in the Circuit Court protective order in 17-CA-421.

Huminski believes the protective order to be incredibly corrupt as set forth in the below links to relevant documents and the complaint to the Florida Commission on Ethics .

To: doss.virlindia@leg.state.fl.us

Subject: Mike Scott - Fl ethics commission, Lee inspector general - obstruction of justice, denial of public safety

I put this compilation together. Let me know if you have any questions.

I plan to depose Sheriff Scott in the next several months to question him exhaustively concerning the use of his power to silence criticism, withhold public safety services, and engage in

obstruction of justice, witness intimidation and witness tampering of Federal and State court matters.

These are serious felonies. Thanks. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Friday, October 27, 2017 5:26 PM
To: KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; zmiller@flrc2.org; Smith, Kathleen A; news@fox4now.com; pnolan@fox4now.com; Amy.Wegmann@fox4now.com; malcolm.johnson@Fox4Now.com; adam.pinsker@Fox4Now.com; brent.batten@naplesnews.com; vonna.keomanyvong@naplesnews.com; dana.caldwell@naplesnews.com; maria.perez@naplesnews.com
Subject: Mike Scott - Fl ethics commission, Lee inspector general - obstruction of justice, denial of public safety

Crimes of SHeriff Scott finally under investigation. I authorize releases of any and all records to the public and interested parties.

Commencement letters,
Fl Commission on Ethics, Sheriff Scott – Obstruction of Justice – Denial of public safety services. Confirmation Letter.

http://web.archive.org/web/20171027193921/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/fl-ethics-letter-sheriff-scott026.pdf

Ethics complaints,

Complaint Sheriff Scott to Florida Commission on Ethics

http://web.archive.org/web/20171014141949/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/merged-ethics-sheriff-w-attach-notarized.pdf

Sheriff Mike Scott's pro se status in U.S. Bankruptcy Court and his obstruction of those proceedings.

https://web.archive.org/web/20171024235027/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/motion-to-vacate-pre-trial-and-protective-orders.pdf

Dated at Bonita Springs, Florida this 15th day of November, 2017.

-/S/- Scott Huminski

_____

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 15th day of November, 2017 to all parties.

-/s/- Scott Huminski

_____

Scott Huminski

PD

11/17/2017 11:41 AM Filed Lee County Clerk of Courts

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	11/17/2017	

Attorney: AT Miller, Zachary P. &

APPEARANCE
____ Failed to Appear
____ Present w/o Attorney
____ Present w/ Attorney
X Present by Attorney
____ Present w/ Interpreter
____ Interpreter Services Requested
Language _____
____ Victim/Other _____

PLEA
____ Guilty
____ Not Guilty
____ Nolo Contender
____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
____ Withheld by Judge
____ Adjudicated Guilty
____ Withheld by Clerk
_____

VERDICT
____ Guilty by Judge
____ Not Guilty by Judge
____ Guilty by Jury
____ Not Guilty by Jury
____ Mistrial
_____

DISPOSITION
____ Acquitted
____ Nolle Pros
____ No Information
____ Dismissed
____ Adm.Dismissed
____ Merge & Dismiss

SENTENCE
____ Probation Reporting _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ One Time Cost $_____ Waive COS $_____
____ Report to Probation Today or Upon Release Within _____
____ Probation may terminate early when conditions are met
____ May Transfer Probation to _____
____ May Report to Probation and/or Instruct by Mail
____ Ignition Interlock Device _____ DD/MM/YY
____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
____ Statutory Exception to Vehicle Impound
____ Does Not Own Vehicle ____ Shared Vehicle
____ Other_____
____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
____ No Possession or Consumption of Alcohol or Illicit Substances
____ DUI School - Follow recommendations/Phase ____ I ____ II
____ School to Determine which Phase
____ Sign up w/in _____ days
____ Traffic School 4 Hr / 8Hr / 12 Hr
____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
____ Sign up for Batterer's Intervention Program w/in 30 Days
____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
____ Attend & Complete Program_____
____ DNA Testing Collected ____ in Court ____ at LCJ
____ Other Testing ____ HIV ____ STD _____
____ Defendant Advised of Habitual and/or Felony Status

____ Jail Time _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ Weekend Time Fri 6pm to Sun 6pm
____ Beginning _____
____ Day Work Program* _____ Days
___ Minimum ___ day(s) a week ___ consecutive weeks
____ Credit Time Served _____DD/MM/YY
____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
____ Defendant Remanded ____ Sentence Suspended
____ DL Suspended/Revoked _____ DD/MM/YY
____ Spec. Conditions - Drive for Work/Business purposes
____ Show Valid Driver's License within _____
____ Produced Valid Driver's License in Court
____ Community Service _____ Hours and/or Pay $_____
____ Must complete _____ hours of community service before buyout
____ Show Proof of Com. Service to Clerk w/in _____
____ Stay Away from arrest location _____
____ No Contact with victim _____
____ State Orally Amends Charge in Open Court
____ Formal Filing of Information is Waived
____ Information Filed in Open Court
____ Successfully Completed Pretrial Diversion Program
____ Judicial Warning
____ Defendant Accepted DV Diversion
____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to 12.21.17

MANDATORY COURT APPEARANCE

For _____ AR ___ DS _____ TR _____ DA _____ DD _____ DT _____ RH

Time 8:30 AM PM Court Room 1A ____ Speedy Trial Waived ____ Speedy Trial Tolled

____ JRA ____ HAS ____ MEG ____ ZMG ____ DSG ____ JMG ____ TPP ____ ABH _____

____ Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** _____

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

DOCKET NO. 17-MM-815

AKA: STATE V. HUMINSKI

From: scott huminski <s_huminski@live.com>
Sent: Friday, November 17, 2017 6:48 AM
To: zmiller@flrc2.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org
Subject: Re: Consolidated Petition for Writ of Mandamus / Prohibition 2DCA

Zach, New strategy.

1. File a motion to reconsider denial of your recusal
2. File a new motion to recuse citing the same reasons as the PD and citing Judge Adams granting of the PD recusal
3. Get a hearing
4. If denied, we have 30 days to file a petition for cert
5. The county court is divested of jurisdiction while cert is decided
6. Cert specifically allows review of a denial
   - Examples of orders that appellate courts have considered on petition for writ of certiorari include discovery orders requiring disclosure of privileged or trade secret information and other confidential information that could injure the party or another outside the context of the litigation;19 orders denying dismissal of actions for failing to comply with statutory presuit notice or screening;20 prejudgment orders finding a party in civil contempt;21 orders on motions to disqualify counsel or to withdraw as counsel because of conflict;22 pretrial orders in criminal cases denying the prosecution's motions in limine to exclude evidence;23 and pretrial orders in criminal cases denying the prosecution's motions to take blood, hair, and saliva samples from defendant.24
   - *Contents of the Petition or Complaint for Writ of Certiorari, Response, and Reply*
     A complaint for writ of certiorari filed in the circuit court must contain the elements found in Florida Rule of Civil Procedure 1.630(b). A petition for writ of certiorari filed in the district court of appeal must follow the requirements of Florida Rule of Appellate Procedure 9.100(g). Generally, unlike a notice of appeal, a petition for writ of certiorari must set forth the facts and legal authority in support of the requested relief. Further, because no record is transmitted from the lower tribunal to the appellate court, the parties must provide an appendix containing the documents and transcripts filed in the lower tribunal and relied upon in the petition, response, or reply.25 Rules 1.630(d) and (e), and 9.100(h), (j), and (k) provide the requirements for filing a response and reply.
   - These procedures are at

http://www3.flabar.org/DIVCOM/JN/JNJournal01.nsf/Articles/9893B3B8B95B66C2852572AC0059ED7E

As we have discussed, your handling this case will create a conflict with cases of your other clients in the exact same manner that the PD recusal was based upon. The core factual reason is

privileged, just as it was for the PD who was immediately allowed to recuse. You should be off the case, if not, we take it up. This case is frivolous and vexatious.

I will work on the consolidated petition to the 2DCA in the meantime. This prosecution is completely unethical.

Then we can also move to change venue as I am effectively violating a circuit court order every time i disobey the Circuit Court Sheriff protective order. Also can be taken up.

Then we can move to disqualify the State's Attorney. The case has no legitimate charging document, it is frivolous and vexatious considering the pending Circuit Court protective order preventing my meaningful participation. This is burdening the Court with a matter that should have been dismissed by the SA. As Judge Adams noted it is only jurisdictionally proper in the County Court the initiation in the Circuit and several months of litigation in the circuit court are void. It was not properly initiated in either the Circuit or County Courts.

-- scott

From: scott huminski <s_huminski@live.com>
Sent: Thursday, November 16, 2017 5:35 PM
To: zmiller@flrc2.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org
Subject: Consolidated Petition for Writ of Mandamus / Prohibition 2DCA

Anthony,

Will you consent to stay the case while I pursue a Writ in the 2DCA addressing the crazy protective order of SHeriff Mike Scott. Your consent will save litigating the stay issue in the County Court and the District Court of Appeals. I can request it in both venues. As Judge Adams has already ruled in my favor concerning identical issues in the pre-trial order (vagreness and over-breadth), your forcing this appellate action is frivolous and vexatious. A prosecutors duty is to seek justice, not win at all costs. Berger v. United States, 295 U.S. 78 (1935).

I plan to pursue the matter in Federal Court as well. The obstruction of justice embodied in the protective order preventing my meaningful participation in my own defense is outrageous and criminal.

Your position that the protective order is legitimate and can be subject to a contempt charge is opposite to our discussions about having the order declared void. It is not contempt to violate a transparently unconstitutional and void order. See Collateral Bar Doctrine. Case law on it is in my filings.

I will bring both cases civil and criminal up to the 2DCA to mandate that the SHeriff's order is wildly unconstitutional and prohibiting you from prosecuting a charge for violating it. I don't understand a desire for the state to embrace an order that is not only unconstitutional, it is criminal.

I don't have to stay the Circuit Court case as it has not had a judge on it in months. The extraordinary writ is proper before the 2DCA as the civil case resides in Circuit Court. I'm learning your rules down here which are different from most states where the rules mirror the federal rules.

Zach, If the judge doesn't let you off. File a motion to stay the case while we put together the petition for writs of mandamus/prohibition in the DCA. Also seek consent from Anthony for the stay to pursue this matter in higher courts. The petition is going to illustrate how ridiculous and frivolous this situation is. It is a waste of judicial resources to pursue this in multiple state courts and ethically questionable. At the arraignment attended by the ASA, Judge Krier recited a version of fact that was nowhere in the record, an illegal ex parte communication is the only possible source, I believe was from the sheriff. Judge Krier also ranted that the federal courts have no power over her court, as the Federal judge ruled, the case was removed and remanded 30 days later. Anything Judge Krier did while she was divested of jurisdiction by the federal courts is void and absent all jurisdiction. We probably should get a ruling on that too in the DCA, but, its best to keep things simple.

-- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Thursday, November 16, 2017 1:39 PM
To: zmiller@flrc2.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org
Subject: State's position on interstate terrorist death threats

Anthony,
The civil lawsuit was filed because the sheriff supported the death threats sent via the U.S. to us from Arizona by Trevor Nelson and/or Debra Riffel.

If the state wishes me to abandon my investigation and litigation seeking to identify the terrorist, State law enforcement must take over this activity. I went to civil court because the sheriff made it clear that he did not care if the AZ terrorists killed myself or my wife.

I have the Glendale AZ police report where these two terrorist admitted their motive -- that i was responsible for the suicide of Justin M Nelson. I definitely agree that it is reasonable for Trevor Nelson and his mother to make this conclusion, especially in the mind of someone that is the offspring of a seriously mentally ill person like the deceased.

As the Judge allowed, i will not attend tomorrow and i do support the recusal of Zach. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Thursday, November 16, 2017 7:06 AM
To: zmiller@flrc2.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org
Subject: Sheriff's crimes

First death threat from Trevor Nelson impersonating Gilbert AZ police officer Ryan Pillar,

"Hello Scott,
It's almost time for you to die.
Did you think that I would let you get away with your bullshit and your lawsuits? … Enjoy your last few days on earth.
I'll be there real soon. Officer Pillar"

More on death threats from AZ terror cell, Trevor Nelson, Debra Riffel alleged terror activity.

http://web.archive.org/web/20171116120215/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/notice-of-appeal-scan-with-death.pdf

https://web.archive.org/web/20161112124232/https:/trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2016/09/affidavit-2nd-death-threat.pdf

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2016/11/follow-up-to-precautionary-measures-request.pdf

https://web.archive.org/web/20161003112553/https:/trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2016/09/alleged-criminal-history-of-trevor-nelso1.pdf

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, November 15, 2017 10:29 PM
To: zmiller@flrc2.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org
Subject: Why the PD and defense counsel are conflicted- Sheriff's crimes

A vigorous defense in FL v. Huminski requires an attack upon the ethics, morality and criminal conduct of SHeriff Scott. This prejudices other clients of the PD and conflict counsel as such undisputed allegations proffered against the sheriff would result in negative consequences or prejudice for other clients of the PD and conflict counsel.

The crimes of Sheriff Scott must be prominent in the case, which, could indeed prejudice clients of the PD and Conflict Counsel in cases involving the LCSO or Sheriff Scott. This is not the only reason why recusal is mandated, I can not reveal reasons that are attorney/client privileged. As everyone knows of the crimes of the sheriff and the misconduct is rudimentary and obvious, there is no privilege to knowledge that is available to the general public and is in the public domain. Sheriff Scott could be criminally convicted in a 5 minute trial with information that has been public for several months now. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, November 15, 2017 5:52 PM
To: zmiller@flrc2.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org
Subject: Huminski polygraph concerning death threats

Anthony, Please schedule a polygraph concerning the death threats. The LCSO did one and found it not conclusive. I would like a question by question report from the LCSO polygrapher and access to the records consistent with my defenses of duress, necessity and self defense. The last time i took a polygraph for the FBI, Bill McComick agent on the case, the polygraph worked fine and i wore a wire.

Without killing Nelson and Riffel myself the only recourse I have relied upon is law enforcement to handle this life threatening situation. I don't believe in violence, but, the sheriff has abandoned his duty to protect lee citizens like myself. So what is left to stop trevor nelson if law enforcement applauds the transmission of interstate terrorist death threats. The last letter i received in the spring was captured being mailed on Scottsdale AZ post office surveillance. It was consistent with a customer counter transaction, insured and with tracking. I presume it would have latent prints or other forensic data on it and probably the prints of the clerks who placed on the self adhesive labels and postage.

This is the reason for the civil case, I was trying to find out if Trevor Nelson and/or Debra Riffel are involved in the interstate transmission of terrorist death threats. Given all the terror acts lately, i take this matter very seriously despite the Sheriff's position to be light on terror.

I would be happy to take another polygraph from a different agency that doesn't embrace the policies of the sheriff. If the sheriff did his job related to the terrorist death threats, there would not have been any civil litigation from me.

Trevor Nelson is genetically predisposed to violence and approaching his breaking point like his father did when he took his own life. Whether it is homicide or suicide remains to be determined. I'm not comfortable with this potential killer out in the public, he has relatives in cape coral. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, November 15, 2017 4:06 PM
To: zmiller@flrc2.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org
Subject: Notification

I hereby notify the SA that I have bilateral hip replacements and active avascular necrosis of my knees. As such I can not pass a field sobriety test. I was arrested by the Gilbert AZ police for dui in 2012, the blood test came back negative for everything. Never prosecuted, only harassed and wrongfully arrested for driving with a disability of the lower extremities that has no bearing on operating a vehicle. Share this with the LCSO.

Please provide your position as to the death threats I have been receiving for the last three years from Arizona. The US postal inspector Mark Cavic can fill you in. The terrorist death threat are from Trevor Nelson and Debra Riffel of Glendale or Scottsdale AZ.

The sheriff must be held accountable for refusing to polygraph the two suspects who have admitted to the Glendale Police Dept. that they blame me for the death of Trevor Nelson's father, Justin M. Nelson. See his obituary,

http://www.rivernewsonline.com/main.asp?SectionID=3&SubSectionID=28&ArticleID=57106

Vengeance for the death of Nelson is one hell of a motive for murder and the mail threats i've been receiving.

The first death threats is in this video,
https://www.youtube.com/watch?v=-dJYlLMBLVk

It leaves no doubt as to the serious nature of the interstate transmission of these terrorist death threats, one of which had a white powder in it I believe to be anthrax. This terrorism can not be allowed to flourish in Lee county by a terror cell operating out of Maricopa COunty, AZ. -- scott huminski

Sheriff Mike Scott support of terrorist death threats against bonita couple, corruption, misconduct

www.youtube.com

I created this video with the YouTube Slideshow Creator (http://www.youtube.com/upload) The death threat on the signs reads, "Hello Scott, It's almost time for you ...

Justin Michael Nelson - The Northwoods River News ...

www.rivernewsonline.com

Justin Michael Nelson, age 36, of Glendale, Ariz., passed away on Oct. 30, 2012. Born June 19, 1976, in Escanaba, Mich., he was

the son of Michael (Janet) Nelson, of ...

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, November 15, 2017 2:58 PM
To: zmiller@flrc2.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org
Subject: Criminal complaint against sheriff scott

Anthony,

Please provide me with a formal response to my complaint of criminal conduct related to Sheriff Scott's protective order and his criminal manipulation / obstruction of State and Federal court matters.

Sheriff Scott is #1 on the list of depositions related to the contempt case, however he has obstructed my deposition of him with his illegal protective order.

Obviously, I can not report crime to the only law enforcement agency with jurisdiction in Bonita Springs because of the prohibitions in the Sheriff's protective order, so I must complain directly to the State's Attorneys office. Please advise. Sergeant Close of FHP advised me his agency can not respond to calls in Bonita as evidenced when I reported crimes to 911 on Sept. 23,24 and had conversations with Sgt Close.

The Sheriff's denial of public safety services to me via his protective order is a Federal civil rights crime under Title 18 U.S.C. § § 241,242 and a violation of equal protection and enforcement of the laws . The sheriff has post-graduate degrees and a knowledge of the law greater than an ordinary person. He knows of the criminal nature of his conduct. His criminal motive is to make himself litigation-proof and to protect his personal wealth from lawsuits, legal fees and other expenses related to litigation. Quite a nifty criminal scheme. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, November 15, 2017 1:13 PM
To: zmiller@flrc2.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org
Subject: Huminski plea

Hi folks, Judge Adams should have let Zach off the case. My disqualification motion just filed.

The order i am accused of violating is a crime in itself as the record shows. Serious felony obstruction and witness tampering/intimidation by Sheriff Scott.

The ethics commission has alerted the sheriff to the criminal nature of his protective order, yet, he continues to stand behind it. Criminal intent of the sheriff to obstruct justice is abundant and without dispute.

It makes no sense to continue litigation involving violation of a court order that everybody agrees is patently illegal, unconstitutionally vague and over-broad with zero narrow tailoring to a legitimate governmental purpose.... and is criminal manipulation of federal and state court proceedings. The Sheriff should be charged.

Zach, file a motion to reconsider in light of my motion. You should be allowed to recuse for the exact same reason cited by the PD. -- scott

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, November 15, 2017 12:25 PM
To: zmiller@flrc2.org; akunasek@sao.cjis20.org; hboltz@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org
Subject: Huminski plea

In support of a plea to disorderly conduct, not contempt:

We all agree via stipulation signed by the judge that the pre trial order was vastly unconstitutional as vague and over-broad and not narrowly-tailored to a legitimate governmental purpose. Even the amended pre trial order obstructs my service of SHeriff Scott in federal court matters.

I stand behind my memo to disqualify conflict counsel, as there is a conflict of interest, that was revealed in privileged conversations between myself and Zach. Zach has not engaged in any improper conduct but given the content of privileged conversations, i can confirm a conflict and cause for disqualification exists. I can reveal that it is the exact same conflict proffered by the

Public Defender and granted by judge Adams. Kevin also does fine work, there is just an unavoidable conflict with both the PD and conflict counsel. Private counsel needs to be appointed.

The sheriff's protective order was even more draconian than the pre-trial order.

We spoke of having the protective order declared void by Judge Adams, if so, it is completely illogical for me to entertain a plea that requires a perception that the order was legal and constitutional. It was not.

Under two exceptions to the collateral bar rule/doctrine (1) transparently unconstitutional/illegal and (2) requires surrender of constitutional rights, I had no duty to obey the protective order.

The order also constituted criminal obstruction of justice of a matter pending before the Federal Courts and the two 20th Circuit Court matters. The sheriff was put on notice of his criminal conduct (re:protective order) as revealed in the link to the below (letter to sheriff from FL Commission on Ethics). Criminal intent of the sheriff is now clearly established. The sheriff has taken no action to end his obstruction of justice, witness intimidation and witness tampering in federal and state court matters.

Anthony, please forward to the FDLE for investigation. I will notify the FBI and U.S. Attorney concerning the successful obstruction of the federal court in Tampa. The ethics commission will decide on the matter on December 8.

Judge Adams mentioned jurisdiction as the reason for the transfer to county court. The case was not properly brought in the county court with a criminal information, indictment or order from judge Krier instituting the county court case by referring it to the State's Attorney for prosecution in the correct forum. Yes, Judge Adams is correct in that the several months that Judge Krier held proceedings in Circuit Court prior to her recusal were without jurisdiction and void. Every scrap of paper she signed was in the Circuit Court and in her capacity as a Circuit Court judge.

There exists no valid charging document in the County Court. Read it.

The protective order is criminal. There is no duty to obey an order that is criminal. See my complaint to FL Commission on Ethics,

To: doss.virlindia@leg.state.fl.us
Subject: Mike Scott - Fl ethics commission, Lee inspector general - obstruction of justice, denial of public safety

I put this compilation together. Let me know if you have any questions.

I plan to depose Sheriff Scott in the next several months to question him exhaustively concerning the use of his power to silence criticism, withhold public safety services, and engage in obstruction of justice, witness intimidation and witness tampering of Federal and State court matters.

These are serious felonies. Thanks. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Friday, October 27, 2017 5:26 PM
To: KatherineT@pd.cjis20.org; KevinS@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; zmiller@flrc2.org; Smith, Kathleen A; news@fox4now.com; pnolan@fox4now.com; Amy.Wegmann@fox4now.com; malcolm.johnson@Fox4Now.com; adam.pinsker@Fox4Now.com; brent.batten@naplesnews.com; vonna.keomanyvong@naplesnews.com; dana.caldwell@naplesnews.com; maria.perez@naplesnews.com
Subject: Mike Scott - Fl ethics commission, Lee inspector general - obstruction of justice, denial of public safety

Crimes of SHeriff Scott finally under investigation. I authorize releases of any and all records to the public and interested parties.

Commencement letters,

Fl Commission on Ethics, Sheriff Scott – Obstruction of Justice – Denial of public safety services. Confirmation Letter.

http://web.archive.org/web/20171027193921/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/fl-ethics-letter-sheriff-scott026.pdf

Ethics complaints,

Complaint Sheriff Scott to Florida Commission on Ethics

http://web.archive.org/web/20171014141949/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/merged-ethics-sheriff-w-attach-notarized.pdf

Sheriff Mike Scott's pro se status in U.S. Bankruptcy Court and his obstruction of those proceedings.

https://web.archive.org/web/20171024235027/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/motion-to-vacate-pre-trial-and-protective-orders.pdf

Emails:

The Florida Bar
Inquiry/Complaint Form

PART ONE (See Page 1, PART ONE – Complainant Information.):

Your Name: Scott Huminski
Organization:
Address: 24544 Kingfish Street
City, State, Zip Code: Bonita Springs FL 34134
Telephone: 239 300 6656
E-mail: s_huminski@live.com
ACAP Reference No.:
Does this complaint pertain to a matter currently in litigation? Yes [X] No [ ]

PART TWO (See Page 1, PART TWO – Attorney Information.):

Attorney's Name: Anthony Kunasek Florida Bar No.:
Address: 2000 Main Street
City, State, Zip Code: Fort Myers FL 33901
Telephone: 239 533 1000

PART THREE (See Page 1, PART THREE – Facts/Allegations.): The specific thing or things I am complaining about are: (attach additional sheets as necessary)

I sent Mr. Kunasek, esq. a copy of the Notre Dame law journal condemning ethical issues related to his conduct consistent with and similar to release/dismissal agreements. see

http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1458&context=ndjlepp

ASA Kunasek, esq. demands that I drop a civil matter in a plea agreement. He is obsessed with stopping litigation against his colleague, Sheriff Mike Scott. He has made it clear that if I don't drop a civil matter he will take retaliatory action against me in sharp contrast to the legal authorities set forth in the Notre Dame paper above. I feel coerced and blackmailed by these tactics.

The status of the civil matter now is that I am forbidden access to public safety services in my home town. I am forbidden from reporting a crime, fordidden from criticizing the Sheriff in my journalism, forbidden from attending my own court hearings with threats from the Sheriff and Mr. Kunasek.

Mr. Kunasek has chosen to support alleged criminal conduct of Sheriff Scott as set forth at the below link to assure the Sheriff's conduct is allowed to flourish. The Sheriff has his own counsel in the civil matter and does not need the meddling from the State's Attorney in the civil matter. I believe the State's Attorney and prosecutors generally may be prohibited from the private practice of law.....
http://web.archive.org/web/20171014141949/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/merged-ethics-sheriff-w-attach-notarized.pdf

PART FOUR (See Page 1, PART FOUR – Witnesses.): The witnesses in support of my allegations are: [see attached sheet].

PART FIVE (See Page 1, PART FIVE – Signature.): Under penalties of perjury, I declare that the foregoing facts are true, correct and complete.

Scott Huminski

Print Name

Signature

11/17/2017

Date

Statutes:
State Attorney Forbidden
from private
Practice of
LAW
27.015

USPS CERTIFIED MAIL™

9507 1000 3214 7324 0000 82

U.S. POSTAGE
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FOLD HERE

The FL Bar
651 E Jefferson St.
Tallahasee FL
32399-2300

No. 2D17-

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, ARIZONA, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

PETITION FOR A WRIT OF PROHIBITION AND A WRIT OF MANDAMUS AND A WRIT OF CORAM NOBIS AND QUO WARRANTO– ALL WRITS JURISDICTION

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656
E-mail s_huminski@live.com

Zachary Miller,esq
Regional Conflict
Counsel
zmiller@flrc2.org

BASIS FOR INVOKING JURISDICTION

This Court has original jurisdiction to issue writs of prohibition and mandamus under Article V, section 4(b)(3) of the Florida Constitution, and under Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure.

Huminski also asserts jurisdiction for writ of quo warranto and coram nobis and under "all-writs" jurisdiction. Fla. Const. art. V, §§ 3(b), 4(b).

PREFACE

This petition is related to conduct of recused judge Hon. Elizabeth Krier and is not related to the acts/orders of the currently presiding judge, Hon. Michael McHugh. Petitioner's Appendix filed herewith consists of filed documents in the Circuit Court except for the Complaint to the Florida Commission on Ethics with attachments which is the first document set forth in the appendix. The Appendix mirrors the chronology of the Circuit Court docket except with respect to the ethics complaint. Appendix page numbers are encircled and handwritten.

ISSUES PRESENTED

1. Whether a no "contact and communication" protective order concerning the Lee Sheriff's Office with no exceptions and zero narrow tailoring to a legitimate governmental interest is void ab initio for violation of First

Amendment precepts and Equal Protection and Enforcement of the Laws and constitutes a forbidden prior restraint.

2. Whether acts, orders and rulings of the Court Below are *Void Ab Initio* for lack of all jurisdiction after the case was removed to United States Bankruptcy Court divesting it of all jurisdiction until the matter was remanded back to State court.
3. Whether the criminal prosecution initiated in this matter and litigated in the Circuit Court until 8/14/2017 is *void ab initio* as it is predicated upon alleged violation of the Sheriff's protective order which was a legal nullity from its inception. All acts and orders of Judge Krier were filed in the Circuit Court in her capacity as a Circuit Court judge.
4. Whether the criminal prosecution is barred by two exceptions to the Collateral Bar Rule/Doctrine as the protective order is transparently unconstitutional / illegal and the order requires the surrender of constitutional rights.
5. Whether the Circuit Court criminal matter has not been concluded in a lawful manner, conversely, it has been abandoned by the State's Attorney and should be dismissed with prejudice for want of prosecution as it is the duty of the State's Attorney to see to it that the cases criminally prosecuted by the State's Attorney should be disposed of in a legal and regular manner

without lingering in uncertainty and burdening the litigants and the Courts as finality is the goal of all court matters.

6. Whether the State's Attorney having two identical prosecutions pending in the Circuit Court and County Court with the same allegations (contempt) and grounded upon the same fact violates double jeopardy.

FACT FROM PROCEEDINGS BELOW

This matter was initiated in the Circuit Court grounded upon Scott Huminski's ("Huminski") investigation and State FOIA requests concerning death threats Huminski had received via the U.S. Mails. Lee Sheriff Mike Scott requested and was granted a protective order barring all communication and contact from Huminski. A criminal contempt prosecution was initiated in the Circuit Court for Huminski's alleged contact with the Sheriff via email and via the internet. After several months of litigation of the criminal matter in Circuit Court, some Circuit Court files were placed by the Clerk under a County Court docket without input from the State's Attorney. The Circuit Court criminal matter was never concluded and no statute or court rule empowers the clerk's office to "transfer" a case and initiate a new criminal prosecution. The power to bring a criminal case is reserved for the State's Attorney. The criminal case remains in the Circuit Court and has never been concluded, just apparently abandoned by the State's Attorney. The

filing of a second identical criminal matter in County Court by the clerk violates double jeopardy. The State's Attorney's duty is to bring actions in the correct court, not every Court in the 20th Circuit.

The Sheriff's Protective Order

The Court below granted a motion for protective order by Lee Sheriff Mike Scott. See Petitioner's Appendix ("PETAPP") at page(s) 8-10.

The protective order forbids all contact with the Sheriff and his staff effectively:

1. Excluding Huminski from all public safety service and law enforcement in his town of residence, Bonita Springs, FL without exception. See County Court Order narrowly tailoring a similar pre-trial order with vastly vague and overbroad terms. (See PETAPP at line(s) 6-7)
2. Forbidding Huminski's First Amendment reporting of crime. See PETAPP at line(s) 113.
3. Forbidding Huminski's First Amendment core political criticism of the Sheriff to likely political opponents (members of the Sheriff's Department).

4. Forbidding Service of the Sheriff in a matter pending before the United States Bankruptcy Court whereby the Sheriff and Huminski were both *pro se*. Service was mandated by bankruptcy rule 9027.
5. Forbidding/threatening Huminski concerning his attendance at the Lee Courthouse complex whereby prohibited contact has to be made with the Sheriff's staff who perform security screening and act as bailiffs. Huminski's individual right to courthouse access has been determined in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) and denied once again in the Sheriff's protective order.
6. Huminski is barred from asking the Circuit Court to hear his motions to vacate by the terms of the protective order.
7. Huminski's banishment from the lee courthouse and the protective order's prohibition against filing present an exhaustion of all redress to the indigent Huminski in the Circuit Court who was appointed a public defender by the Circuit Court and is now represented by regional conflict counsel.
8. Huminski is forbidden from serving this petition upon the Sheriff under the terms of the protective order, effectively obstructing justice. See motion to enjoin protective order to allow service filed herewith.

The case below has had all judges assigned disqualify and the last act of the Circuit Court except for multiple recusals and re-assignment orders was on 8/8/2017. Currently, the Chief Judge is assigned to the case, however, Huminski is forbidden a hearing on his pending motions to vacate under the terms of the sheriff's protective order.

ALL ACTS TAKEN WHILE CASE WAS REMOVED TO U.S. BANKRUPTCY COURT ARE VOID AB INITIO

The case below was removed to the United States Bankruptcy Court at 5:02 p.m. on 6/26/2017 and was remanded back to State Court via a federal order docketed in the Circuit Court on 8/8/2017. See PETAPP at line(s) 28-30, 91-94. All acts and orders taken by the Circuit Court in defiance of the federal court's jurisdiction are VOID AB INITIO, ironically, even the recusal of Judge Krier and arraignment of 6/29/2017. (See PETAPP at pages 60-74, 76-82)

MEMORANDUM OF LAW

Removal to Bankruptcy Court

The removal to Bankrutcy Court is a self-executing function of federal law and plainly obvious in the Dockets from the Court Below and the United States Bankruptcy Court. Absent from either the State or Federal record is any motion to remand the case under federal abstention doctrines by the defendants or objection to

the removal. Any objection to federal jurisdiction or removal not pled in the bankruptcy court is waived. 28 U.S.C. §1447(c) All acts and orders of the Circuit Court were entered in a complete absence of jurisdiction as removal divested jurisdiction from the State Court.

At hearing on 6/29/2017, Hon. Judge Krier could not have been more emphatic by stating that "Nothing gets removed from my court -- ever". As all litigants are aware, any claim mentioning the violation of a federal right/privilege can and usually is removed to federal court by insurance defense attorneys under federal question jurisdiction and bankruptcy removal under Rule 9027 is quite common. The Circuit Court's, Judge Krier presiding, position on federal removal is bewildering.

Court Orders – Collateral Bar Rule

A transparently invalid order cannot form the basis for a contempt citation. See 3 Wright, Federal Practice & Procedure Sec. 702 at 815 n. 17 (1982) (collateral bar rule does not apply if the order violated was transparently unconstitutional); State ex rel. Superior Ct. of Snohomish County v. Sperry, 79 Wash.2d 69, 483 P.2d 608 (1971), cert. denied, 404 U.S. 939, 92 S.Ct. 272, 30 L.Ed.2d 252 (contempt citation improper because order violated was transparently void); see also United States v. Dickinson, 465 F.2d 496, 509-10 (5th Cir.1972) (recognizing exception to

collateral bar rule for transparently invalid orders); Ex parte Purvis, 382 So.2d 512, 514 (Ala.1980) (same).

Court orders are not sacrosanct. See Cobbledick v. United States, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940); accord United States v. Ryan, 402 U.S. 530, 91 S.Ct. 1580, 29 L.Ed.2d 85 (1971). In Cobbledick, the Supreme Court ruled that when a motion to quash a subpoena is denied, the movant may either obey its commands or violate them, and, if cited for contempt, properly contest its validity in the contempt proceeding. Cf. Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972); Maness v. Meyers, 419 U.S. 449, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975) These cases involve orders that require the surrender of irretrievable rights and establish that blind obedience to all court orders is not required. See also Nebraska Press Assoc., 427 U.S. at 559, 96 S.Ct. at 2802 ("A prior restraint ... has an immediate and irreversible sanction.") An appeal can not undo the immediate constitutional injury of a prior restraint such as we have in the instant matter. The instant matter does constitute a prior restraint against core political criticism of a politician (Sheriff) and a prior restraint concerning reporting crime to local law enforcement. An order entered by a court clearly without jurisdiction over the contemnors or the subject matter is not protected by the collateral bar rule. United Mine Workers, 330 U.S. at 293, 67 S.Ct. at 695 Were this not the case, a court could wield power over parties or matters obviously not within its authority--a concept

inconsistent with the notion that the judiciary may exercise only those powers entrusted to it by law. The Circuit Court did issue orders and held hearings in a removed case and in violation of the automatic stay of bankruptcy.

Huminski's email publications to large audiences on the topics of report of terrorist death threats originating in Arizona and transmitted into Lee County, report of crime to law enforcement and criticism of politician/sheriff are pure speech and core political protected expression. The principal purpose of the First Amendment's guaranty is to prevent prior restraints. Near, 283 U.S. at 713, 51 S.Ct. at 630 The Supreme Court has declared: "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1577, 29 L.Ed.2d 1 (1971); see also Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963) When, as here, the prior restraint impinges upon the right of the press (Huminski was acknowledge as a Citizen-Reporter, Huminski v. Corsones) to communicate news and involves expression in the form of pure speech--speech not connected with any conduct--the presumption of unconstitutionality is virtually insurmountable. Nebraska Press Assoc., 427 U.S. at 558, 570, 96 S.Ct. at 2802, 2808 (White, J., concurring) Huminski notes his status as a citizen-reporter. See Generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)

The Supreme Court strongly protects "core political speech" as a "value that occupies the highest, most protected position" in the hierarchy of constitutionally-protected speech. R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 422 (1992) (Stevens, J., concurring). See also Burson v. Freeman, 504 U.S. 191, 217 (1992). In defining the core political speech worthy of this elevated level of protection, the Court has broadly included "interactive communication concerning political change.", the essence of Huminski's communications with the sheriff. Meyer v. Grant, 486 U.S. 414, 422 (1988). Huminski's electronic communications objected to the Sheriff's position on interstate terrorist death threats. Huminski has also published his opposition to the sheriff's policies as signage at his home and on the internet. For example, see https://www.youtube.com/watch?v=-dJYlLMBLVk and see generally https://www.youtube.com/channel/UC-y4hdd9G-cN3GxkJIMpF9w and see a google search on the petitioner.

Political speech gets higher protection because it is an essential part of the democratic process. Indeed, evaluating a statute that would have restricted all anonymous leafleting in opposition to a proposed tax, the Supreme Court reflected on the importance of specifically protecting such political speech which applies equally here to Huminski's speech regarding corruption, misconduct and oppression by police and government actors who support the death threats received by Huminski. The First Amendment affords the broadest protection to such political

expression in order "to assure [the]unfettered interchange of ideas for the bringing about of political and social changes desired by the people." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 346-47 (1995), quoting Roth v. United States, 354 U.S. 476, 484 (1957)

Recently, the Supreme Court made it abundantly clear that laws or in this case a court order that burden political speech are subject to strict scrutiny review. Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010), invalidated a federal statute that barred certain independent corporate expenditures for electioneering communications. Highlighting the primacy of political speech, the Court noted that "political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction' furthers a compelling interest and is narrowly tailored to achieve that interest.'" Citizens United, 558 U.S. at 340 (quoting Federal Election Comm'n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 464 (2007)). There exists no compelling reason to silence Huminski's reporting of crime or criticism of the sheriff.

The order and the threats from the Sheriff/Court under State law/Common Law cut off the "unfettered interchange of ideas" in an important place for individual political expression--the Courts and internet. McIntyre, 514 U.S. at 346-

47. Treading upon core First Amendment expression must be accomplished in as minimally a restrictive manner as possible, and should never be done so in the form of an absolute bar on all political expression as is the case at Bar whereby criticism, reporting of crime and civil/bankruptcy litigation has been viewed as a per se criminal activity by the State Court. See Bd. of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 574 (1987) (invalidating a statute because it "reache[d] the universe of expressive activity, and, by prohibiting all protected expression, purport[ed] to create a virtual 'First Amendment Free Zone.' ") (emphasis in original).

Validating a sweeping ban on core political speech would seriously undermine the Supreme Court's stated goal of safeguarding the democratic process. The alleged contact with the Sheriff made by Huminski were related to reporting crime and criticism of a political figure. A constitutional solution should have been to direct the sheriff to delete any emails he considered junk mail. Shutting down Huminski's reporting crime to law enforcement is an extreme remedy that does not survive constitutional scrutiny under vagueness and over-breadth precepts.

Grayned v. The City of Rockford, 408 U.S. 104 (1972) summarized the time, place, manner concept: "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular

time." Time, place, and manner restrictions must withstand intermediate scrutiny. Note that any regulations that would force speakers to change how or what they say do not fall into this category (so the government cannot restrict one medium even if it leaves open another) Ward v. Rock Against Racism, 491 US 781 (1989) held that time, place, or manner restrictions must:

* Be content neutral
* Be narrowly tailored
* Serve a significant governmental interest
* Leave open ample alternative channels for communication

If the government tries to restrain speech before it is spoken, as opposed to punishing it afterward, it must be able to show that punishment afte r the fact is not a sufficient remedy, and show that allowing the speech would "surely result in direct, immediate, and irreparable damage to our Nation and its people" (New York Times Co. v. United States, 403 U.S. 730 (1971)).

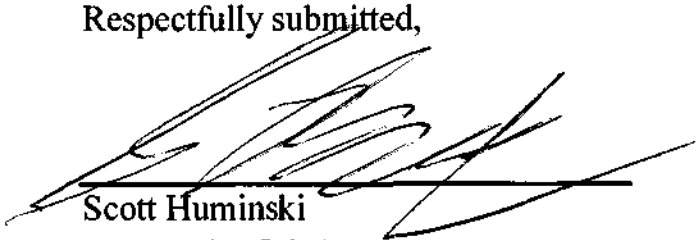
In Bridges v California, 314 U.S. 252 (1941), Mr. Justice Black, for the five-to-four majority, presented clear and present danger as "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterance can be punished"; adding that even this did not "mark the

furthermost constitutional boundaries of protected expression." Bridges v. California, 314 U. S. 252, 263 (1941).

CONCLUSION

For all of the forgoing reasons, the Court should grant the Petitions and issue a Writ of Prohibition, Writ of Mandamus, Writ of Coram Nobis and Writ of Quo Warranto requiring the Circuit Court vacate all acts, orders and rulings entered while the case was removed to U.S. Bankruptcy Court, vacate the protective order as void ab initio for First Amendment violations, order the initiation of the criminal matter *Void Ab Initio* and dismiss it with prejudice and find that the orders involved in this case are exceptions to the Collateral Bar Rule which allows violation of a transparently unconstitutional order and allows violation of an order that requires the surrender of Constitutional rights.

Respectfully submitted,



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s_huminski@live.com

CERTIFICATE OF SERVICE – FOR PETITION, APPENDIX AND MOTIONS

I HEREBY CERTIFY that on or before December 07, 2017, a true copy of the foregoing and Petitioner's Appendix and Motion to Stay Matters Below and MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER and MOTION TO REPLEAD WITH ASSISTANCE OF COUNSEL have been served pursuant to the Rules upon,

20th Circuit Public Defender's Office (Kevin Sarlo, esq.),

Regional Conflict Counsel (Zachary Miller, esq.),

State's Attorney (ASA Anthony Kunasek, esq.),

Hon. Michael McHugh,

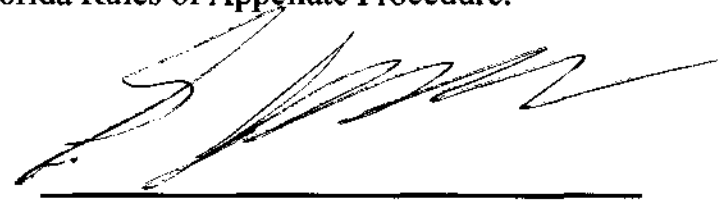
Hon. James Adams,

All parties in 17-CA-421 (except the Sheriff Defendants and Scribd, Inc., defendants whereby service is prohibited by order, see MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER filed herewith which, if granted, would allow service to complete).

Scott Huminski

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.21 (a)(2), I certify that this computer-generated brief/petition is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.



Scott Huminski

No. 2D17-

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINAKI,

Petitioner,

TOWN OF GILBERT, AZ, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

MOTION TO STAY MATTERS BELOW

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656 E-mail s_huminski@live.com

MOTION TO STAY MATTERS BELOW

NOW COMES, Scott Huminski ("Huminski") and moves to stay the two matters related to this petition which are pending in the Circuit Court, Huminski v. Town of Gilbert, AZ et al., 17-CA-421 and County Court, State v. Huminski, 17-MM-815 as follows:

1. The existence of two cases prosecuting the exact same charge based upon the exact same facts violates double jeopardy or is otherwise unfounded and unethical.
2. The instant matter will be dispositive of both of the criminal contempt prosecutions, and thus, they should be stayed pending disposition of this petition.

WHEREFORE, The matters below should be stayed pending resolution of this case.

Dated at Bonita Springs, Florida this 3rd day of 2017 December

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_Huminski@live.com

See Certificate of Service at Petition pages 16-17

No. 2D17-

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINAKI,

Petitioner,

TOWN OF GILBERT, AZ, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656 E-mail s_huminski@live.com

MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER

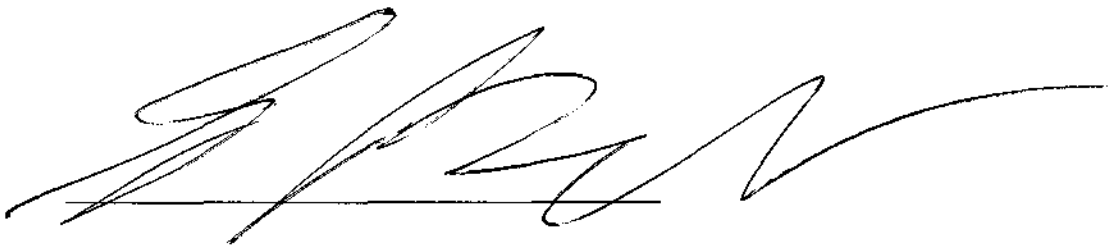
NOW COMES, Scott Huminski ("Huminski") and moves to enjoin the protective orders and pre-trial orders issued related to this matter which prohibit service of Sheriff Mike Scott and Scridb, Inc..

1. The petition before this Court will have an impact on the Circuit Court proceedings below that constituted a hybrid civil and criminal matter and Huminski can not serve essential parties in the instant matter pursuant to existing orders in both the Circuit and County courts.
2. There has been no disposition of the criminal matter in Circuit Court, it has been abandoned by the State's Attorney, and Huminski contends that the "*transfer*" to County Court is not allowed by any Court rule, statute or any other Florida authority. The State's Attorney needed to dismiss the Circuit Court case and file an information, affidavit or indictment in County Court to initiate a prosecution. The clerk can not initiate a criminal case by shuffling digital files between various dockets. The transfer is a huge departure from the statutory practice of criminal law in Florida relating to the procedure for initiating a criminal prosecution in Florida.

3. The protective order of Sheriff Scott (Circuit Court) and the pre-trial order (County Court) forbid the service in this matter of Sheriff Scott and Scribd, Inc. and associated defendants in the Circuit Court. See Petioner's Appendix at line(s) 6-10. The pre-trial order specifically prohibits the service of *pro se* parties to the instant matter and obstructs service of the instant matter. The protective order is wildly over-broad in its prohibitions violating Due Process, the First Amendment and the Sheriff's Due Process rights concerning service.

WHEREFORE, Petitioner requests that Sheriff Scott's protective order and the pre-trial order be enjoined to allow service in this matter.

Dated at Bonita Springs, Florida this 3rd day of 2017 December



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24544 Kingfish Street
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(239) 300-6656
S_Huminski@live.com

See Certificate of Service at Petition pages 16-17

No. 2D17-

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINAKI,

Petitioner,

TOWN OF GILBERT, AZ, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

MOTION TO RE-PLEAD WITH ASSISTANCE OF COUNSEL

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656 E-mail s_huminski@live.com

MOTION TO REPLEAD WITH ASSISTANCE OF COUNSEL

NOW COMES, Scott Huminski ("Huminski") and moves to replead his petition with the assistance of counsel as follows:

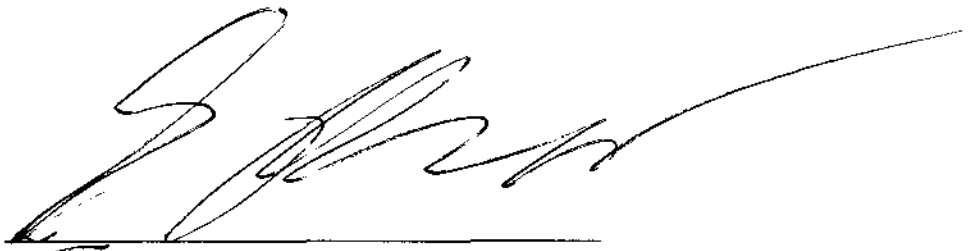
1. The public defender was appointed to represent Huminski beginning with the arraignment/hearing of 6/29/2017 in the matter below and represented Huminski in the hybrid civil/criminal case until 9/28/2017. See Petitioner's Appendix ("PETAPP") at line(s) 58.
2. The petition before this Court has an impact on the Circuit Court proceedings below that constituted a hybrid civil and criminal matter and Huminski has had appointed counsel for the entirety of the criminal proceedings below as recognition by the Court of his indigency and full disability under Social Security.
3. The criminal portion of the case appeared on a docket in County Court 17-MM-815 despite no dismissal of the Circuit Court case 17-CA-421 and no filing of a valid charging document in the County Court, 17-MM-815.
4. The Public Defender remained counsel for Huminski in the County Court until Regional Conflict Counsel was assigned on 10/9/2017. The Public Defender engaged in the stipulation that constituted an admission by all

parties and the Court that the pre-trial order and its predecessors (the protective orders) were vastly unconstitutional. PETAPP at lines 5-6.

5. There has been no disposition of the criminal matter in Circuit Court and Huminski contends that the "*transfer*" to County Court is not allowed by any Court rule, statute or any other Florida authority. The State's Attorney needed to dismiss the Circuit Court case and file an information, affidavit or indictment in County Court to initiate a prosecution. The transfer is a huge departure from the statutory practice of criminal law in Florida.

WHEREFORE, Huminski requests that counsel be ordered to appear for Huminski in this matter and that petitioner's counsel be allowed to re-plead the petition if counsel believes that it is necessary and further represent the indigent Huminski as this matter is inextricably intertwined with the criminal case against Huminski and seeks relief related to the criminal case.

Dated at Bonita Springs, Florida this 3rd day of 2017 December



Scott Huminski, pro se
24544 Kingfish Street
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(239) 300-6656
S_Huminski@live.com

See Certificate of Service at Petition pages 16-17

No. 2D17-4740

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, AZ, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

NOTICE OF RELATED CASES

SCOTT HUMINSKI, PRO SE
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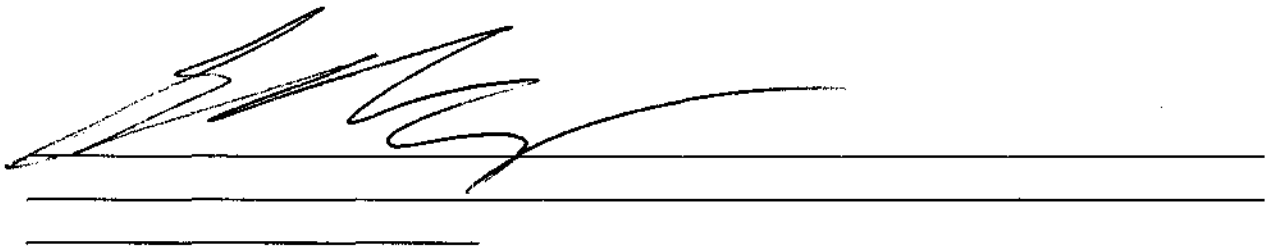
(239) 300-6656 E-mail s_huminski@live.com

NOTICE OF RELATED CASES

NOW COMES, Scott Huminski ("Huminski") and notifies of related case, State v. v. Huminski, Lee County Court, 17-MM-815. This County Court case is also a based upon the same fact as the criminal contempt prosecuted in 17-CA-421 and is large reason why this appeal/petition was brought – two identical cases brought by the same prosecutor in both Circuit and County Courts.

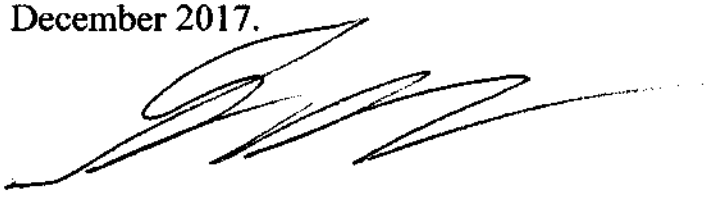
Dated at Bonita Springs, Florida this 7th day of December, 2017,



Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_Huminski@live.com

CERTIFICATE OF SERVICE

Copies of the foregoing were served upon all parties of record on this 7th day of December 2017.



Scott Huminski

DOCKET NO. 17-MM-815

AKA: STATE V. HUMINSKI

From: scott huminski <s_huminski@live.com>
Sent: Thursday, December 14, 2017 12:27 PM
To: KevinS@pd.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org
Subject: Re: Huminski v. Gilbert 2D17-4740 17-MM-815

Zach,

We need to schedule deposition of Judge Krier and Sheriff Scott. I have told you to do this previously. Prior to deposition, we need to take care of the no-contact orders regarding both the judge and sheriff.

I need to participate in the depositions. I caught Krier in many lies and other misconduct, this is why she recused. Then she got bounced back to collier county for some reason. There is a lot to investigate

The orders the State relies upon have criminally obstructed justice on 5 instances in both State and Federal Court. There is no duty to obey court orders that constitute intent to obstruct justice. The crimes of the sheriff and judge krier are central to our defense. The State has no duty to further obstruction of justice. -- scott huminski

.

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 13, 2017 3:20 PM
To: KevinS@pd.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org
Subject: Huminski v. Gilbert 2D17-4740

Kevin & Zach, Please note the pending filing concerning appointment of counsel. This is a criminal matter arising from the cases you both worked on. Please respond to the 2dca as to your position on appointment of counsel. Current case status is below. Both the PD and conflict counsel have been added as parties as well as the State's Attorney.
see https://edca.2dca.org/Case.aspx?CaseID=105779 The Electronic Frontier Foundation, eff.org, seeks to speak with counsel about direct or amicus 1st amendment assistance. Please advise. -- scott

1

17-4740

SCOTT A. HUMINSKI
vs
TOWN OF GILBERT, ARIZONA, ET AL.,

ate	Type	Pleading	Note
/2017	Motion	Motion for Appointment of Counsel	SECOND MOTION TO RE-PLEAD WITH ASSISTANC COUNSEL
/2017	Notice	Notice	NOTICE OF ATTEMPTED DELIVERY OF DISTRICT COURT OF APPEAL FE
/2017	Receipt	Filing Fee $300	: Receipt: 2017 - 1018251 Amount: 300
/2017	Event	Certificate	AMENDED CERTIFICATE OF SERVICE
/2017	Notice	Notice of Related Case	
/2017	Order	deny motion until fee satisfied	
/2017	Letter		
/2017	Order	fee - writ; pro se	
/2017	Order	c of s; mailing addresses	
/2017	Petition	Petition Filed	
/2017	Motion	Emergency Motion To Stay	
/2017	Motion	Miscellaneous Motion	
/2017	Motion	Motion for Appointment of Counsel	
/2017	Petition	ORIGINAL APPENDIX OR ATTACHMENT	

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, December 12, 2017 9:53 AM
To: KevinS@pd.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; doss.virlindia@leg.state.fl.us
Subject: Huminski service obstructed in 2DCA and 17-CA-421 - hearing today

The orders of the Circuit Court have obstructed service in the Circuit Court and the 2DCA. Below is the NEF for my filing today in the 2DCA as served in 17-CA-421. Under the protective orders service is forbidden to the Sheriff and Scribd defendants. First Amendment and Due

Process violations. A court should never forbid conduct that ends up criminally obstructing justice. Even the County Court protective order, although somewhat narrowly tailored, still obstructs justice concerning service in State and Federal cases.

The protective orders, besides qualifying as exceptions to the Collateral Bar Rule, are criminal acts intending to obstruct justice. One question would be, do court orders that constitute crimes need to be obeyed? I'm obeying and the criminal offenses, obstruction of justice, are piling up. The next target of the protective orders will be the Florida Supreme Court. The Sheriff and Judge Krier need to be criminally prosecuted as they worked in concert to obstruct justice.

My attendance at the hearing today before Judge McHugh at 2:30 has been obstructed by the protective orders. A corrupt way to win court cases, banish the other party from the courthouse. An item of pecuniary value to the sheriff. Corruption.

The parties in 17-CA-421 have the Due Process right to receive service in 2D17-4740 and I have the duty to serve them and the right to serve them under the 1st Amendment which has been criminally obstructed.

A review of service in 17-CA-421 and 2D17-4740 will reveal the obstruction of justice has been effective for months and constitutes an attack upon the integrity of State and Federal court proceedings and is prejudicial to the administration of justice. -- scott huminski

see

Notice of Service of Court Documents

Filing Information

Filing #:	65255837
Filing Time:	12/12/2017 09:24:40 AM ET
Filer:	Scott Alan Huminsky 239-300-6656
Court:	Twentieth Judicial Circuit in and for Lee County, Florida
Case #:	362017CA000421A001CH
Court Case #:	17-CA-000421
Case Style:	Huminski, Scott et al Plaintiff vs Town of Gilbert AZ et al Defendant

Documents

Title	File
Motion	2nd motion re-plead merged.pdf

E-service recipients selected for service:

Name	Email Address

Name	Email Address
JAMES D. FOX	jfox@ralaw.com
	serve.jfox@ralaw.com
Jeffrey Lincoln Smith	jeffrey.smith@sandersparks.com
	lisa.franceschi@sandersparks.com
	allison.mitchell@sandersparks.com
Robert Dwane Pritt	rpritt@ralaw.com
	dkomoroski@ralaw.com
James D. Fox	jfox@ralaw.com
	serve.jfox@ralaw.com
Scott A Huminski	s_huminski@live.com
	scott.huminski@gmail.com
Maricopa County Sheriff's Office	complaints@mcso.maricopa.gov
Scott Alan Huminsky	scott.huminski@gmail.com
Steven Douglas Knox	doug.knox@quarles.com
	donna.santoro@quarles.com
	docketfl@quarles.com
Keely F Morton	keely.morton@quarles.com
	ivon.delarosa@quarles.com
	nichole.perez@quarles.com
Robert D. Pritt	rpritt@ralaw.com
	serve.rpritt@ralaw.com

E-service recipients not selected for service:

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	maribel@dldlawyers.com
Kenneth R. Drake	kendrake@dldlawyers.com
	josefina@dldlawyers.com

Name	Email Address
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Robert Shearman	robert.shearman@henlaw.com
	courtney.ward@henlaw.com
Trip Adler	trip@scribd.com
Jason Bentley	jbentley@scribd.com
Jenn Daniels	mayor@gilbertaz.gov
	jenn.daniels@gilbertaz.gov
Tim Dorn	tim.dorn@gilbertaz.gov
Mike Scott	mscott@sheriffleefl.org
	sheriff@sheriffleefl.org
	jholloway@sheriffleefl.org
Phoenix Mayor	mayor.stanton@phoenix.gov
	chief.williams@phoenix.gov
Nelson, John Doe	jmichaelnelsonwrites@gmail.com

This is an automatic email message generated by the Florida Courts E-Filing Portal. This email address does not receive email.
Thank you,
The Florida Courts E-Filing Portal

From: scott huminski <s_huminski@live.com>
Sent: Monday, December 11, 2017 5:37 PM
To: KevinS@pd.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org
Subject: Huminski 2DCA filing

Link to last motion filed in the 2DCA also attached. I contacted the JA of Judge McHugh regarding my banishment from the lee courthouse and attendance at the hearing tomorrow. I did not hear back. With the courthouse banishment in effect and the prohibition concerning contact and communications with the Sheriff defendants and Scribd, Inc. defendants, I am forced to absent myself from the hearing as the cloud of criminal prosecution hangs high in my

consciousness concerning the threats issued by the various defendants targeting the First Amendment and Due Process.

The threats embodied in the protective orders of sheriff Scott have now obstructed a Circuit Court case, a County Court Case, service in the 2nd District Court of Appeal and the U.S. Bankruptcy Court (a unit of U.S. District Court).

Too much official/sheriff crime attached to these matters. Link below. -- scott huminski

https://edca.2dca.org/DCADocs/_eFilings/3669/3669_44_12112017_05185888_e.pdf

---

From: scott huminski <s_huminski@live.com>
Sent: Monday, December 11, 2017 10:01 AM
To: KevinS@pd.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org
Subject: Sheriff's order obstructs hearing tomorrow before Hon M. McMugh

The sheriff's protective order and the protective order of Scribd, Inc. prevent my attendance at a hearing tomorrow at 2:30 before Judge McHugh. I can not enter the lee courthouse facility without forbidden "contact and communication" with Sheriff Scott's staff at security screening and in the courtrooms. Furthermore, at hearing, I am forbidden from communicating with defendants Sheriff Scott or Scribd, Inc..

As such even if I could enter the courthouse, I am prohibited by order from communicating at the hearing or being there to the extent that it may be considered "contact" under protective orders.

I note that the Sheriff's protective order has obstructed my service of him in the 2DCA, likewise with Scribd, Inc.. These crimes dwarf any allegations the State has made against me related to the patently and transparently unconstitutional protective orders. The Sheriff also successfully obstruct the federal bankruptcy court matter by prohibiting service. 4 court matters obstructed by Sheriff Scott. State and federal felonies.

Not only do the orders run afoul of the First Amendment, they eliminate all chances of procedural and substantive Due Process.

A little too much order in this Court.

Payment of the fee in the 2DCA is today.

I am directing appointed counsel, to appear for me tomorrow as the Circuit Court criminal matter has never been lawfully concluded. Kevin or Zach, please appear tomorrow and request dismissal of the Circuit criminal matter with prejudice, as it has been abandoned by the SA and the County Court matter was initiated unlawfully. There is no Statute, Court Rule or other Florida authority providing for the transfer of cases between Circuit and County courts via the

clerks manipulation of digital files and dockets. Criminal charges must be brought by the SA with an information or indictment, not by a clerk.

The entire situation constitutes a manifest injustice. -- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Thursday, December 7, 2017 3:28 PM
To: KevinS@pd.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org
Subject: Notice DCA 17-4740

See attached notice

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, December 5, 2017 3:43 PM
To: KevinS@pd.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org
Subject: Orders from DCA 17-4740

I do not have access to these orders that are VOR in the docket and no access via the DCA website (it says I am not a party). Please advise, whoever is handling this now. -- scott

12/04/2017	Order from DCAappellant to submit amended certificate of service within 5 days Comments: appellant to submit amended certificate of service within 5 days	1
12/04/2017	Order from DCAdirecting appellant to forward their filing fees Comments: directing appellant to forward their filing fees	1
12/04/2017	Order from DCAdenying appellants motion for appointment of counsel without prejudice Comments: denying appellants motion for appointment of counsel without prejudice	1
12/04/2017	Acknowledgment from DCA2D17-4740 prohibition Comments: 2D17-4740 prohibition	1

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, December 5, 2017 9:13 AM
To: KevinS@pd.cjis20.org; Smith, Kathleen A; katherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org
Subject: appeal 17-4740

Attached usps scan re: judges

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, December 5, 2017 9:11 AM
To: 2dcaportalhelp@flcourts.org; KevinS@pd.cjis20.org; Smith, Kathleen A; katherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org
Subject: Fee for appeal 17-4740

Hello 2DCA Clerk , May i mail a check for the fee for the above appeal? Or, can it be done electronically? In the Circuit Court the 20th Circuit public defender was assigned to the Circuit Court case. Is it their responsibility?

I included all parties that may be involved in this petition related to the criminal case below. It is my understanding that either the Public Defender or Conflict Counsel will proceed with the petition as counsel was appointed in the lower court.

Thanks.

Scott Huminski, petitioner

From: scott huminski <s_huminski@live.com>
Sent: Monday, December 4, 2017 11:36 AM
To: scott huminski; s_huminski@yahoo.com; rpritt@ralaw.com; douglas.knox@quarles.com; KevinS@pd.cjis20.org; zmiller@flrc2.org; katherineT@pd.cjis20.org; info@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; andrew@crawforddefense.com; dgolden@flcr2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; akunasek@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; Civil CM
Subject: Sheriff Scott criminal obstruction of justice re: service 2DCA docket 17-4740

Protective orders of Sheriff Scott and Scribd, Inc. prevent and criminally obstruct service in 2DCA 17-4740. Sheriff Scott's staff was at hearings where this topic was extensively discussed. Criminal intent is present.

Anthony, you or an appellate colleague should appear in the petition case. Also you should consider charges against Sheriff Scott. Obstruction of Justice, witness tampering, witness intimidation related to my banishment from court and prohibition against service of process. At the first hearing in Circuit Court it was clear that ex parte communication was influencing Judge Krier because she stated fact not on the record. This may have been the sheriff as well.

-- scott huminski

From: scott huminski on behalf of scott huminski <scott.huminski@gmail.com>
Sent: Monday, December 4, 2017 11:11 AM
To: s_huminski@yahoo.com; rpritt@ralaw.com; douglas.knox@quarles.com; KevinS@pd.cjis20.org; zmiller@flrc2.org; KatherineT@pd.cjis20.org; info@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; andrew@crawforddefense.com; dgolden@flcr2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; akunasek@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; Civil CM
Subject: Huminski 2DCA docket 17-4740

From: eFile2DCA@flcourts.org <eFile2DCA@flcourts.org>
Sent: Monday, December 4, 2017 10:41 AM
To: S_HUMINSKI@LIVE.COM; S_HUMINSKI@LIVE.COM; S_HUMINSKI@LIVE.COM
Subject: Pleading Accepted On Case: 17-4740

Your Petition All Writs on case 17-4740 has been accepted and is now on the docket.

DCA Case No: 17-4740
Case Name : SCOTT A. HUMINSKI v TOWN OF GILBERT, ARIZONA, ET AL.,
LT Case No : 2017CA00421

From: scott huminski <s_huminski@live.com>
Sent: Monday, December 4, 2017 9:27 AM
To: scott huminski; s_huminski@yahoo.com; rpritt@ralaw.com; douglas.knox@quarles.com; KevinS@pd.cjis20.org; zmiller@flrc2.org; KatherineT@pd.cjis20.org; info@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; andrew@crawforddefense.com; dgolden@flcr2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; akunasek@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; Civil CM
Subject: Huminski seeks to appear via telephone at 12/12 hearing

Hello,

I seek to appear telephonic-ally at the 12/12 hearing to orally move to stay the case while petition is being considered by the 2DCA. I note that the criminal matter before the Circuit Court was never concluded, either the public defender or conflict counsel should attend and address the criminal case abandoned by the State's Attorney. The criminal case was not transferred anywhere as there is no statute, rule or Florida authority that allows the clerk to initiate a criminal proceeding by shuffling digital files between dockets.

The Sheriff's criminal protective order prevents my appearance in person. It is obstruction of justice -- scott huminski

---

From: scott huminski on behalf of scott huminski <scott.huminski@gmail.com>
Sent: Sunday, December 3, 2017 3:41 PM
To: jack.smith@townofcary.org; s_huminski@yahoo.com; rpritt@ralaw.com; douglas.knox@quarles.com; KevinS@pd.cjis20.org; zmiller@flrc2.org; KatherineT@pd.cjis20.org; info@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; andrew@crawforddefense.com; dgolden@flcr2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; akunasek@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; Civil CM
Subject: Huminski petition filed 2DCA

Second District Court of Appeal

Case List	Case	Docket	File Document	Pending Filings	Rejected Filings	My Notifications	My Profile	Logoff

Filings pending approval

	Document	Title	Case	Appellant	Appellee
	Appendix for Initial Brief		New	Scott Huminski	Town of Gilber
/2017	Motion for Appointment of Counsel		New	Scott Huminski	Town of AZ, et a
	Miscellaneous Motion		New	Scott Huminski	Town of Gilber
/2017	Emergency Motion To Stay		New	Scott Huminski	Town of AZ, et a
	Petition All Writs		New	Scott Huminski	Town of Gilber

From: scott huminski <s_huminski@live.com>
Sent: Sunday, December 3, 2017 11:52 AM
To: scott huminski; jack.smith@townofcary.org; s_huminski@yahoo.com; rpritt@ralaw.com; douglas.knox@quarles.com; KevinS@pd.cjis20.org; zmiller@flrc2.org; KatherineT@pd.cjis20.org; info@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; andrew@crawforddefense.com; dgolden@flcr2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; akunasek@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; Civil CM
Subject: Huminski petition filed 2DCA

See file stamped copy of petition. The public defender or conflict counsel needs to appear. This case is part of the criminal proceedings. Anthony, you should appear, the relief requested includes dismissal with prejudice of the criminal case in the Circuit Court which would be depositive in County Court. -- scott

---

From: scott huminski on behalf of scott huminski <scott.huminski@gmail.com>
Sent: Sunday, December 3, 2017 11:24 AM
To: jack.smith@townofcary.org; s_huminski@yahoo.com; rpritt@ralaw.com; douglas.knox@quarles.com; KevinS@pd.cjis20.org; zmiller@flrc2.org; KatherineT@pd.cjis20.org; info@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; andrew@crawforddefense.com; dgolden@flcr2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; akunasek@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; Civil CM
Subject: Huminski 2DCA

Links for convenient access,

Petition
https://judgeelizabethvkrierleecountyflcorruption.files.wordpress.com/2017/06/petition-for-writs-signed-scan028.pdf

Motions
https://web.archive.org/web/20171203161421/https://judgeelizabethvkrierleecountyflcorruption.files.wordpress.com/2017/06/motion-injunction-scan029.pdf

http://web.archive.org/web/20171203161659/https://judgeelizabethvkrierleecountyflcorruption.files.wordpress.com/2017/06/motion-replead-scan030.pdf

http://web.archive.org/web/20171203161845/https://judgeelizabethvkrierleecountyflcorruption.files.wordpress.com/2017/06/motion-stay-scan031.pdf

Appendix in 2DCA
https://web.archive.org/web/20171130195941/https://judgeelizabethvkrierleecountyflcorruption.files.wordpress.com/2017/06/appendix-scanned-merged.pdf

---

From: scott huminski <s_huminski@live.com>
Sent: Saturday, December 2, 2017 1:02 PM
To: jack.smith@townofcary.org; scott.huminski@gmail.com; s_huminski@yahoo.com; rpritt@ralaw.com; douglas.knox@quarles.com; KevinS@pd.cjis20.org; zmiller@flrc2.org; KatherineT@pd.cjis20.org; info@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; andrew@crawforddefense.com; dgolden@flcr2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; akunasek@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; Civil CM; scott huminski
Subject: NEF for Petition for Writs- Circuit and County

FYI - hand delivering this week to 2DCA

NOTICE OF ELECTRONIC FILING - SUBMISSION # 64878771

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Notice of Service of Court Documents

Filing Information

Filing #:	64878771
Filing Time:	12/02/2017 11:47:14 AM ET
Filer:	Scott Alan Huminsky 239-300-6656
Court:	Twentieth Judicial Circuit in and for Lee County, Florida
Case #:	362017CA000421A001CH
Court Case #:	17-CA-000421
Case Style:	Huminski, Scott et al Plaintiff vs Town of Gilbert AZ et al Defendant

Documents

Title	File
Petition	petition for writs signed scan028.pdf

E-service recipients selected for service:

Name	Email Address
JAMES D. FOX	jfox@ralaw.com
	serve.jfox@ralaw.com
Jeffrey Lincoln Smith	jeffrey.smith@sandersparks.com
	lisa.franceschi@sandersparks.com
	allison.mitchell@sandersparks.com
Robert Dwane Pritt	rpritt@ralaw.com

Name	Email Address
	dkomoroski@ralaw.com
James D. Fox	jfox@ralaw.com
	serve.jfox@ralaw.com
Scott A Huminski	s_huminski@live.com
	scott.huminski@gmail.com
Maricopa County Sheriff's Office	complaints@mcso.maricopa.gov
Phoenix Mayor	mayor.stanton@phoenix.gov
	chief.williams@phoenix.gov
Scott Alan Huminsky	scott.huminski@gmail.com
Steven Douglas Knox	doug.knox@quarles.com
	donna.santoro@quarles.com
	docketfl@quarles.com
Keely F Morton	keely.morton@quarles.com
	ivon.delarosa@quarles.com
	nichole.perez@quarles.com
Robert D. Pritt	rpritt@ralaw.com
	serve.rpritt@ralaw.com

E-service recipients not selected for service:

Name	Email Address
Doron Weiss	dweiss@dldlawyers.com
	maribel@dldlawyers.com
Kenneth R. Drake	kendrake@dldlawyers.com
	josefina@dldlawyers.com
Kenneth R Drake	kendrake@dldlawyers.com
	josefina@dldlawyers.com
Robert Shearman	robert.shearman@henlaw.com
	courtney.ward@henlaw.com
Trip Adler	trip@scribd.com

Name	Email Address
Jason Bentley	jbentley@scribd.com
Jenn Daniels	mayor@gilbertaz.gov
	jenn.daniels@gilbertaz.gov
Tim Dorn	tim.dorn@gilbertaz.gov
Mike Scott	mscott@sheriffleefl.org
	sheriff@sheriffleefl.org
	jholloway@sheriffleefl.org
Nelson, John Doe	jmichaelnelsonwrites@gmail.com

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Thank you,
The Florida Courts E-Filing Portal

NOTICE OF ELECTRONIC FILING - SUBMISSION # 64878802

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Notice of Service of Court Documents

Filing Information

Filing #:	64878802
Filing Time:	12/02/2017 11:52:30 AM ET
Filer:	Scott Alan Huminsky 239-300-6656
Court:	Twentieth Judicial Circuit in and for Lee County, Florida
Case #:	362017CA000421A001CH
Court Case #:	17-CA-000421
Case Style:	Huminski, Scott et al Plaintiff vs Town of Gilbert AZ et al Defendant

Documents

Title	File
Motion For Temporary Injunction	motion injunction scan029.pdf
Motion	motion stay scan031.pdf
Motion	motion replead scan030.pdf

E-service recipients selected for service:

Name	Email Address
JAMES D. FOX	jfox@ralaw.com
	serve.jfox@ralaw.com
Jeffrey Lincoln Smith	jeffrey.smith@sandersparks.com
	lisa.franceschi@sandersparks.com
	allison.mitchell@sandersparks.com
Robert Dwane Pritt	rpritt@ralaw.com
	dkomoroski@ralaw.com
James D. Fox	jfox@ralaw.com
	serve.jfox@ralaw.com
Scott A Huminski	s_huminski@live.com
	scott.huminski@gmail.com
Scott Alan Huminsky	scott.huminski@gmail.com
Steven Douglas Knox	doug.knox@quarles.com
	donna.santoro@quarles.com
	docketfl@quarles.com
Keely F Morton	keely.morton@quarles.com
	ivon.delarosa@quarles.com
	nichole.perez@quarles.com
Robert D. Pritt	rpritt@ralaw.com
	serve.rpritt@ralaw.com

E-service recipients not selected for service:

Name	Email Address
Doron Weiss	dweiss@dldlawyers.com
	maribel@dldlawyers.com
Kenneth R. Drake	kendrake@dldlawyers.com
	josefina@dldlawyers.com
Kenneth R Drake	kendrake@dldlawyers.com

Name	Email Address
	josefina@dldlawyers.com
Robert Shearman	robert.shearman@henlaw.com
	courtney.ward@henlaw.com
Trip Adler	trip@scribd.com
Jason Bentley	jbentley@scribd.com
Jenn Daniels	mayor@gilbertaz.gov
	jenn.daniels@gilbertaz.gov
Tim Dorn	tim.dorn@gilbertaz.gov
Mike Scott	mscott@sheriffleefl.org
	sheriff@sheriffleefl.org
	jholloway@sheriffleefl.org
Maricopa County Sheriff's Office	complaints@mcso.maricopa.gov
Phoenix Mayor	mayor.stanton@phoenix.gov
	chief.williams@phoenix.gov
Nelson, John Doe	jmichaelnelsonwrites@gmail.com

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Thank you,
The Florida Courts E-Filing Portal

NOTICE OF ELECTRONIC FILING - SUBMISSION # 64878828

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Notice of Service of Court Documents

Filing Information

Filing #:	64878828
Filing Time:	12/02/2017 11:58:26 AM ET
Filer:	Scott Alan Huminsky 239-300-6656
Court:	Twentieth Judicial Circuit in and for Lee County, Florida
Case #:	362017MM000815000ACH
Court Case #:	17-MM-000815

Case Style: State of Florida vs Huminski, Scott A

Documents

Title	File
Notice	petition for writs signed scan028.pdf
Motion	motion stay scan031.pdf
Motion	motion injunction scan029.pdf
Motion	motion replead scan030.pdf

E-service recipients selected for service:

Name	Email Address
Public Defender 20Th Circuit	efiling@ca.cjis20.org
Scott Alan Huminsky	scott.huminski@gmail.com
scott huminski	s_huminski@live.com
kathleen smith	kathleens@pd.cjis20.org
State Attorney 20Th Circuit	eService@sao.cjis20.org
Zachary Miller	zmiller@flrc2.org

E-service recipients not selected for service:

Name	Email Address
No Matching Entries	

This is an automatic email message generated by the Florida Courts E-Filing Portal. This email address does not receive email.

Thank you,
The Florida Courts E-Filing Portal

From: scott huminski <s_huminski@live.com>
Sent: Saturday, December 2, 2017 12:26 PM
To: Hughes, Jack; 'Maribel Medina'; Civil CM
Cc: rpritt@ralaw.com; Ortega, Melanie; Josefina Rodriguez; douglas.knox@quarles.com; KevinS@pd.cjis20.org; zmiller@flrc2.org; KatherineT@pd.cjis20.org; Smith, Kathleen A; info@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; andrew@crawforddefense.com; dgolden@flcr2.org; appeals@pd.cjis20.org; MmcHugh@ca.cjis20.org; JAdams@ca.cjis20.org; doss.virlindia@leg.state.fl.us; akunasek@sao.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org
Subject: Huminski 2DCA case and Sheriff Scott ethics matter

Kevin and Zach,

This appeal/petition substantially deals with the criminal matter. Either the Public Defender or conflict counsel needs to appear and assist in this petition largely related to the criminal prosecution.

I need to report a crime at this point as I am forbidden to report crime to the agency with jurisdiction in Bonita Springs pursuant to Circuit Court orders. The protective orders issued by Judge Krier obstruct my service of the Sheriff defendants and Scribd defendants in the 2DCA matter. This obstruction of service is criminal and well aware to the Sheriff and his staff who have attended every hearing at the Lee Court Complex. Criminal intent is obvious and well documented by the record and my ejection from County Court on Sept 22 by the Sheriff.

Signed copies of the petition and initial motions has been filed in both the Circuit and County Courts. I will hand deliver to the 2DCA this week.

A true and correct copy of the Appendix has already been forwarded to you. Attached are "as filed" copies of the petition and initial motions.

There are good reasons for the 1st Amendment case law cited in the petition, one reason would to prevent situations like we have here happening. If Judge Krier obeyed the 1st amendment and narrowly tailored her orders the petition would largely be moot, however, that would not account for her disrespect for the authority, power and jurisdiction of the federal courts, the removal to bankruptcy court and the violation of the automatic stay (a federal injunction). V -- scott hurminski

cc: 20th presiding judges, State's Attorney, Public Defender, Conflict Counsel, FL Commission on Ethics

---

From: scott huminski <s_huminski@live.com>
Sent: Friday, December 1, 2017 11:25 AM
To: Hughes, Jack; 'Maribel Medina'; Civil CM
Cc: rpritt@ralaw.com; Ortega, Melanie; Doron Weiss; Josefina Rodriguez; Ken Drake; douglas.knox@quarles.com; kevinS@pd.cjis20.org; zmiller@flrc2.org; KatherineT@pd.cjis20.org; Smith, Kathleen A; info@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; andrew@crawforddefense.com; dgolden@flcr2.org; appeals@pd.cjis20.org
Subject: 2DCA case Huminski v. Town of Gilbert, AZ, et al. - case No.: 17-CA-000421

This case is being brought up to the 2nd District Court of Appeals on extraordinary writs. See attached. It will be filed in the 2DCA on Monday.

As I am banished from attending courthouse proceedings (see attached) and see my other courthouse banishment case Hurminski v. Corsones, 396 F.3d 53 (2d Cir. 2005).

I request to participate in the 12/12/2017 hearing telephonically and orally request a stay/continuance while the matter is being resolved in the 2DCA. -- scott hurminski

From: Hughes, Jack <JHughes@CA.CJIS20.ORG>
Sent: Friday, December 1, 2017 10:03 AM
To: 'Maribel Medina'; Civil CM
Cc: rpritt@ralaw.com; Ortega, Melanie; scott huminski; Doron Weiss; Josefina Rodriguez; Ken Drake; Robert.shearman@henlaw.com; douglas.knox@quarles.com
Subject: RE: Huminski v. Town of Gilbert, AZ, et al. - case No.: 17-CA-000421

Please mail a copy of the filed motion and the proposed order directly to Judge McHugh along with copies for conforming and stamped addressed envelopes for service.

Jack Hughes
Civil/ADR Manager
Lee County Justice Center
1700 Monroe Street
Fort Myers, Fl. 33901
239-533-8424(Civil Office)
239-533-3361(ADR Office)
239-357-4865(Cell)
Email: jhughes@ca.cjis20.org

NOTE TO ALL LITIGANTS:

1. Include in Subject Line of ALL emails: NAME OF ASSIGNED JUDGE and Court Case Number.

2. Please include in your emails the e-mail addresses of ALL PARTIES AND/OR ATTORNEYS TO THE CASE (As set forth in their designations) in the address blocks (to: or cc:) so that I can send my response to ALL PARTIES by using the "reply to all" option and avoid ex parte communications. Thank you!

From: Maribel Medina [mailto:maribel@dldlawyers.com]
Sent: Thursday, November 30, 2017 1:55 PM
To: Civil CM <CivilCM@CA.CJIS20.ORG>
Cc: rpritt@ralaw.com; Ortega, Melanie <MOrtega@ralaw.com>; scott huminski <s_huminski@live.com>; Doron Weiss <dweiss@dldlawyers.com>; Josefina Rodriguez <josefina@dldlawyers.com>; Ken Drake <kendrake@dldlawyers.com>; Robert.shearman@henlaw.com; douglas.knox@quarles.com
Subject: Huminski v. Town of Gilbert, AZ, et al. - case No.: 17-CA-000421

*** WARNING: This is an EXTERNAL email. DO NOT open attachments or click links from UNKNOWN or UNEXPECTED email. ***

Good afternoon Kathy,

In follow-up to yesterday's conversation, please find attached for Judge McHugh's review and consideration, Defendant Scribd's Motion and Proposed Order requesting permission to appear at the December 12, 2017 hearing telephonically.
The Motion and Notice of Hearing has been filed.

Please let us know if you need any further information in this regard.

Sincerely,

Maribel Medina
DeMahy Labrador Drake Victor Rojas & Cabeza
Legal Assistant to Doron Weiss, Esq. and Nicholas A. DeMahy, Esq. | Coral Gables/Miami
t: 305.443.4850 | f: 305.443.5960 | e: maribel@dldlawyers.com

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, November 28, 2017 4:29 PM
To: Sarlo, Kevin; zmiller@flrc2.org; info@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; jenafyr@flcr2.org; andrew@crawforddefense.com; dgolden@flcr2.org; Smith, Kathleen A; KatherineT@pd.cjis20.org
Subject: Huminski 2DCA appendix

The PD participated at the 6/29 arraignment, despite the removed status of the case. Conflict counsel participated only in the County Court matter which was the result of a "transfer" from Circuit Court. No such thing as a transfer under any statute, rule or any other Fl authority.

See attached

-- scott

From: scott huminski <s_huminski@live.com>
Sent: Monday, November 27, 2017 12:46 PM
To: Sarlo, Kevin; zmiller@flrc2.org; info@flrc2.org; jsexton@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; jenafyr@flcr2.org; andrew@crawforddefense.com; dgolden@flcr2.org; Smith, Kathleen A; KatherineT@pd.cjis20.org
Subject: Counsel for Huminski writ 2DCA???

OK,

Along with the petition, I will file a motion to re-plead with assistance of whatever counsel the 2DCA finds was the attorney of record or otherwise is properly a participant. I will serve both the PD and Conflict Counsel.

I haven't received word back from conflict counsel. I believe both of you have appellate staff. So I have no preference. -- scott

---

From: Sarlo, Kevin <KevinS@pd.cjis20.org>
Sent: Monday, November 27, 2017 12:14 PM
To: 'scott huminski'; zmiller@flrc2.org
Subject: RE: PD on Huminski writ 2DCA??? - Zach I listed you as counsel

Mr. Huminski:

Based upon our review of the file for 17-CA-421, it appears that we were never officially appointed to represent you in the circuit case.

The court provisionally appointed the Public Defender in 17-CA-421 for the arraignment on the order to show cause only. Without an application or further order from the court, we did not represent you in circuit court beyond that provisional appointment.

Therefore, we do not represent you on your petition.

Sincerely,

Kevin John Sarlo
Assistant Public Defender
Misdemeanor Division
(239) 533-1876
KevinS@pd.cjis20.org

From: scott huminski [mailto:s_huminski@live.com]
Sent: Sunday, November 26, 2017 11:04 AM
To: zmiller@flrc2.org; Smith, Kathleen A <Kathleens@pd.cjis20.org>; Sarlo, Kevin <KevinS@pd.cjis20.org>; info@flrc2.org; jsexton@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; jenafyr@flcr2.org; andrew@crawforddefense.com; dgolden@flcr2.org
Subject: PD on Huminski writ 2DCA??? - Zach I listed you as counsel

Kevin, You were on the Circuit Case, so this petition may reside properly with the PD office, Conflict Counsel only came on in the County Court. Please advise whether the public defender or conflict counsel will be on the below action in the appellate court. See below link.

I will be filing prior to the next hearing in County Court. No statute or court rule allows the clerk to shuffle filings between Circuit and County Courts. The PD is still on the Circuit Court criminal matter and probably on this appellate petition. The county court matter was not

initiated lawfully. The clerk shuffling digital files around in their database is not the way a criminal matter is initiated in Florida. -- scott huminski

http://web.archive.org/web/20171126152711/https://judgeelizabethvkrierleecountyflcorruption.files.wordpress.com/2017/06/petition-for-writs11-26.pdf

---

From: scott huminski <s_huminski@live.com>
Sent: Saturday, November 25, 2017 9:31 AM
To: zmiller@flrc2.org; Smith, Kathleen A; KevinS@pd.cjis20.org; info@flrc2.org; jsexton@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; jenafyr@flcr2.org; andrew@crawforddefense.com; dgolden@flcr2.org
Subject: Huminski writ 2DCA - Zach I listed you as counsel

Zach refer to your appellate people the petition is nearing completion and you are counsel of record - see below 1st amendment law is fairly complete

No. 2D17-

IN THE DISTRICT COURT OF APPEAL FOR THE
SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, ARIZONA, ET AL,

Respondents.

Circuit Court No. 2017CA00421

22

PETITION FOR A WRIT OF PROHIBITION AND A WRIT OF MANDAMUS AND A WRIT OF CORAM NOBIS AND QUO WARRANTO– ALL WRITS JURISDICTION

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656
E-mail s_huminski@live.com

Zachary Miller,esq
Regional Conflict Counsel
zmiller@flrc2.org

BASIS FOR INVOKING JURISDICTION

This Court has original jurisdiction to issue writs of prohibition and mandamus under Article V, section 4(b)(3) of the Florida Constitution, and under Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure.

Huminski also asserts jurisdiction for writ of quo warranto and coram nobis and under "all-writs" jurisdiction. Fla. Const. art. V, §§ 3(b), 4(b).

PREFACE

This petition is related to conduct of recused judge Hon. Elizabeth Krier and is not related to the acts/orders of the currently presiding judge, Hon. Michael McHugh. Petitioner's Appendix filed herewith consists of filed documents in the Circuit Court except for the Complaint to the Florida Commission on Ethics with attachments which is the first document set forth in the appendix. The Appendix mirrors the chronology of the Circuit Court docket except with respect to the ethics complaint.

ISSUES PRESENTED

1. Whether a no "contact and communication" protective order concerning the Lee Sheriff's Office with no exceptions and zero narrow tailoring to a legitimate governmental interest is void ab initio for violation of First Amendment precepts and Equal Protection and Enforcement of the Laws and constitutes a forbidden prior restraint.

2. Whether acts, orders and rulings of the Court Below are *Void Ab Initio* for lack of all jurisdiction after the case was removed to United States Bankruptcy Court divesting it of all jurisdiction until the matter was remanded back to State court.

3. Whether the criminal prosecution initiated in this matter and litigated in the Circuit Court until 8/14/2017 is *void ab initio* as it is predicated upon alleged violation of the Sheriff's protective order which was a legal nullity from its inception. All acts and orders of Judge Krier were filed in the Circuit Court in her capacity as a Circuit Court judge.

4. Whether the criminal prosecution is barred by two exceptions to the Collateral Bar Rule/Doctrine as the protective order is transparently unconstitutional / illegal and the order requires the surrender of constitutional rights.

FACT FROM PROCEEDINGS BELOW

This matter was initiated in the Circuit Court grounded upon Scott Huminski's ("Huminski") investigation and State FOIA requests concerning death threats Huminski had received via the U.S. Mails. Lee Sheriff Mike Scott requested and was granted a protective order barring all communication and contact from Huminski. A criminal contempt prosecution was initiated in the Circuit Court for Huminski's alleged contact with the Sheriff via email and via the internet. After several months of litigation of the criminal matter in Circuit Court, some Circuit Court files were placed by the Clerk under a County Court docket without input from the State's Attorney, thus, Huminski will not address the County Court matter here as the Circuit Court criminal matter was never concluded and no statute or court rule empowers the clerk's office to "transfer" a case and initiate a new criminal prosecution. The power to bring a

criminal case is reserved for the State's Attorney. The criminal case remains in the Circuit Court and has never been concluded, just apparently abandoned by the State's Attorney.

The Sheriff's Protective Order

The Court below granted a motion for protective order by Lee Sheriff Mike Scott. See Petitioner's Appendix ("PETAPP") at pages x thru x.

The protective order forbade all contact with the Sheriff and his staff effectively:

1. Excluding Huminski from all public safety service and law enforcement in his town of residence, Bonita Springs, FL without exception. See County Court Order narrowly tailoring a similar pre-trial order with vastly vague and overbroad terms. (See PETAPP at pages x thru x)
2. Forbidding Huminski's First Amendment reporting of crime.
3. Forbidding Huminski's First Amendment core political criticism of the Sheriff to likely political opponents (members of the Sheriff's Department).
4. Forbidding Service of the Sheriff in a matter pending before the United States Bankruptcy Court whereby the Sheriff and Huminski were both *pro se*. Service was mandated by bankruptcy rule 9027. (See PETAPP at pages x thru x)
5. Forbidding/threatening Huminski concerning his attendance at the Lee Courthouse complex whereby prohibited contact has to be made with the Sheriff's staff who perform security screening and act as bailiffs. Huminski's individual right to courthouse access has been determined in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) and denied once again in the Sheriff's protective order.
6. Huminski is barred from asking the Circuit Court to hear his motions to vacate (See PETAPP at pages x thru x) by the terms of the protective order.
7. Huminski's banishment from the lee courthouse and the protective order's prohibition against filing present an exhaustion of all redress to the indigent Huminski in the Circuit Court who was appointed a public defender by the Circuit Court and is now represented by regional conflict counsel.

The case below has had all judges assigned disqualify and the last act of the Circuit Court except for multiple recusals and re-assignment orders was on 8/8/2017. Currently, the Chief Judge is assigned to the case, however, Huminski is forbidden a hearing on his pending motions to vacate under the terms of the sheriff's protective order.

ALL ACTS TAKEN WHILE CASE WAS REMOVED TO U.S. BANKRUPTCY COURT ARE VOID AB INITIO

The case below was removed to the United States Bankruptcy Court at 5:02 p.m. on 6/26/2017 and was remanded back to State Court via a federal order docketed in the Circuit

Court on 8/8/2017. All acts and orders taken by the Circuit Court in defiance of the federal court's jurisdiction are VOID AB INITIO, ironically, even the recusal of Judge Krier and arraignment of 6/29/2017. (See PETAPP at pages x thru x)

MEMORANDUM OF LAW

Removal to Bankruptcy Court

The removal to Bankrutcy Court is a self-executing function of federal law and plainly obvious in the Dockets from the Court Below and the United States Bankruptcy Court. Absent from either the State or Federal record is any motion to remand the case under federal abstention doctrines by the defendants or objection to the removal. Any objection to federal jurisdiction or removal not pled in the bankruptcy court is waived. 28 U.S.C. §1447(c) All acts and orders of the Circuit Court were entered in a complete absence of jurisdiction as removal divested jurisdiction from the State Court.

At hearing on 6/29/2017, Hon. Judge Krier could not have been more emphatic by stating that "Nothing gets removed from my court -- ever". As all litigants are aware, any claim mentioning the violation of a federal right/privilege can and usually is removed to federal court by insurance defense attorneys under federal question jurisdiction and bankruptcy removal under Rule 9027 is quite common. The Circuit Court's, Judge Krier presiding, position on federal removal is bewildering.

Court Orders – Collateral Bar Rule

A transparently invalid order cannot form the basis for a contempt citation. See 3 Wright, Federal Practice & Procedure Sec. 702 at 815 n. 17 (1982) (collateral bar rule does not apply if the order violated was transparently unconstitutional); State ex rel. Superior Ct. of Snohomish County v. Sperry, 79 Wash.2d 69, 483 P.2d 608 (1971), cert. denied, 404 U.S. 939, 92 S.Ct. 272, 30 L.Ed.2d 252 (contempt citation improper because order violated was transparently void); see also United States v. Dickinson, 465 F.2d 496, 509-10 (5th Cir.1972) (recognizing exception to collateral bar rule for transparently invalid orders); Ex parte Purvis, 382 So.2d 512, 514 (Ala.1980) (same).

Court orders are not sacrosanct. See Cobbledick v. United States, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940); accord United States v. Ryan, 402 U.S. 530, 91 S.Ct. 1580, 29 L.Ed.2d 85 (1971). In Cobbledick, the Supreme Court ruled that when a motion to quash a subpoena is denied, the movant may either obey its commands or violate them, and, if cited for contempt, properly contest its validity in the contempt proceeding. Cf. Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972); Maness v. Meyers, 419 U.S. 449, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975) These cases involve orders that require the surrender of irretrievable rights and establish that blind obedience to all court orders is not required. See also Nebraska Press Assoc., 427 U.S. at 559, 96 S.Ct. at 2802 ("A prior restraint ... has an immediate and irreversible sanction.") An appeal can not undo the immediate constitutional injury of a prior restraint such as we have in the instant matter. The instant matter does constitute a prior restraint against core political criticism of a politician (Sheriff) and a prior restraint concerning reporting crime to local law enforcement. An order entered by a court clearly without jurisdiction over the contemnors or the subject matter is not protected by the collateral bar rule. United Mine Workers, 330 U.S. at 293, 67 S.Ct. at 695 Were this not the case, a court could wield power over parties or matters obviously not within its authority--a concept inconsistent with the notion that the judiciary may exercise only those powers entrusted to it by law. The Circuit Court court did issue orders and held hearings in a removed case and in violation of the automatic stay of bankruptcy.

Huminski's email publications to large audiences on the topics of report of terrorist death threats originating in Arizona and transmitted into Lee County, report of crime to law enforcement and criticism of politician/sheriff are pure speech and core political protected expression. The principal purpose of the First Amendment's guaranty is to prevent prior restraints. Near, 283 U.S. at 713, 51 S.Ct. at 630 The Supreme Court has declared: "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1577, 29 L.Ed.2d 1 (1971); see also Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963) When, as here, the prior restraint impinges upon the right of the

press (Huminski was acknowledge as a Citizen-Reporter, Huminski v. Corsones) to communicate news and involves expression in the form of pure speech--speech not connected with any conduct--the presumption of unconstitutionality is virtually insurmountable. Nebraska Press Assoc., 427 U.S. at 558, 570, 96 S.Ct. at 2802, 2808 (White, J., concurring) Huminski notes his status as a citizen-reporter. See Generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)

The Supreme Court strongly protects "core political speech" as a "value that occupies the highest, most protected position" in the hierarchy of constitutionally-protected speech. R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 422 (1992) (Stevens, J., concurring). See also Burson v. Freeman, 504 U.S. 191, 217 (1992). In defining the core political speech worthy of this elevated level of protection, the Court has broadly included "interactive communication concerning political change.", the essence of Huminski's communications with the sheriff. Meyer v. Grant, 486 U.S. 414, 422 (1988). Huminski's electronic communications objected to the Sheriff's position on interstate terrorist death threats. Huminski has also published his opposition to the sheriff's policies as signage at his home and on the internet. For example, see https://www.youtube.com/watch?v=-dJYlLMBLVk and see generally https://www.youtube.com/channel/UC-y4hdd9G-cN3GxkJIMpF9w and a google search on the petitioner.

Political speech gets higher protection because it is an essential part of the democratic process. Indeed, evaluating a statute that would have restricted all anonymous leafleting in opposition to a proposed tax, the Supreme Court reflected on the importance of specifically protecting such political speech which applies equally here to Huminski's speech regarding corruption, misconduct and oppression by police and government actors who support the death threats received by Huminski. The First Amendment affords the broadest protection to such political expression in order "to assure [the]unfettered interchange of ideas for the bringing about of political and social changes desired by the people." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 346-47 (1995), quoting Roth v. United States, 354 U.S. 476, 484 (1957)

Recently, the Supreme Court made it abundantly clear that laws or in this case a court order that burden political speech are subject to strict scrutiny review. Citizens United v.

Federal Election Comm'n, 558 U.S. 310 (2010), invalidated a federal statute that barred certain independent corporate expenditures for electioneering communications. Highlighting the primacy of political speech, the Court noted that "political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction' furthers a compelling interest and is narrowly tailored to achieve that interest.'" Citizens United, 558 U.S. at 340 (quoting Federal Election Comm'n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 464 (2007)). There exists no compelling reason to silence Huminski's reporting of crime or criticism of the sheriff.

The order and the threats from the Court under State/Common Law cut off the "unfettered interchange of ideas" in an important place for individual political expression--the Courts. McIntyre, 514 U.S. at 346-47. Treading upon core First Amendment expression must be accomplished in as minimally a restrictive manner as possible, and should never be done so in the form of an absolute bar on all political expression as is the case at Bar whereby criticism, reporting of crime and civil/bankruptcy litigation has been viewed as a per se criminal activity by the State Court. See Bd. of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 574 (1987) (invalidating a statute because it "reache[d] the universe of expressive activity, and, by prohibiting all protected expression, purport[ed] to create a virtual 'First Amendment Free Zone.' ") (emphasis in original).

Validating a sweeping ban on core political speech would seriously undermine the Supreme Court's stated goal of safeguarding the democratic process. The alleged contact with the Sheriff made by Huminski were related to reporting crime and criticism of a political figure. A constitutional solution should have been to direct the sheriff to delete any emails he considered junk mail. Shutting down Huminski's reporting crime to law enforcement is an extreme remedy that does not survive constitutional scrutiny under vagueness and over-breadth precepts.

Grayned v. The Cityof Rockford, 408 U.S. 104 (1972) summarized the time, place, manner concept: "The crucial question is whether the manner of expression is basically

incompatible with the normal activity of a particular place at a particular time." Time, place, and manner restrictions must withstand intermediate scrutiny. Note that any regulations that would force speakers to change how or what they say
do not fall into this category (so the government cannot restrict one medium even if it leaves open another) Ward v. Rock Against Racism, 491 US 781 (1989) held that time, place, or manner restrictions must:

* Be content neutral
* Be narrowly tailored
* Serve a significant governmental interest
* Leave open ample alternative channels for communication

If the government tries to restrain speech before it is spoken, as opposed to punishing it afterward, it must be able to show that punishment after the fact is not a sufficient remedy, and show that allowing the speech would "surely result in direct, immediate, and irreparable damage to our Nation and its people" (New York Times Co. v. United States, 403 U.S. 730 (1971)).

CONCLUSION

Void Ab Initio

Respectfully submitted,

CERTIFICATE OF SERVICE

I HERE BY CERTIFY that on April 30, 2012, my office hand-delivered a true copy of the foregoing to:

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.21 (a)(2), I certify that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, November 22, 2017 9:45 AM
To: zmiller@flrc2.org; Smith, Kathleen A; KevinS@pd.cjis20.org; info@flrc2.org; jsexton@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; jenafyr@flcr2.org; andrew@crawforddefense.com; dgolden@flcr2.org
Subject: Huminski writ prohibition/mandamus 2DCA - first amendment

The criminal case was litigated in the Circuit Court for 4 months prior to the "transfer" to County Court. As there is no statute or court rule allowing a transfer between Circuit and County, there is no valid County Court case. No criminal information, affidavit or other charging instrument filed in county court by the State's Attorney.

Judge Krier's recusal is void because of the removal to U.S. Bankruptcy Court. As far as the law goes the only valid criminal matter still exists in the Circuit Court (it was never dismissed) with judge krier presiding.

The "transfer" occurred by a clerk shuffling around files in the court data base. The State's attorney did not initiate the County Court matter. This is why I have not given it much consideration in the petition. -- scott

---

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, November 22, 2017 8:59 AM
To: zmiller@flrc2.org; Smith, Kathleen A; KevinS@pd.cjis20.org; info@flrc2.org; jsexton@flrc2.org; appeals@flrc2.org; bhileman@flrc2.org; jenafyr@flcr2.org; andrew@crawforddefense.com; dgolden@flcr2.org
Subject: Huminski writ prohibition/mandamus 2DCA - first amendment

Zach, This petition needs to be transferred to your appellate people. Attached is my petition (unfinished) and appendix body

I started this petition for various writs. The 2DCA is the correct forum as I am challenging issues when the case was pending in the Circuit Court ie. all of judge krier's order, acts and rulings.

As my communications were via email and other electronic means the EFF Electronic Frontier Foundation has expressed interest in amicus support. --scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Monday, November 20, 2017 1:29 PM
To: stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; zmiller@flrc2.org; KevinS@pd.cjis20.org; GKortright@leeclerk.org; doss.virlindia@leg.state.fl.us
Subject: Ethics complaint against prosecutor- as filed.

http://web.archive.org/web/20171120182644/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/ethics-complaint-prosecutor027.pdf

---

From: scott huminski <s_huminski@live.com>
Sent: Saturday, November 18, 2017 11:58 AM
To: stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; zmiller@flrc2.org; KevinS@pd.cjis20.org; GKortright@leeclerk.org; doss.virlindia@leg.state.fl.us
Subject: Another lawyer opines on Huminski "crimes"

From: 'kenneth ditkowsky' via Lawsters <lawsters@googlegroups.com>
Sent: Friday, November 17, 2017 6:40 PM
To: lawsters@googlegroups.com; scott huminski; Chicago FBI; White House; JoAnne M. Denison; The Wall Street Journal; Probate Sharks; ACLU; Jay Goldman; Legal Abuse Syndrome; ABAJournal.com; J. Ditkowsky; Robert Grundstein; Bev Cooper; ABA Commission On Racial and Ethnic Diversity In the Profession; Cynthia Stephens; Better Government Association; Lisa Madigan Ill Atty Gen Office; The State of Illinois; illinoislawyernow@isba.org
Subject: Re: [Lawsters:29450] Public defender tells the truth

You are correct - Judge's orders have to be obeyed - however, as I understand you case, you called the Sheriff in violation because you saw something that reasonably required the assistance of the Sheriff.

thus, but for the requirement of the RULE OF LAW that you not take into your own hands enforcement of the law - i.e. self help - you did what the RULE OF LAW requires you do do. It therefore because of statutes such as 18 USCA 4 and the Constitution you did not violate the Judge's order and therefore there is no basis to hold you in contempt of Court. YOU CANNOT BE PLACED IN THE POSITION OF "damned if you do, and damned if you don't"

If the facts as I stated them are not correct, please let me know.

Ken Ditkowsky
www.ditkowskylawoffice.com

From: scott huminski <s_huminski@live.com>
Sent: Saturday, November 18, 2017 8:50 AM
To: stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; zmiller@flrc2.org; KevinS@pd.cjis20.org; GKortright@leeclerk.org; doss.virlindia@leg.state.fl.us
Subject: States Attny prohibited from private practice of law

27.015¤ Private practice prohibited.—All state attorneys elected to said office shall be so elected on a full-time basis and shall be prohibited from the private practice of law while holding said office.

This is what he is doing concerning case 17-ca-421 which he is obsessed with.

From: scott huminski <s_huminski@live.com>
Sent: Friday, November 17, 2017 5:46 PM
To: stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; zmiller@flrc2.org; KevinS@pd.cjis20.org; GKortright@leeclerk.org; doss.virlindia@leg.state.fl.us
Subject: Brady request

I need all data from my polygraph that would enable another expert to interpret. Something stinks at the LCSO. -- scott

---

From: scott huminski <s_huminski@live.com>
Sent: Friday, November 17, 2017 3:51 PM
To: stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; zmiller@flrc2.org; KevinS@pd.cjis20.org; GKortright@leeclerk.org; doss.virlindia@leg.state.fl.us
Subject: Bar complaint - ASA Anthony Kunasek

see
http://web.archive.org/web/20171117204944/https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/06/bar-complaint-asa-kunasek.pdf

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From: scott huminski <s_huminski@live.com>
Sent: Thursday, November 9, 2017 3:45 PM
To: stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; zmiller@flrc2.org; KevinS@pd.cjis20.org; GKortright@leeclerk.org; doss.virlindia@leg.state.fl.us
Subject: Sheriff Scott criminal intent - Fl Commission on Ethics

Five days have elapsed since the Sheriff was served by the Commission. According to the rules he would have been served the ethics complaint on or about October 30. At hearing on June 29 before judge krier, the sheriff was clearly put on notice of the pending bankruptcy filing, which he chose to obstruct and the crimes against the State Court matters.

The Sheriff has taken no action to rectify the crimes he is guilty of and this criminal conduct is governed by the continuing criminal offense doctrine with regard to the obstruction of justice and threats against witnesses in state and federal courts.

His denial of public safety services to myself, may not be a crime, however, it is a violation of his oath and the public trust and his contract to supply public safety services to Bonita Springs. -- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Saturday, November 4, 2017 11:44 AM
To: stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; Smith, Kathleen A; KatherineT@pd.cjis20.org; zmiller@flrc2.org; KevinS@pd.cjis20.org; GKortright@leeclerk.org; doss.virlindia@leg.state.fl.us
Subject: Sheriff Scott ethics violations and crimes

In addition to the two cases the Sheriff is obstructing in the 20th Circuit and the Bankruptcy case he already obstructed, I seek to file federal litigation that is actively being obstructed by Sheriff Scott as follows,

To declare Sheriff's protective order preventing the reporting of crime a violation of the First Amendment. Reporting of crime is protected expression.

To declare the criticism of politician Sheriff Scott core protected political expression under the First Amendment. Core political expression enjoys the highest level of protection under the First Amendment.

To declare the SHeriff's protective order a forbidden prior restraint upon speech. Prior restraints constitute the most heinous violation of the First Amendment.

To declare the Sheriff's denial of public safety services to Huminski a violation of equal protection and enforcement of the laws.

To reopen my bankruptcy case (already obstructed by the Sheriff) to deal with issues related to the sheriff.

The Sheriff's protective order obstructs the above litigation, intimidates and tampers with myself as the main witness in the aforementioned torts. This conduct is not only unethical, it is criminal. The Sheriff has put his desire to block litigation against himself and retaliate against a critic before his oath and duties of his office. His use of his authority to make himself litigation-proof is an item of pecuniary value.

The crimes of the sheriff against the justice system must stop. -- scott huminski

No. 2D17-4740

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, AZ, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

SECOND MOTION TO RE-PLEAD WITH ASSISTANCE OF COUNSEL

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656 E-mail s_huminski@live.com

SECOND MOTION TO REPLEAD WITH ASSISTANCE OF COUNSEL

NOW COMES, Scott Huminski ("Huminski") and moves to replead his petition with the assistance of counsel as follows:

1. The fee for this petition has been forwarded in the U.S. Mail (# 9505 5000 3214 7343 0003 22) to the Clerk's office with a delivery attempt on 12/11/2017.
2. This case began as a civil matter in Circuit Court and then morphed into a hybrid civil/criminal contempt matter and remains unresolved in the Circuit Court to this day and abandoned by the State's Attorney.
3. From the first criminal/civil hearing in the Circuit Court on 6/29/2017, Huminski was represented by Court appointed counsel and all papers authored by the Circuit Court (Judge Krier presiding) were captioned and filed in the Circuit Court. See Petitioner's Appendix ("PETAPP") at pages 58, 75, 88, 89, 90.
4. While the criminal Circuit Court matter was pending a new docket entry appeared in County Court, that was not brought by the State's Attorney, rather, it was brought by the Clerk by shuffling files between Courts and

dockets. The public defender remained representing Huminski in this action brought by the Clerk's Office, See PETAPP at lines 6, 7.

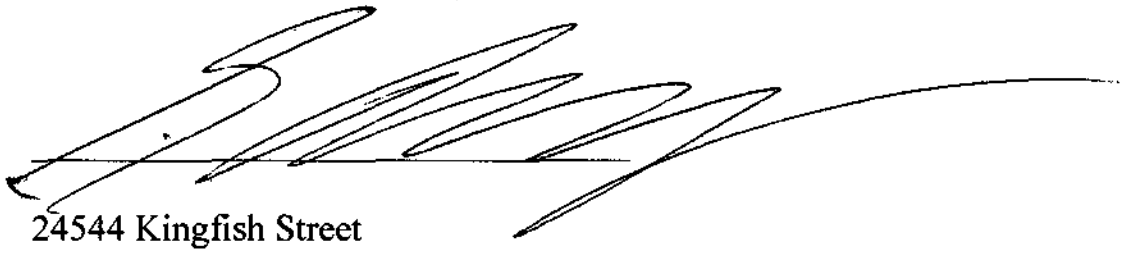
5. The petition before this Court has an impact on the Circuit Court proceedings below that constituted a hybrid civil and criminal matter and Huminski has had appointed counsel for the entirety of the criminal proceedings below as recognition by the Court of his indigency and full disability under Social Security.
6. A second identical criminal case appeared on a docket in County Court 17-MM-815 despite no dismissal of the criminal Circuit Court case 17-CA-421 and no filing of a valid charging document in the County Court, 17-MM-815.
7. The Public Defender remained counsel for Huminski in the Circuit & County Courts until Regional Conflict Counsel was assigned on 10/9/2017. The Public Defender engaged in the stipulation that constituted an admission by all parties and the Court that the pre-trial order and its predecessors (the protective orders) were vastly unconstitutional. PETAPP at lines 5-6. The existence of the stipulated order is dispositive concerning a large portion of the relief sought in this petition (i.e. that the orders allegedly violated by Huminski were exceptions to the Collateral Bar Rule as they

were transparently unconstitutional and mandated the surrender of constitutional rights).

8. There has been no disposition of the criminal matter in Circuit Court and the "*transfer*" to County Court is not allowed by any Court rule, Statute or any other Florida authority. See PETAPP at line 58. The State's Attorney needed to dismiss the Circuit Court case and file an information, affidavit or indictment in County Court to initiate a new prosecution. The "transfer" is a huge departure from the statutory practice of criminal law in Florida.

WHEREFORE, Huminski requests that his criminal defense counsel in the Courts below be ordered to appear for Huminski in this matter and that petitioner's counsel be allowed to re-plead the petition if counsel believes that it is necessary and continue representation of the indigent Huminski as this matter is inextricably intertwined with the criminal case as it exists in the Circuit Court against Huminski and Huminski seeks relief related to the criminal case in this petition.

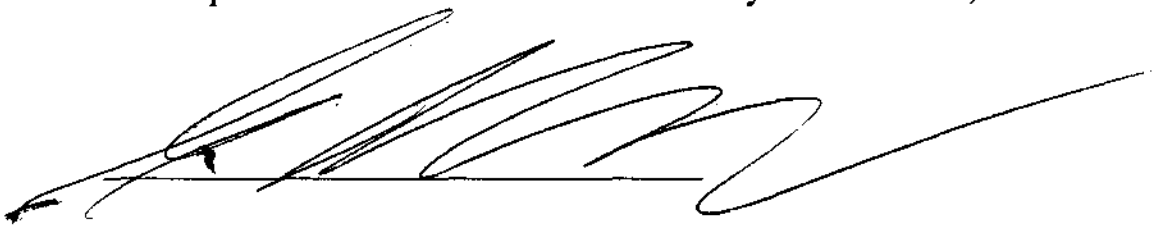
Dated at Bonita Springs, Florida this 12th day of December, 2017.



24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_Huminski@live.com

Certificate of Service

I certify that a true and correct copy of the foregoing was served upon all parties of record pursuant to the Rules on this 12th day of December, 2017.



Scott Huminski

No. 2D17-4740

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, AZ, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

PETITIONER'S OPENING APPENDIX
VOLUME 2

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656 E-mail s_huminski@live.com

Zachary Miller, Esq.
Assigned Conflict
Counsel

PETITIONER'S OPENING APPENDIX
VOLUME 2

Index

Page

*** APPENDIX NUMBERING AT LOWER RIGHT CORNER ***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or before December 17, 2017, a true copy of this document has been served pursuant to the Rules upon all parties of record.

Dated at Bonita Springs, Florida this 17th day of December, 2017

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656 S_Huminski@livc.com

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

SCOTT HUMINKSI,

Plaintiff,

Civil Division

Case No.: Case No.: 17-CA-000421

vs.

TOWN OF GILBERT, AZ, *et. al.*,

Defendants.
_____/

ORDER ON SCRIBD, INC.'S MOTION TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT FOR DECLATORY, INJUNCTIVE AND OTHER RELIEF

THIS CAUSE having come before the Court on Defendant Scribd, Inc.'s ("Scribd") Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and Other Relief (the "Complaint") and the Court having reviewed the file, heard the argument of the parties, and being advised in the premises, the Court

FINDS:

1. Plaintiff is a vexatious litigant. The Court takes judicial notice of the matters of *Huminski v. State of Vermont et. al.*, Middle District of Florida Case No. 2:13-cv-00692 and *Huminski v. State of Vermont et. al.*, Southern District of Florida Case No. 1:13-cv-23099, as well as the opinion of *Huminski v. Vermont*, 2014 WL 169848, *5 (M.D. Fla. January 15, 2014), which found that Plaintiff has a history of abusive litigation practices.

It is hereby:

ORDERED AND ADJUDGED:

1. The Motion to Dismiss is GRANTED as follows.

2. Plaintiff may not file any additional documents or materials of any nature with the Court in this matter unless the filing is signed by an attorney who is a member in good standing

of the Florida Bar. In the event that Plaintiff violates this provision, the Court may enter an Order to Show Cause why Plaintiff should not be held in contempt upon written notice from Scribd.

3. Plaintiff's Complaint is dismissed without prejudice as against Scribd. ONLY

4. Plaintiff is hereby given one opportunity to file an amended pleading. The amended pleading shall be signed by an attorney who is a member in good standing of the Florida Bar and be served on or before Monday June 5, 2017. In the event that Plaintiff does not file an amended pleading in the above-described manner and timeframe, the Court shall dismiss Plaintiff's action against Scribd with prejudice upon written notice from Scribd.

5. The Court reserves ruling on Scribd's request, pursuant to Section 14 of the General Terms of Use, for an award of its reasonable costs and attorney's fees incurred in its defense of this action.

DONE AND ORDERED, in Chambers, at Lee County, Florida this 19 day of April, 2017.

JUDGE ELIZABETH V. KRIER

5/19/17

Copies furnished to:
Counsel of Record
Scott Huminski, Esq.- s_huminski@live.com

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SERVICE LIST

SCOTT HUMINSKI V. TOWN OF GILBERT, AZ, ET. AL.
Circuit Court Case Number: 2017-CA-000421

S. Douglas Knox, Esq. **Keely Morton, Esq.** Quarles & Brady, LLP 101 E. Kennedy Blvd., Suite 3400 Tampa, Florida 33602-5195 Tel: (813) 387-0300 Fax: (813) 387-1800 ***Attorneys for Defendant City of Glendale*** *douglas.knox@quarles.com* *keely.morton@quarles.com* *nichole.perez@quarels.com* *donna.santoro@quarles.com* *ivon.delarosa@quarles.com* *docketfl@quarles.com*	**Robert D. Pritt, Esq.** **James D. Fox, Esq.** Roetzel & Andress, LPA 850 Park Shore Drive Trianon Centre-Third Floor Naples, Florida 34103 Tel: (239) 649-6200 Fax: (239) 261-3659 ***Attorneys for City of Surprise, AZ*** serve.rpritt@ralaw.com jfox@ralaw.com serve.jfox@ralaw.com
Scott Huminski 24544 Kingfish Street Bonita Springs, FL 34134 s_huminski@live.com ***Plaintiff***	**Robert C. Shearman, Esq.** Henderson, Franklin, Starnes & Holt, P.A. Post Office Box 280 1715 Monroe Street Fort Myers, FL 33901-0280 Tel: (239) 344-1346 Fax: (239) 344-1501 Robert.shearman@henlaw.com Courtney.ward@henlaw.com ***Attorneys for Defendant Sheriff Mike Scott***

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
LEE COUNTY, FLORIDA

State of Florida
v.

Case No. 17-CA-421

Scott Huminski

ORDER on Pre-Trial Release and Case management setting

This matter having come before the court on the June 29, 2017

It is ordered: Scott Huminski is to have no contact with this court unless done by and through a licensed attorney and so to obey all previously entered Orders of the Court: Orders filed on 4/20/17, 4/20/17 & 4/20/17. *

It is further ordered that the Case Management Conference is to be held on August 15, 2017 in courtroom 4H.

* 4/24/17 is Order Denying Motion to Vacate
4/20/17 is Order on STRICKEN Judge's Motion to Dismiss
4/20/17 is Order on Defendant Mike Scott's Motion to Dismiss.

All above Orders have been served on Mr Huminski previously as of this date.

ORDERED Fort Myers, Lee County, Florida, this 29 day of June 20 17

CIRCUIT JUDGE

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Copies provided to:
SAO
Defendant

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

Vs. CASE NO: 17-MM-815

SCOTT HUMINSKI

_____/

ORDER ON ARRAIGNMENT

THIS CAUSE having come before this Court on 6/29/17 for Arraignment on the Order to Show Cause issued on 6/5/17 and SCOTT HUMINSKI having been served with the Order and having appeared before the Court and the Court having appointed the Public Defender's Office to represent SCOTT HUMINSKI, and being advised of the premises, it is ORDERED and ADJUDGED as follows:

1. SCOTT HUMINSKI was advised of his rights.

2. The Public Defender's Office was appointed to represent SCOTT HUMINSKI.

3. SCOTT HUMINSKI entered a plea of not guilty.

4. The Court ordered pre-trial release for SCOTT HUMINSKI with the conditions set forth below. **Failure to comply with the conditions may result in this pre-trial release being revoked.**

   A. SCOTT HUMINSKI shall check in with the pre-trial release program and thereafter check in with a pre-trial officer every two (2) weeks.;

   B. SCOTT HUMINSKI shall comply with all previously entered orders of the Court in Case number 17-CA-421 including:
      (1) SCOTT HUMINSKI shall not contact the Lee County Sherriff's Office except through their legal counsel, unless said contact is initiated by the Sherriff's office, such as if SCOTT HUMINSKI is arrested or stopped for a traffic violation.

      (2) SCOTT HUMINSKI shall not file anything in the Court file in Case No. 17-CA-421 unless such filing occurs by an attorney licensed in the State of Florida.

(3) SCOTT HUMINSKI shall not contact the Court's office except through an attorney licensed in the State of Florida.

5. This Case is scheduled for case management on 8/15/17 at 1PM. At the time of Case Management, the State shall inform the Court and Defendant whether they will be requesting a sentence less than 60 days that would entitle SCOTT HUMINSKI to a non-jury trial or a greater sentence that would require a jury trial. At the time of case management, the Court will set a trial date.

DONE and ORDERED this 7 day of July, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
SAO
PD
Pre-trial release program, Scott Perkham

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

SCOTT HUMINSKI
Plaintiff

v. CASE NO: 17-CA-421

TOWN OF GILBERT, AZ, et al
Defendants
_____/

ORDER PROHIBITING CONTACT

THIS CAUSE having come before this Court in Chambers and the Court being advised of the premises, it is ORDERED and ADJUDGED as follows:

1. This Court conducted hearings in the above styled Case on 4/18/17 on the Motion to Dismiss and Motion for Protective Order of Defendant-Mike Scott, the Motion to Dismiss of Defendant-SCRIBD, INC. and the Motion to Dismiss of Defendant-Surprise, AZ. At the conclusion of these hearings, the Court orally granted the Motions, took judicial notice of several of the various law suits that the Plaintiff has filed across the United States, found that the filings in the above-styled-Case lack rationale and legal substance, found the Plaintiff to be a vexatious litigant, prohibited the Plaintiff from filing anything further in the State of Florida or in the above-styled-Case without doing so through a licensed Florida attorney acting on his behalf, prohibited the Plaintiff from contacting the Defendants except through their attorneys AND prohibited the Plaintiff from contacting this Judge's Office except through a licensed Florida attorney acting on his behalf. In dismissing the Plaintiff's causes of action, the Court granted him leave to amend against certain Defendants, but required that anything that is filed in the Court filed be filed by a licensed Florida attorney.

2. The Court has not yet set forth the prohibition against contacting the undersigned judge's office in writing and such is not reflected in the Orders the Court issued on the above Motions.

3. Almost immediately after the above hearing, the Plaintiff began emailing the undersigned Judge's office and that of another judge unconnected to this Case. Said emails lack rationale and could be construed as threatening if not harassing. In addition, these emails violate written Orders of this Court prohibiting the Plaintiff from contacting Defendants except through their counsel.

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4. **The Plaintiff is hereby PROHIBITED from contacting the undersigned Judge, said Judge's office, judicial assistant, clerk or bailiff or attempting such contact through any other Judge or Judge's office, clerk or bailiff, including by email, U.S. mail, telephone or personally. The Plaintiff may only make such contact through a licensed Florida attorney acting on his behalf. If the Plaintiff violates this Order, it may result in criminal contempt proceedings being brought against him that may result in incarceration or fines or both.**

DONE and ORDERED this 26 day of April, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

4/26/17 Conformed copies to:
Scott Huminski, 24544 Kingfish Street, Bonita Springs, FL 34134 and s_huminski@live.com
S. Douglas Knox & Keely Morton, attorneys for Defendant-City of Glendale at doglas.knox@quarles.com; keely.morton@quarles.com; docketfl@quarles.com
Robert D. Pritt & James D. Fox, Attorneys for City of Surprise, AZ at serve.rpritt@ralaw.com; jfox@ralaw.com; serve.jfox@ralaw.com
Robert Sherman, attorneys for Defendant-Sheriff Mike Scott at Robert.sherman@henlaw.com; Courtney.ward@henlaw.com
Kenneth R. Drake & Doron Weiss, attorneys for SCRIBD, INC. at kendrake@dldlawyers.com; dweiss@dldlawyers.com
Chief Judge

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

CIVIL CASE CAPTION

SCOTT HUMINSKI,
Plaintiff
v.
TOWN OF Gilbert, AZ, et al

Civil Case No.: 17CA421

Criminal Case No. _____

DESCRIPTION OF SCOTT HUMINSKI	
GENDER: Male RACE: Caucasian HEIGHT: approx. 5 ft 10 in. WEIGHT: ? DOB: 12/1/59	EYE COLOR: ? HAIR COLOR: Brown LAST KNOWN ADDRESS: 24544 Kingfish St. Bonita Springs, FL 34134

ORDER TO SHOW CAUSE

This cause comes before the court for review based upon the alleged conduct of SCOTT HUMINSKI for the issuance of an Order to Show Cause directed to SCOTT HUMINSKI for violation of the Orders set forth below copies of which are attached hereto and made a part hereof.

The Orders that SCOTT HUMINSKI is alleged to be in violation of are:

DATE executed by Court	CASE No.	ORDER TITLE
4/19/17	17CA421	Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order (specifically Paragraphs 1, 2 & 7) – attached hereto as Exhibit A
4/19/17	17CA421	Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and

		Other Relief (specifically Paragraph 2) – attached hereto as Exhibit B

COUNT 1: INDIRECT CRIMINAL CONTEMPT
In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically ordered that any further pleadings be signed by a licensed attorney representing the Plaintiff (Paragraph 7). In the Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and Other Relief, SCOTT HUMINSKI was specifically ordered not to file any additional documents or materials of any nature with the Court unless the filing was signed by an attorney and specifically provided that an Order to Show Cause might be entered against him if he did so (Paragraph 2). SCOTT HUMINSKI has continued to file multiple documents in the Court file in contradiction to these Orders as evidenced by the attached composite Exhibit C.

COUNT 2: INDIRECT CRIMINAL CONTEMPT
In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically prohibited from directly contacting, communicating with or otherwise serving materials directly on Sheriff Scott, his agents and employees (see Paragraph 1 & 2). SCOTT HUMINSKI was specifically ordered to direct such contact to counsel for Mike Scott (see Paragraph 2). SCOTT HUMINSKI has repeatedly violated this Order by contacting Sheriff Scott, his agents and employees since the execution of the Court's orders – see the emails attached as composite Exhibit D.

NOW, THEREFORE, you SCOTT HUMINSKI are hereby ORDERED to appear before this court before Judge *KRIER* on THURSDAY, 5/25/17, at ***8:30 a.m.***, in Room 4H of the Lee County Courthouse, located at1700 Monroe Street, Ft. Myers, Florida 33901, to be arraigned. THIS IS A CRIMINAL PROCEEDING. A subsequent trial will be scheduled requiring Respondent to show cause why he should not be held in contempt of this court for violation of the above Orders. **Punishment, if imposed, may include a fine and incarceration.** Should the court determine, based on the evidence presented at trial, that the conduct of SCOTT HUMINSKI warrants sanctions for civil contempt in addition to or instead of indirect criminal contempt, the court reserves the right to find him guilty of civil contempt and impose appropriate civil sanctions.

IF YOU FAIL TO APPEAR as set forth above, a warrant for your arrest or a writ of bodily attachment may be issued to effectuate your appearance.

The court hereby appoints the STATE ATTORNEY's OFFICE to prosecute the case.

The Court hereby advises SCOTT HUMINSKI that he is entitled to be represented by counsel and if he can't afford an attorney, that one may be appointed for him in this criminal contempt proceeding ONLY (not in the civil Case). This Court hereby appoints the PUBLIC DEFENDER's OFFICE to provisionally represent SCOTT HUMINSKI at the above Arraignment proceeding pending a determination of indigency. This Court anticipates that SCOTT HUMINSKI will be found to be indigent.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Court Administration at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

IT IS FURTHER ORDERED that the Sheriff of this County serve this Order to Show Cause by delivering copies to SCOTT HUMINSKI, with proof of Sheriff's service.

DONE AND ORDERED in Lee County, Florida, on 4/26/17.

Circuit Judge, Elizabeth V. Krier

Copies to:
State Attorney's Office
Public Defender's Office

S. Douglas Knox & Keely Morton, attorneys for Defendant-City of Glendale at doglas.knox@quarles.com; keely.morton@quarles.com; docketfl@quarles.com
Robert D. Pritt & James D. Fox, Attorneys for City of Surprise, AZ at serve.rpritt@ralaw.com; jfox@ralaw.com; serve.jfox@ralaw.com
Robert Sherman, attorneys for Defendant-Sheriff Mike Scott at Robert.sherman@henlaw.com; Courtney.ward@henlaw.com
Kenneth R. Drake & Doron Weiss, attorneys for SCRIBD, INC. at kendrake@dldlawyers.com; dweiss@dldlawyers.com

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

SCOTT HUMINKSI,

Plaintiff,

Civil Division

Case No.: Case No.: 17-CA-000421

vs.

TOWN OF GILBERT, AZ, *et. al.*,

Defendants.
_____/

ORDER ON SCRIBD, INC.'S MOTION TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT FOR DECLATORY, INJUNCTIVE AND OTHER RELIEF

THIS CAUSE having come before the Court on Defendant Scribd, Inc.'s ("Scribd") Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and Other Relief (the "Complaint") and the Court having reviewed the file, heard the argument of the parties, and being advised in the premises, the Court

FINDS:

1. Plaintiff is a vexatious litigant. The Court takes judicial notice of the matters of *Huminski v. State of Vermont et. al.*, Middle District of Florida Case No. 2:13-cv-00692 and *Huminski v. State of Vermont et. al.*, Southern District of Florida Case No. 1:13-cv-23099, as well as the opinion of *Huminski v. Vermont*, 2014 WL 169848, *5 (M.D. Fla. January 15, 2014), which found that Plaintiff has a history of abusive litigation practices.

It is hereby:

ORDERED AND ADJUDGED:

1. The Motion to Dismiss is GRANTED as follows.

2. Plaintiff may not file any additional documents or materials of any nature with the Court in this matter unless the filing is signed by an attorney who is a member in good standing

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Exhibit A

of the Florida Bar. In the event that Plaintiff violates this provision, the Court may enter an Order to Show Cause why Plaintiff should not be held in contempt upon written notice from Scribd.

3. Plaintiff's Complaint is dismissed without prejudice as against Scribd. only

4. Plaintiff is hereby given one opportunity to file an amended pleading. The amended pleading shall be signed by an attorney who is a member in good standing of the Florida Bar and be served on or before Monday June 5, 2017. In the event that Plaintiff does not file an amended pleading in the above-described manner and timeframe, the Court shall dismiss Plaintiff's action against Scribd with prejudice upon written notice from Scribd.

5. The Court reserves ruling on Scribd's request, pursuant to Section 14 of the General Terms of Use, for an award of its reasonable costs and attorney's fees incurred in its defense of this action.

DONE AND ORDERED, in Chambers, at Lee County, Florida this 19 day of April, 2017.

JUDGE ELIZABETH V. KRIER

4/19/19

Copies furnished to:
Counsel of Record
Scott Huminski, Esq.- s_huminski@live.com

SERVICE LIST

SCOTT HUMINSKI V. TOWN OF GILBERT, AZ, ET. AL.
Circuit Court Case Number: 2017-CA-000421

S. Douglas Knox, Esq. **Keely Morton, Esq.** Quarles & Brady, LLP 101 E. Kennedy Blvd., Suite 3400 Tampa, Florida 33602-5195 Tel: (813) 387-0300 Fax: (813) 387-1800 ***Attorneys for Defendant City of Glendale*** *douglas.knox@quarles.com* *keely.morton@quarles.com* *nichole.perez@quarels.com* *donna.santoro@quarles.com* *ivon.delarosa@quarles.com* *docketfl@quarles.com*	**Robert D. Pritt, Esq.** **James D. Fox, Esq.** Roetzel & Andress, LPA 850 Park Shore Drive Trianon Centre-Third Floor Naples, Florida 34103 Tel: (239) 649-6200 Fax: (239) 261-3659 ***Attorneys for City of Surprise, AZ*** serve.rpritt@ralaw.com jfox@ralaw.com serve.jfox@ralaw.com
Scott Huminski 24544 Kingfish Street Bonita Springs, FL 34134 s_huminski@live.com ***Plaintiff***	**Robert C. Shearman, Esq.** Henderson, Franklin, Starnes & Holt, P.A. Post Office Box 280 1715 Monroe Street Fort Myers, FL 33901-0280 Tel: (239) 344-1346 Fax: (239) 344-1501 **Robert.shearman@henlaw.com** **Courtney.ward@henlaw.com** ***Attorneys for Defendant Sheriff Mike Scott***

INSTR # 2017000087579, Doc Type ORD, Pages 3, Recorded 04/24/2017 at 11:06 AM, Linda Doggett, Lee County Clerk of Circuit Court, Deputy Clerk ERECORD

4/20/2017 4:12 PM Filed Lee County Clerk of Courts

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

SCOTT HUMINSKI,

Plaintiff,

v. CASE NO. 17-CA-000421

TOWN OF GILBERT, AZ, et al.

Defendants.
_____/

ORDER ON DEFENDANT MIKE SCOTT'S MOTION TO DISMISS AND MOTION FOR PROTECTIVE ORDER

This matter having come before the Court on the following motions from Defendant Mike Scott, as Sheriff of Lee County (i) Motion to Dismiss, and (ii) Motion to prohibit Plaintiff from Directly Contacting, Communicating With, or Otherwise Serving Materials Directly upon Sheriff Scott, his Agents Servants and Employees, and the Court having reviewed the file, considered the arguments of all parties present, and being otherwise advised of the governing law, it is

ORDERED AND ADJUDGED as follows:

1. Defendant Mike Scott's Motion to prohibit Plaintiff from Directly Contacting, Communicating With, or Otherwise Serving Materials Directly upon Sheriff Scott, his Agents Servants and Employees is GRANTED.

2. Plaintiff shall directed all pertinent correspondence, communications, and/or pleadings involving this case solely to counsel for Defendant Mike Scott.

3. Defendant Mike Scott's Motion to Dismiss is GRANTED without prejudice.

Exhibit B

4. Plaintiff's complaint fails to comply with Fla. R. Civ. P. 1.110(b)(2), which requires that a pleading "contain . . . a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." Id.

5. Plaintiff's complaint starts with a nearly incoherent diatribe of facts regarding death threats and a purported murder. Sprinkled amongst these paragraphs are references to public records requests, physical abuse, and alleged "human rights deprivations." These confusing and conclusory allegations fall far below Florida's pleading requirements. See Horowitz v. Laske, 855 So. 2d 169, 173 (Fla. 5th DCA 2003) ("[A]t the outset of a suit, litigants must state their pleadings with sufficient particularity for a defense to be prepared." (citation omitted)).

6. As pled, the complaint deprives Defendant Mike Scott of an opportunity to properly answer or prepare a defense. See Dawson v. Blue Cross Ass'n, 293 So. 2d 90, 92 (Fla. 1st DCA 1974) ("The allegations must, of course, be sufficient to inform the defendant of the nature of the cause against him.").

7. The Court further finds that Plaintiff is a vexatious litigant under Fla. Stat. § 68.093 based upon the numerous frivolous lawsuits Plaintiff has filed in Florida and elsewhere, of which this Court took judicial notice, and the Court therefore orders that any further pleading Plaintiff files in this case shall be signed by a licensed attorney representing the Plaintiff.

8. As part of the Court's ruling that Plaintiff is a vexatious litigant, it takes judicial notice of the numerous court cases cited in the parties' papers, which include: Huminski v. State of Vermont, Md. Fla. Case No. 2:13-cv-692; Huminski v. State of Vermont, S.D. Fla. Case No. 1:13-cv-23099; and Huminski v. Connecticut, D. Conn. Case No. 3:14-cv-1390.

9. Plaintiff is granted 45 days to file an amended complaint in this matter, and consistent with the Court's rule that he is a vexatious litigant, any amended complaint must be signed by a licensed attorney.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 19 day of April, 2017.

The Honorable Elizabeth K. Krier
Circuit Court Judge

Copies furnished to:

All counsel of record

Scott Huminski
24544 Kingfish Street
Bonita Springs, FL 34134
Pro se Plaintiff
s_huminski@live.com

4/19/17

Filing # 55299040 E-Filed 04/19/2017 01:35:38 PM

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO.
TOWN OF GILBERT, AZ, ET AL.	)	17-CA-421
DEFENDANTS.	)	

MOTION TO RECUSE JUDGE KRIER,
Notice of the Three Lies of Judge krier

NOW COMES, Plaintiff, Scott Huminski ("Huminski"), moves to recusal an notices the lies of jusge Krier at hearing on 4/19/2017

1. Judge Krier stated she is not bound by the automatic stay of bankruptcy.
2. Judge Krier stated that sheriff scott did not commit a fraud by accepting monies fron Huminski and then refused to provide Huminski the documents he paid for FRAUD - wrongful or criminal deception intended to result in financial or personal gain. A basic legal precept Judge Krier should know

3. Judge Krier delusionally created "fact" whereby she found the death threat letters acknowledged by all parties were a delusion of huminski without a shred of evidence indicating such. Inventing evididence is not a judicial function.

Judge Krier has insufficient knowledge of the law, fraud, automatic stays and creates delusional fact to support here rulings. It is noteworthy that not one defendant supported the judges characterization of the facts of the complaint or agreed with the delusions of the judge.

Dated at Bonita Springs, Florida this 19th day of April, 2017 and served via the Court's automated email service.

-/s/- Scott Huminski

1

Exhibit C

19

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO.
TOWN OF GILBERT, AZ, ET AL.	)	17-CA-421
DEFENDANTS.	)	

MOTION TO RECUSE JUDGE KRIER,
Furtherance of lcso public records fraud

NOW COMES, Plaintiff, Scott Huminski ("Huminski"), moves for recusal as follows;

1. Sworn on the record is Huminski's affidavit indicating he paid Sheriff Scott and the LCSO for public records.
2. Judge Krier stated that sheriff scott did not commit a fraud by accepting monies fron Huminski and Judge krier assisted Sheriff Scott in the commission of the crime of fraud by dismissing the count from the complaint.
3. Judge Krier indicated she would not allow Huminski to received the documents he paid for from Sheriff Scott or the LCSO without paying additional fees to attorneys.

Dated at Bonita Springs, Florida this 19th day of April, 2017 and served via the Court's automated email service.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO.
TOWN OF GILBERT, AZ, ET AL.	)	17-CA-421
DEFENDANTS.	)	

AFFIDAVIT OF SCOTT HUMINSKI REGARDING PUBLIC RECORDS REQUESTS TO SURPRISE, AZ AND SHERIFF SCOTT/LCSO

NOW COMES, Plaintiff, Scott Huminski ("Huminski"), under oath and hereby deposes, states and swears based upon personal knowledge as follows,

1. Huminski is over 18 years of age and under no legal disability.
2. Huminski retained a third party FOIA / public records service, muckrock.com of Somerville Mass., that assists citizens in obtaining public records in the interests of government transparency and accountability.
3. Muckrock.com obtains public records for citizens, provides the disclosed public records to the interested requesting citizen, and publishes the results of FOIA and public record request on the internet for the public to access free of charge in furtherance of transparency, accountability and pursuant to First Amendment precepts.
4. Huminski issued public record requests through the muckrock.com service to the Town of Surprise AZ and to the Lee County Sheriff's Office/Sheriff Scott ("LCSO").
5. Surprise requested a fee of $55.00 and LCSO requested a fee of $6.25 for production of the public documents. Surprise and the LCSO were both paid by Huminski via checks mailed from muckrock.com.

6. Both Surprise and the LCSO entered into contract with Huminski to supply public records and have refused to honor the duty to produce documents that Huminski paid for.
7. Attached hereto are true and correct copies of the aforementioned public records requests and correspondence history as accurately and truthfully documented by the muckrock.com service along with the cancelled check to the LCSO.
8. Harold Brady's depiction of the muckrock.com activity in his affidavit of April 2017 filed in this matter is false and intended to defraud Huminski of $55.00 and is deceptive to this Court.
9. The attached correspondences are also located at muckrock.com at https://www.muckrock.com/foi/lee-county-36/lee-county-sheriffs-office-public-records-request-31908/ and https://www.muckrock.com/foi/surprise-9567/public-records-request-surprise-az-police-department-30945/
10. In the attached, Lt. Harold Brady, esq. lied that there is a federal law that prohibits release of public records. Also in his affidavit of 4/5/2017 filed in this case, Harold Brady's description of the attached emails as "unintelligible" is a lie. I believe Harold Brady is holding the Muckrock check sent on or about February 24, 2017 under his "federal law" prohibition theory.

Dated at Bonita Springs, Florida this this 10th day of April 2017 at Bonita Springs Florida and served via the Court's e-service system

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

SWORN AND SUBSCRIBED to before me on this 10th day of April, 2017 at Bonita Springs Florida

MARGOTTY J. MULLINS
Notary Public - State of Florida
Commission # GG 047813
My Comm. Expires Nov 15, 2020

Notary Exp.

Re: Muckrock Court Affidavit - police fraud - Huminski case

Information Muckrock <info@muckrock.com>

Sun 4/9/2017 11:55 AM

To:michael@muckrock.com <michael@muckrock.com>; morisy@gmail.com <morisy@gmail.com>; scott huminski <s_huminski@live.com>;

Thanks Scott, reviewing this today, but don't have my laptop.

Will put together a statement regarding the checks.

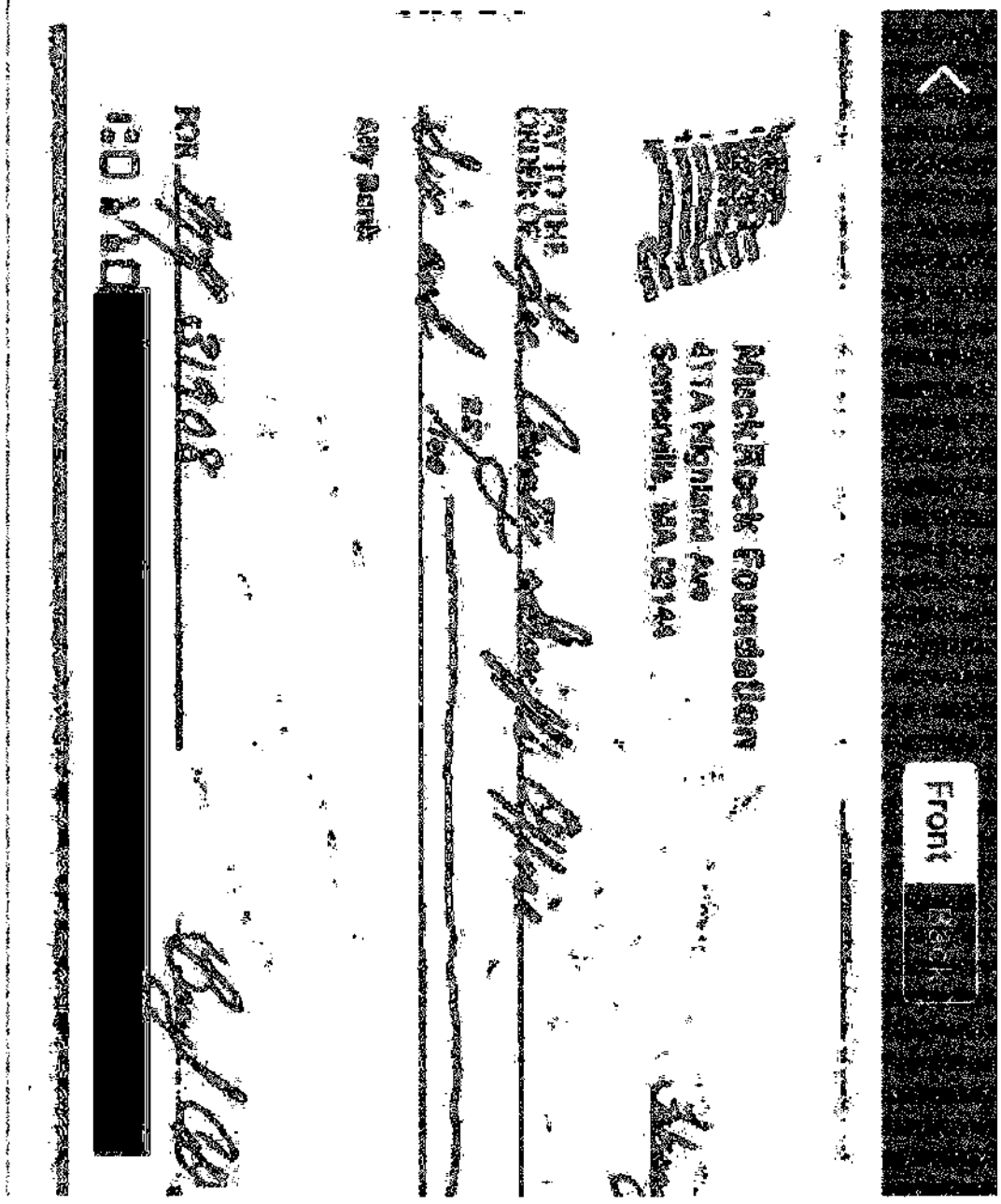
Attached is the cancelled Lee County check. It looks like the other one was never cashed, but was mailed out Jan. 24 (might be postmarked the next day).

Thanks and let us know if you'd like us to send another check for the other department. Will try to follow up more thoroughly by tomorrow afternoon.

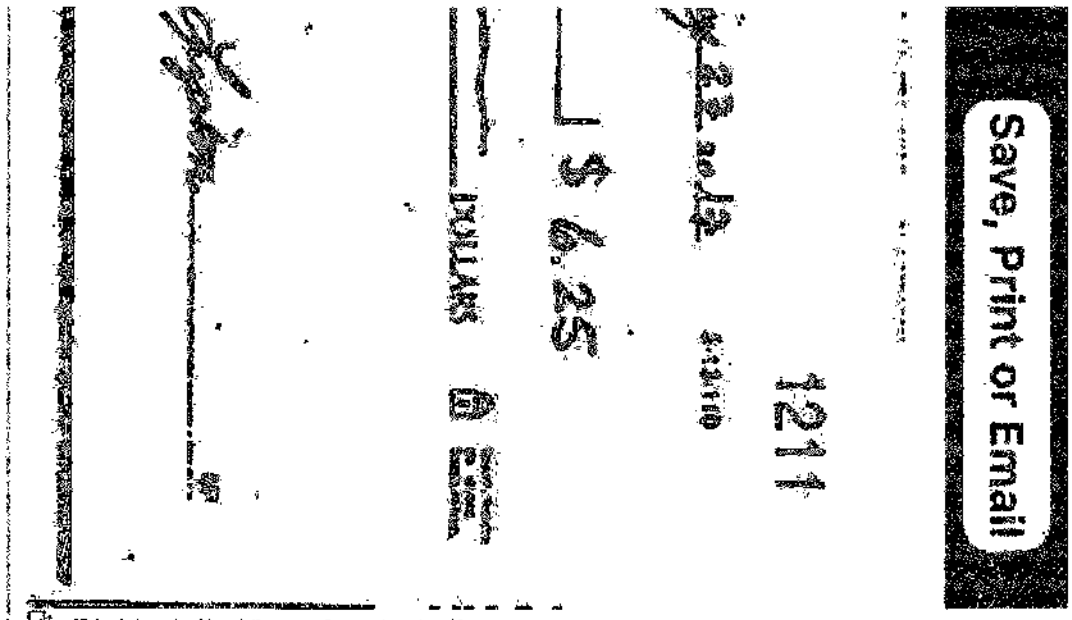
Michael

On Sun, Apr 9, 2017 at 11:27 AM scott huminski <s_huminski@live.com> wrote:

scott huminski has shared a OneDrive file with you. To view it, click the link below.



25



affidavit huminski public records muckrock.pdf

Michael, attached is my affidavit re:muckrock for filing with the Court. These cops are crooks and they are trying to bring muckrock into this litigation with their lies.

You are welcome to intervene as an interested party that is being portrayed improperly. You definitely have the right to intervene to set the record straight and defend the integrity of muckrock.com. These cops are alleging that muckrock pocketed the fee money and is engaging in fraud. It is the cops who accepted the fees and now are engaging in fraud by not honoring their contract to provide public records.

You can use this case to defend the reputation of muckrock and shed some light on crooked cops and lawyers.

-- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Sunday, April 9, 2017 11:05 AM
To: morisv@gmail.com
Subject: Fw: Cops claim Muckrock didn't send checks

From: scott huminski <s_huminski@live.com>
Sent: Sunday, April 9, 2017 10:55 AM
To: info@muckrock.com; michael@muckrock.com
Subject: Cops claim Muckrock didn't send checks

The Surprise AZ police and Lee County Sheriff's Office are claiming Muckrock pocketed public records fees instead of forwarding it to them.

These cops are crooked, but, we have a court hearing next week and they are going to lie about the muckrock checks.

Can i get a copy of the cancelled checks to present to the court and expose these liars. And/or could you supply an affidavit concerning the checks.

the 2 muckrock fees are related to,

https://www.muckrock.com/foi/surprise-9567/public-records-request-surprise-az-police-department-30945/

https://www.muckrock.com/foi/lee-county-36/lee-county-sheriffs-office-public-records-request-31908/

I like your service, maybe it can play a role in exposing these crooked police agencies who are outrageously claiming that no checks were ever sent from muckrock. – scott huminski

---

Lee County Sheriff's Office public records request

www.muckrock.com

Justin M Nelson DOB 6/19/1976 (deceased), residence Glendale AZ Debra M Riffel DOB 11/22/1964, residence Glendale AZ Pursuant to statute please provide a list of all ...

Public records request Surprise AZ police department

www.muckrock.com

Subject: Public Records Request: Public records request Surprise AZ police department. To Whom It May Concern: Pursuant to the state open records law, Ariz. Rev. Stat ...

--

MuckRock

CITY OF SURPRISE EMAIL EXCHANGE WITH HUMINSKI VIA INTERMEDIARY MUCKROCK.COM

https://www.muckrock.com/foi/surprise-9567/public-records-request-surprise-az-police-department-30945/

Subject: Public Records Request: Public records request Surprise AZ police department
To Whom It May Concern:

Pursuant to the state open records law, Ariz. Rev. Stat. Ann. Secs. 39-121 to 39-122 and 39-128, I hereby request the following records:

All records and documents and police reports referencing or mentioning or pertaining to,
Scott Huminski
Trevor M Nelson DOB 8/2/1998, residence Glendale AZ
Justin M Nelson DOB 6/19/1976 (deceased), residence Glendale AZ
Debra M Riffel DOB 11/22/1964, residence Glendale AZ

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I would request your response within ten (10) business days.

Sincerely,

scott huminski

Subject: RE: Public Records Request: Public records request

From: Kimberly Davey

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Good Morning,

We have received your request and unfortunately I will need more information in order to research. Please supply locations, date and time ranges and type of incidents. You have indicated that the individuals listed below are Glendale residents. We only have access to what has occurred in the city of Surprise so if these incidents took place in Glendale then you will need to contact Glendale Police Department.

Sincerely,

Kimberly Davey
Records Technician
Surprise Police Department
14250 W Statler Plaza Ste 103
623-222-4384 direct
623-222-4002 fax
kimberly.davey@surpriseaz.gov<mailto:kimberly.davey@surpriseaz.gov>

~WRD000

- Download

From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Time range from 2000 to present. All records requested, any time, any date and any type of incident from jay walking to murder. I have spoken to various Surprise police personnel and I know that records exist. Officer Hector Heredia was involved in some of the investigations, John Vance and others were also involved as well as the Surprise police official who acts as legal adviser. You do not need the specifics that you requested to run an inquiry on myself and the listed individuals.

This request is made pursuant to the furtherance of an investigation into a conspiracy to commit murder and death threats. Please expedite.

The 3 persons that live(d) in glendale formerly lived in Surprise. Please do not use any further stall tactics as their is a looming murder conspiracy that depends upon your prompt and good faith response to this request. Human life is at risk. -- scott huminski
From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
The Glendale Police and the Phoenix police already responded in full pursuant to statute. They did not need the information you demand for a public records request, neither do you.

Pursuant to Statute, supply a list of all documents withheld and the reason for withholding. Below is the full request that is subject to litigation in Florida State Courts sent on 11/21/2016 to many Surprise Police and City employees, your response is very late and subjects the City and Police to a civil lawsuit,

From: scott huminski <s_huminski@live.com>
Sent: Monday, November 21, 2016 9:04 AM

To: lynn.arouh@gilbertaz.gov; mayor@gilbertaz.gov; jean.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; ted.bullock@gilbertaz.gov; alison.ferrante@gilbertaz.gov; jack.pemberton@gilbertaz.gov; james.richter@gilbertaz.gov; jon.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; sandra.raynor@usdoj.gov; jcarroll@asu.edu; jennifer@jcarrollaw.com; dave.meyer@gilbertaz.gov; debra.hartin@gilbertaz.gov; balen@sheriffleefl.org; john.vance@surpriseaz.gov; paula.neaman@phoenix.gov; hoffman@cohenandwolf.com; fred.augenstern@state.ma.us; adlawefilings@state.ma.us; amy.spector@state.ma.us; LALARCON@norwalkct.org; NMartinez@norwalkct.org; mescobedo@cohenandwolf.com; michael.skold@ct.gov; peter.shapiro@lewisbrisbois.com; ecolangelo@norwalkct.org; prosecases@ca2.uscourts.gov; callforaction@winknews.com; newstips@nbc-2.com; comments@nbc-2.com; news@fox4now.com; christy.andrews@abc-7.com; newstips@abc-7.com; dabbot@water.net; daniel.liezo-adams@water.net; bhannon@water.net; spontius@water.net; hsegel@water.net; rob.evans@abc-7.com; chloe.morroni@abc-7.com; chris.parks@abc-7.com; amanda.hall@winknews.com; lois.thome@winknews.com; chris.cifatte@winktv.com; staceey.adams@winknews.com; rob.spicker@winktv.com; jennifer.stacy@winktv.com; bob.irzyk@winktv.com; aginfo@atg.state.vt.us; mdonofrio@atg.state.vt.us; kylelm@atg.state.vt.us; wgriffin@atg.state.vt.us; skline@atg.state.vt.us; basay@atg.state.vt.us; jkolber@atg.state.vt.us; afitzgerald@atg.state.vt.us; secretary@sec.state.vt.us; cmaguire@atg.state.vt.us; john.lavoie@state.vt.us; wnelson05753@gmail.com; anna.saxman@state.vt.us; matthew.valerio@state.vt.us; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; bhamilton@sheriffleefl.org; rmitan@sheriffleefl.org; rdobson@sheriffleefl.org; jbarte@sheriffleefl.org; tking@sheriffleefl.org; rnewman@sheriffleefl.org; cwoulard@sheriffleefl.org; dmacomber@sheriffleefl.org; dglover@sheriffleefl.org; kenucker@fdle.state.fl.us; whitneybrooke@fdle.state.fl.us; luannpezet@fdle.state.fl.us; lorinnizeil@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinahenring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdeavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridaiegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetracca@sheriffleefl.org; nrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodycarpressurewashing@gmail.com; mbraun@news-press.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; smith@litchfieldcavo.com; donaldson@litchfieldcavo.com; stephanie.ameiss@gilbertaz.gov; l_allen@mcso.maricopa.gov; mediarequest@mcso.maricopa.gov; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; s_spidell@mcso.maricopa.gov; p_rees@mcso.maricopa.gov; surplus@mcso.maricopa.gov; p_gray@mcso.maricopa.gov; kevin.thomas@mcso.maricopa.gov; c_krieger@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; Crimes@mcso.maricopa.gov; drugholine@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; t_adams@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; McDaniel, James

M.; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvalepreciinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; jeri.williams@phoenixaz.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; public.records.ppd@phoenix.gov
Subject: Surprise AZ, Gilbert AZ public records request

Scott Huminski
24544 Kingfish Street
Bonita Springs, FL 34134

9/2/2016

Surprise AZ PD, Gilbert AZ PD, Phoenix AZ PD, Maricopa County Sheriff's Office

Dear Police Public Records:

Under the Arizona Public Records Law § 39.101 et seq., I am requesting an opportunity to inspect or obtain copies of public records that mention, Scott Huminski, Justin M. Nelson (deceased), Trevor M. Nelson, Debra M. Riffel all of Glendale AZ except for myself.

Trevor M Nelson DOB 8/2/1998
Justin M Nelson DOB 6/19/1976 (deceased)
Debra M Riffel DOB 11/22/1964

Glendale AZ PD has complied fully to my request without withholding or excessive redaction. Phoenix PD has refused to fully abide by the law and has forwarded the document request to their legal department forcing litigation which will commence against all agencies that refuse to comply under FL tort law including bad faith and intentional infliction of emotional distress (obstruction of the murder conspiracy investigation).

I further request an index of records withheld or excessively redacted and the reasons in compliance with the following statutory mandate,

"If requested, the custodian of the records of an agency (as prescribed under A.R.S. § 41-1001) shall also furnish an index of records or categories of records that have been withheld and state the reasons that each record has been withheld. A.R.S. § 39-121.01(D)(2). "

PDF files by email would suffice. I would also like to request a waiver of all fees in that the disclosure of the requested information is in the furtherance of a continuing private investigation of the series of death threats and murder conspiracy spanning into 2016 that will be published on

the internet in the public interest. This request is for news-gathering purposes and for forwarding to law enforcement. This information is not being sought for commercial purposes.

Please respond to this request in a reasonable time period. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption, privilege, confidentiality interest or court rule/order you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

The 3 year long murder scheme of Trevor Nelson constitutes an imminent and credible threat and requires an immediate expedited response to this records request. Apparently, Gilbert Police Officer Ryan Pillar is another target of Trevor Nelson. Nelson's conduct against Ofc. Pillar began in 2013, two years prior to the issuance of death threats to me by Trevor Nelson, although, the conduct regarding Ofc. Pillar was incorporated in the letters sent to me in a complex and elaborate terrorist scheme implemented by Trevor Nelson spanning 3 years involving a potpourri of serious State and Federal crimes in which Nelson impersonated several individuals including Ofc. Pillar.

Litigation will also provide me subpoena power if the aforementioned agencies do not comply fully with this request.

Thank you for considering my request.

Sincerely,

Scott Huminski
s_huminski@live.com, (239) 300-6656

From: Norma Chavez

Subject: public records request
Sir,

The Surprise Police Department is in receipt of your five public records request; once we've located documents requested and determined the fees we will contact to you.

Norma E. Chavez
Records Supervisor
Surprise Police Department
14250 W. Statler Plaza, Suite 103
Surprise, AZ 85374
Office (623) 222-4224 Fax (623) 222-4002

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City Hall offices open at 8 a.m. and close at 5 p.m. Monday through Friday. More info at www.surpriseaz.gov.

This e-mail and any accompanying files transmitted are intended solely for the use of the individual or entity to whom they are addressed; if you have received this e-mail in error please delete it and notify the sender. In addition, under Arizona law, e-mail communications and e-mail addresses may be public records.
0.1

28 Dec 2016 17:07:22 -0000
From: scott huminski

Subject: Re: public records request
Why the stall tactics from Kimberly? Her conduct is patently in violation of AZ public records law. Is this standard training? Consult with Phoenix and Glendale concerning compliance with AZ public records law. They have got it right.

I expect the pick up order of Justin M. Nelson and the tip off to Nelson by the Surprise Police leading to the suicide of Nelson will be included. Below is the obituary of Nelson, dead at 36, proximately arising from the misconduct of the Surprise police, Harold Brady . Also include everything regarding the lifetime arrest threat issued by Officer Hector Heredia in bold violation of the rules promulgated by the Arizona Supreme Court concerning injunctions against harassment. The arrest threat concerning Nelson is moot, however the lifetime arrest threat from Surprise concerning Nelson's attorney remains in violation of the 1 year rule adopted by the AZ Supreme Court concerning this type of chilling of speech. -- scott huminski

http://www.rivernewsonline.com/main.asp?SectionID=3&SubSectionID=28&ArticleID=57106
From: Harold Brady

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Mr. Huminski:
We cannot comply with your records request. Running a name through our records system is equivalent to a criminal records check on a person. Those record checks are restricted by federal law to only these situations: criminal justice purposes and authorized non-criminal justice purposes. Unfortunately, the circumstances you have presented do not qualify. If you can supply information about a location where an incident(s) occurred or perhaps a short time frame during which a type of incident occurred, we would be glad to search for and, if found, provide you the

information at the normal public record fee rate.
Sincerely,

Lt. Harold Brady
Police and Fire-Medical Legal Advisor
CITY OF SURPRISE

image001

- Download

From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Oddly enough, Phoenix and Glendale Police have supplied police records under the same statutory request. As set forth in the lawsuit against Surprise, I am investigating a conspiracy to commit murder targeting myself and interstate transmission of terrorist death threats.

Your contention that Phoenix and Glendale police have violated federal law by supplying police reports responsive to a public records request is frivolous and unsupported by federal law or case law on the issue.

As required by Statute, please forward to me the Federal Law(s) you rely upon that mandate production of police reports and any other reason specifically set forth by law or case law you have relied upon.

An article on the topic,
http://azdailysun.com/public-records-not-so-public/article_770c3fb0-1149-52c1-8e99-563ad824b39d.html

From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Oddly enough, Phoenix and Glendale Police have supplied police records under the same statutory request. As set forth in the lawsuit against Surprise, I am investigating a conspiracy to commit murder targeting myself and interstate transmission of terrorist death threats.

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As required by Statute, please forward to me the Federal Law(s) you rely upon that mandate production of police reports and any other reason specifically set forth by law or case law you have relied upon.

An article on the topic,
http://azdailysun.com/public-records-not-so-public/article_770c3fb0-1149-52c1-8e99-563ad824b39d.html

Demand for specific statutes and law concerning the withholding of public records.
"If requested, the custodian of the records of an agency (as prescribed under A.R.S. § 41-1001) shall also furnish an index of records or categories of records that have been withheld and state the reasons that each record has been withheld. A.R.S. § 39-121.01(D)(2). "

From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Demand for list of withheld records/documents and reason for withholding under statute,
"If requested, the custodian of the records of an agency (as prescribed under A.R.S. § 41-1001) shall also furnish an index of records or categories of records that have been withheld and state the reasons that each record has been withheld. A.R.S. § 39-121.01(D)(2). "

-- scott huminski
From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Demand for public records under the below case law,

In Cox Arizona Publications Inc. v. Collins,
175 Ariz. 11, 14, 852 P.2d 1194, 1998
(1993), the Arizona Supreme Court reversed
the court of appeals' ruling that the public
is not entitled to examine police reports in
"an active ongoing criminal prosecution."
The Arizona Supreme Court held that such
a "blanket rule . . . contravenes the strong
policy favoring open disclosure and access."
Thus, public officials bear the "burden of
showing the probability that specific, material
harm will result from disclosure" before
it may withhold police records. Mitchell v.
Superior Court, 142 Ariz. 332, 335, 690 P.2d
51, 54 (1984).
From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department

Now Gilbert PD has agreed to supply public records. Surprise is the sole agency refusing to comply with public records law.
From: Harold Brady

Subject: RE: Public Records Request: Public records request Surprise AZ police department

~WRD322

- Download

From: Kimberly Davey

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Mr. Huminski,

I have researched our current Records Management System which dates from 11/2003 to present. The fees for the reports requested comes to $55.00. Payment will need to be received before processing can begin. Please provide an address so the reports can be sent via certified mail.

Thank you,

Kimberly Davey
Records Technician
Surprise Police Department
14250 W Statler Plaza Ste 103
623-222-4384 direct
623-222-4002 fax
kimberly.davey@surpriseaz.gov<mailto:kimberly.davey@surpriseaz.gov>

~WRD000

- Download

From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
OK, Be sure to include a list of any documents withheld pursuant to statute and state the reason for withholding. I will forward funds via the Muckrock.com site.

"If requested, the custodian of the records of an agency (as prescribed under A.R.S. § 41-1001) shall also furnish an index of records or categories of records that have been withheld and state the reasons that each record has been withheld. A.R.S. § 39-121.01(D)(2). "

-- scott huminski
From: MuckRock

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Hi there,

Please send records to this email address or to the following mailing address:

MuckRock
DEPT MR 30945
411A Highland Avenue
Somerville, MA 02144

Thank you.
From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Be sure to include documents related to my complaint of perjury by Debra Riffel at Manasiee Justice Court (Surprise AZ) in July of 2016.
From: MuckRock.com

Subject: None

To Whom It May Concern:

Please find enclosed a check for $55.00 to satisfy the fee associated with the attached public records request.

Thank you.

From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
It has been one week since the mailing of funds from muckrock.com. Please advise if you have received the check and how long it is expected to produce documents. I remind you that there is a pending murder conspiracy investigation awaiting the results of your production. A loss of life because of undue delay is not acceptable. Removing Harold Brady from the matter was a positive development. He is responsible for the death of Justin M. Nelson. -- scott huminski
From: Kimberly Davey

Subject: RE: Public Records Request: Public records request Surprise AZ police department

This is to notify you that you have been sent an e-mail which may contain personal private information that may be used in identity theft (personally identifiable information). In an effort to protect such information, the City of Surprise uses a third party provider (Cisco Systems) to encrypt emails that may contain personally identifiable information.

In order to view this email, you must be a registered user of the Cisco Registered Envelope Service. If you are not already a registered user, the process is free and can be completed by following the instructions below. Otherwise please open the attachment and log in to the Cisco Registered Envelope Service as you would normally.

Read your secure message by opening the attachment, securedoc.html. You will be prompted to open (view) the file or save (download) it to your computer. For best results, save the file first, then open it in a Web browser. To access from a mobile device, forward this message to mobile@res.cisco.com to receive a mobile login URL.

If you have concerns about the validity of this message, contact the sender directly.

First time users - will need to register after opening the attachment. For more information, click the following Help link.
Help - https://res.cisco.com/websafe/help?topic=RegEnvelope
About Cisco Registered Email Service -
https://res.cisco.com/websafe/about">https://res.cisco.com/websafe/about

- [redacted]

securedoc_20170201T061456

  - Download

From: CRES Do Not Reply

Subject: None
Dear scott huminski,

Thank you for registering with Cisco Registered Envelope Service.

CONFIRM ACCOUNT
Please activate this account by going to
<https://res.cisco.com/websafe/activate?uuid=d746e26600000159fc3ec8cd0a089e89dade5bf9>

To stop the registration process you can cancel this account by going to
<https://res.cisco.com/websafe/cancelActivation?uuid=d746e26600000159fc3ec8cd0a089e89dade5bf9>

IMPORTANT
To help keep your personal information safe, Cisco recommends that
you never give your CRES password to anyone, including
Cisco employees.

Welcome to CRES!

To know more about Cisco Registered Envelope Service, see https://res.cisco.com/websafe/about
Terms of Service: https://res.cisco.com/websafe/termsOfService
Privacy Policy: http://www.cisco.com/web/siteassets/legal/privacy.html

---

From: scott huminski

Subject: None
Hi, This is scott huminski, i received a strange response from the Surprise Police concerning this FOIA request. Please advise. thanks -- scott
From: CRES Do Not Reply

Subject: None
Dear scott huminski,

You have 9 day(s) left until your Cisco Registered Envelope Service
account expires. To complete your registration and prevent your account
from expiring, you must confirm your intent to register.

CONFIRM ACCOUNT
Please confirm your acceptance of the Terms of Service and your intent to
register by going to
<https://res.cisco.com/websafe/activate?uuid=d746e26600000159fc3ec8cd0a089e89dade5bf9>

If you wish to cancel the registration process, go to
<https://res.cisco.com/websafe/cancelActivation?uuid=d746e26600000159fc3ec8cd0a089e89da
de5bf9>

IMPORTANT
To help keep your personal information safe, Cisco recommends that you never
give your CRES password to anyone, including Cisco employees.

Thank you,
CRES Customer Support

To know more about Cisco Registered Envelope Service, see https://res.cisco.com/websafe/about

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Terms of Service: https://res.cisco.com/websafe/termsOfService
Privacy Policy: http://www.cisco.com/web/siteassets/legal/privacy.html

---

From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
The subpoena issued against Surprise is located at the following link. PRODUCE THE DOCUMENTS.

https://trevornelsonazglendaleazihs16gcu2020debrariffel.com/2017/02/03/lawsuit-filed-against-scribd-gilbert-glendale-surprise-phoenix-interstate-transmission-of-death-threats-murder-conspiracy-trevor-nelson-of-glendale-az-allegedly-trevorelsonaz/
From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Be sure to include all materials concerning my perjury complaint regarding debra riffel in july 2016 at manistee justice court. This perjury investigation is material to the interstate transmission of terrorist death threats.
From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
I mis-spoke in a email today. I will be adding a fraud count against surprise for charging and accepting $55 and failing to produce the documents. FRAUD - declaratory relief only...
From: MuckRock.com

From: MuckRock

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Hello Ms. Davey,

Payment was submitted for this request, and it seems that there was some confusion regarding the portal. Could you please help us retrieve the materials appropriately?

Thank you for your help,
Beryl, MuckRock
From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
Motion for leave to amend to add FRAUD count against Surprise for collecting money and then failing to produce the promised documents that were paid for.

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/opposition-to-surprise-motion1.pdf
From: scott huminski

Subject: RE: Public Records Request: Public records request Surprise AZ police department
It is fraud to withhold these documents that you have been paid for.

LCSO EMAIL EXCHANGE WITH HUMINSKI VIA INTERMEDIARY MUCKROCK.COM

https://www.muckrock.com/foi/lee-county-36/lee-county-sheriffs-office-public-records-request-31908/

Subject: Sunshine Law Request: Lee County Sheriff's Office public records request
To Whom It May Concern:

Pursuant to Florida's Sunshine Law (Fla. Stat. secs. 119.01 to 119.15 (1995)), I hereby request the following records:

All records and documents and police reports referencing or mentioning or pertaining to,
Scott Huminski DOB 12/01/1959
Trevor M Nelson DOB 8/2/1998, residence Glendale AZ
Justin M Nelson DOB 6/19/1976 (deceased), residence Glendale AZ
Debra M Riffel DOB 11/22/1964, residence Glendale AZ

Pursuant to statute please provide a list of all records, and if records are withheld, the reason for withholding.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I would request your response within ten (10) business days.

Sincerely,

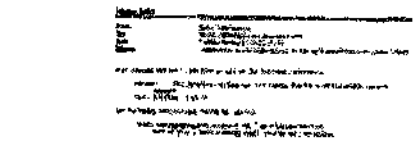
scott huminski

From: scott huminski

Subject: Sunshine Law Request: Lee County Sheriff's Office public records request
Correction: the middle initial of Trevor Nelson is "J". The date of birth and residence is correct.

From: Lee County Sheriff's Office

Subject: None
A fix is required to perfect the request.



From: scott huminski

Subject: RE: Sunshine Law Request: Lee County Sheriff's Office public records request
What fix is required??? Unclear, thanks.
From: scott huminski

Subject: undeliverable
use
jholloway@sheriffleefl.org, mscott@sheriffleefl.org
From: scott huminski

Subject: RE: Sunshine Law Request: Lee County Sheriff's Office public records request
All data supplied to muckrock.com gets published on the Internet. The cisco service you use can not be accessed. Send a regular email with attachments. As there was an apparent attempt on my life, respond today, thank you – scott huminski
From: MuckRock.com

Subject: None
To Whom It May Concern:

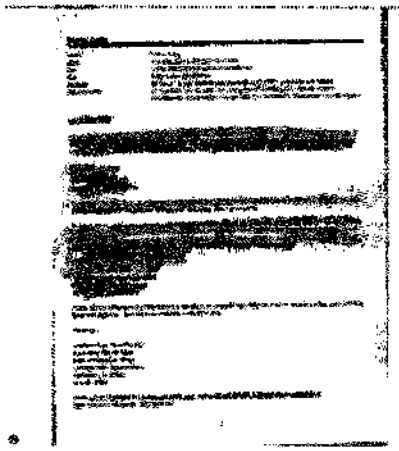
Please find enclosed a check for $6.25 to satisfy the fee associated with the attached public records request.

Thank you.
From: scott huminski

Subject: RE: Sunshine Law Request: Lee County Sheriff's Office public records request
Please advise as to status, it has been over 10 days since you have received payment. – scott huminski

cc: jholloway@sheriffleefl.org, mscott@sheriffleefl.org, jmmcdaniel@sheriffleefl.org,
From: Lee County Sheriff's Office

Subject: None
A fix is required to perfect the request.



Fix Required

From: scott huminski

Subject: RE: Sunshine Law Request: Lee County Sheriff's Office public records request
You have the funds mailed by muckrock. It is now fraud for you not to produce. -- scott huminski
We'll automatically follow up with the agency in 1 week, 4 days.

Filing # 55391880 E-Filed 04/20/2017 07:08:06 PM

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO.
TOWN OF GILBERT, AZ, ET AL.	)	17-CA-421
DEFENDANTS.	)	

MOTION TO RECUSE JUDGE KRIER,
Furtherance of lcso public records fraud and to Vacate for want of Due Process

NOW COMES, Plaintiff, Scott Huminski ("Huminski"), moves for recusal as follows;

1. Sworn on the record is Huminski's affidavit indicating he paid Sheriff Scott and the LCSO for public records.
2. Judge Krier stated that sheriff scott did not commit a fraud by accepting monies fron Huminski and Judge krier assisted Sheriff Scott in the commission of the crime of fraud by dismissing the count from the complaint.
3. Judge Krier indicated she would not allow Huminski to receive the documents he paid for from Sheriff Scott or the LCSO without paying additional fees to attorneys.
4. Judge Krier, despite undisputed facts on the record that fraud has been committed by Sheriff Scott, Surprise,AZ and that Huminski has been subjected to a terrorist murder plot for 2 years and that Huminski was subjected to a patently false arrest, Judge Krier chose to assist the criminals and tortfearsors.
5. Every defendant in this matter knows that all materials proffered by Huminski in this matter are absolutely truthful, yet were silent when Judge Krier became delusional at hearing based upon nothing on the record and despite the record.
6. It is time for the various law enforcement defendants to come forward and confess as to their knowledge of the interstate transmission of terrorist death threats and

other crimes enveloping this matter and let the Court rule on the truth instead of delusions.

Dated at Bonita Springs, Florida this 20th day of April, 2017 and served via the Court's automated email service.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Filing # 55450260 E-Filed 04/22/2017 08:07:33 AM

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
V.	)	DOCKET NO.
TOWN OF GILBERT, AZ, ET AL.	)	17-CA-421
DEFENDANTS.	)	

MOTION TO VACATE ORDERS ARISING FROM HEARINGS OF APRIL 2017 FOR WANT OF DUE PROCESS AS VOID AB INITIO

NOW COMES, Plaintiff, Scott Huminski ("Huminski"), moves to vacate the order arising April 2017 hearings as follows;

1. Judge Krier ("Keier") knew of Huminski's disabilities and status of indigence, surviving only on social security disability income. See Complaint.
2. Krier ruled with tongue in cheek when she mandated huminski pay thousands of dollars to an attorney to participate in this matter with her knowledge that Huminski's sole income was SSDI.
3. Krier;s order has violated Huminski's procedural and substantive Due Process rights concerning the pending motion for contempt whereby the reckless orders of the judge prevent and effectively banish Huminski from these proceedings violating his rights to appear and to be heard concerning the contempt proceedings.
4. Krier's orders violate Huminski's first amendment rights to report crime to law enforcement. All conduct complained of in the contempt motions were in furtherance of a criminal complaint concerning fraud, interstate transmission of terrorist death threats, domestic terrorism, identity theft and other crimes related to the crimes of Trevor Nelson of Glendale AZ.
5. Not one defendant (multiple police agencies in AZ and fl) challenged the veracity of the fact pled by Huminski. Only Krier acting as a puppet for Sheriff Scott

claimed the facts and crimes set forth in Huminski's papers were false with zero factual inquiry or analysis. This dicta at hearing revealed a refusal of Krier to read the complaint and other papers and her delusion concerning real crimes that both Huminski and all law enforcement defendants know happened

6. Sheriff Scott has the opportunity to arrest charge Huminski with the crimes of perjury and false reporting to police, however police only have materials that support Huminski's filings. See attached police report which falsely stated that I signed a withdrawal of the criminal complaint.
7. The attached LCSO complaint was discovered recently as an attachment to an email, however, the LCSO refused to supply any records post June 2015 including documents related to the letter sent to Huminski in January 2017 that contained hate language mocking Huminski's disabilities and an anthrax-like powder. That letter was sent from Trevor Nelson of Glendale AZ as clearly marked on the envelope. The level of terrorist activity allowed by Sheriff Scott has emboldened terrorists to sign their works of terror with knowledge of LCSO weak and ineffective policies against interstate domestic terrorism.

Dated at Bonita Springs, Florida this 22nd day of April, 2017 and served via the Court's automated email service.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

R

Office of the Sheriff
14750 Six Mile Cypress Parkway
Fort Myers, FL 33912

Lee County, Florida
(239) 477-1000

Public Information Request Invoice

Invoice Number: 15456
Invoice Date: Thursday, March 16, 2017

Request Date: 03/16/17
Contact Name: Scott Humanski
Contact Number:
Ext:
Requested Of:

	Quantity	Amount
# Pages @ $.15:		$0.00
Number of Hours @ $18.20:	0.00	$0.00
Supplies 1:		$0.00
Supplies 2:		$0.00
Supplies 3:		$0.00
Postage:		$0.00
	Total Bill:	$6.25

Amount Paid:	
Pay Date:	
Status:	
Authorizing Person:	

Description of Request:
Payment for Report CFS 15-185251

LEE COUNTY SHERIFF'S OFFICE

Deputy Report for Incident 15-185251

Nature: ASSAULT
Location: S3

Address: 24544 KINGFISH ST
BONITA SPRINGS FL 34134

Offense Codes: 1316, UNUC
Received By: DAVIS L **How Received:** T **Agency:** LCSO
Responding Officers: LEWIS T A, ELSAID M
Responsible Officer: LEWIS T A **Disposition:** VUP 05/27/15
When Reported: 14:14:25 05/04/15 **Occurred Between:** 14:14:25 05/02/15 and 14:14:25 05/04/15

Assigned To: ALLEN B **Detail:** SCID **Date Assigned:** 05/05/15
Status: VUN **Status Date:** 06/02/15 **Due Date:** **/**/**

Complainant:
Last: **First:** **Mid:**
DOB: **/**/** **Dr Lic:** **Address:**
Race: **Sex:** **Phone:** **City:** ,

Offense Codes

Reported: **Observed:**

Circumstances

Responding Officers: **Unit :**
LEWIS T A s13
ELSAID M S15

Responsible Officer: LEWIS T A **Agency:** LCSO
Received By: DAVIS L **Last Radio Log:** **:**:** **/**/**
How Received: T TELEPHONE **Clearance:** 08 REPORT TAKEN
When Reported: 14:14:25 05/04/15 **Disposition:** VUP **Date:** 05/27/15
Judicial Status: **Occurred between:** 14:14:25 05/02/15
Misc Entry: **and:** 14:14:25 05/04/15

Modus Operandi: **Description :** **Method :**

Involvements

Date	Type	Description	
05/04/15	Cad Call	14:14:25 05/04/15 ASSAULT	Initiating Call

01/17/17

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Narrative

---------- (lwmain144717050420l5)
On 05/04/2015 around 1414 hours Deputy Lewis was dispatched to 24544 Kingfish Street Bonita Springs, FL 34134 reference to a written threat.

Upon arrival, Deputy Lewis met with Scott Alan Ruminski, the complainant and victim. Scott presented a letter that he received in the mail to Deputy Lewis that reads as follows:

"Nice house Scott. I think I ll comm in through that front window one of these nights. It s time that you pay for murdering Michael Nelson. You two nut jobs can spend eternity together."

Also, there was a photo of Scott's home inside the envelope with the letter. The envelope was apparently mailed from Bonita Springs by the Bonita Springs stamp on it but the return address on the envelope is: Ryan J. Pillar 75 S Civic Center Dr. Gilbert, AZ 85296.

Scott said that his case was being investigated by the FBI, US Marshal Service, and the US postal service. US postal service case number is 2066225-WPV. Mark Cavic is apparently the Postal Inspector working the case. Mark's contact number is 239-768-8007.

Scott Completed a sworn statement and a prosecution affidavit. The letter, envelope and photo were logged into LCSO evidence.
---------- (lwmain144717050420l5)~~

LEE COUNTY SHERIFF'S OFFICE
WAIVERS / AFFIDAVITS Page 1 of 1

L. CFS No. 15-185251

Type of Incident: Write Threat to Kill/Injure 836.1-3108

I, [name of person signing]: X Scott Hunnisker the undersigned

CONSENT TO BE INTERVIEWED

I, [Init. _____] hereby consent to being interviewed by the below listed Lee County Sheriff's Office Law Enforcement Official concerning the above listed incident / offense and I further understand that:

1) I have the right to remain silent and can invoke this right at any time during questioning;
2) If I do make a statement, anything I say can be used against me in court;
3) I have the right to talk to a lawyer/attorney for advice before answering any questions and to have a lawyer/attorney with me during questioning;
4) If I cannot afford a lawyer/attorney, one will be appointed to me without charge before any questioning if I wish;
5) If I decide to answer questions without a lawyer/attorney present, I will still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer/attorney.
6) I understand each of these rights.
7) I have not previously requested any law enforcement officer to allow me to speak with a lawyer/attorney.
8) With the above listed rights in mind, I wish to make a statement and/or answer any questions by any Lee County Sheriff's Office Law Enforcement Official.

CONSENT TO SEARCH / WAIVER OF SEARCH WARRANT

I, [Init. _____] hereby consent that the premises / vehicle / boat located at:

_____

may be searched by any Lee County Sheriff's Office Law Enforcement Official. This consent extends to the main building and any enclosures found on the property. I further agree that anything or any article that may be found in the search of the premises / vehicle / boat may be used at trial in any manner of which I may stand accused. I fully understand my constitutional rights in regard to the search and it is my intention to fully and completely waive such rights by this consent. I give this consent freely and voluntarily, without compulsion or threat of any kind. I further swear or affirm that I am the true and sole owner of the property to be searched; or I represent the owner and have the authority to consent to this search.

WAIVER OF PROSECUTION

I, [Init. _____] request not to prosecute _____ by the Lee County Sheriff's Office regarding my complaint. I am satisfied with the manner in which the investigation was conducted and release the Lee County Sheriff's Office of any responsibility regarding this complaint. I request that any further investigation not be pursued.

X **TRUTH / DESIRE TO PROSECUTE AFFIDAVIT**

I, [Init. SH] certify that the statements made to the below listed Lee County Sheriff's Official concerning the above listed incident/offense were voluntarily made and true to the best of my knowledge. I further certify that I am willing to prosecute in this case. I understand that anyone found guilty of providing false information concerning the alleged commission of any crime is GUILTY OF A MISDEMEANOR OF THE FIRST DEGREE, punishable by a definite term of imprisonment not exceeding one year and/or a fine not exceeding $1,000.00 (Florida Statutes 837.05, 775.083 and 775.083).

Signed this 4 Day of May, 2015, at 1520 hours.

Subject: X [signature] Witness (if available): _____

Deputy and ID#: [signature] Witness (if available): _____

LCSO Form 55 (revised November 12, 2012)

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LEE COUNTY SHERIFF'S OFFICE
SWORN AFFIDAVIT

COUNTY OF LEE
STATE OF FLORIDA

LCSO CFS NO: 15-185251 DATE: 5/4/15

NAME: X Scott Huminski HEIGHT: X 510" WEIGHT: X 210 HAIR: X BR EYES: X BR

DATE OF BIRTH: X 12-1-59 PLACE OF BIRTH: X Bridgeport CT

HOME ADDRESS: X 24544 Kingfish Street

HOME TELEPHONE NUMBER: X 239 300 6656

WORK NAME AND ADDRESS: retired

WORK TELEPHONE NUMBER:

CELL /ALTERNATE PHONE NUMBER: X N/A

I X Scott Huminski NOW WISH TO MAKE THE FOLLOWING SWORN AFFIDAVIT TO
Dep Elect WHO I KNOW TO BE A DEPUTY SHERIFF, WITH THE LEE
COUNTY SHERIFF'S OFFICE, WHO IS EMPOWERED BY FLORIDA STATUTE TO TAKE SWORN TESTIMONY.

On 4/2/15 I received a letter threatening me with Death For participating in litigation in the Federal Courts. I consider this witness intimidation/tampering and obstructing of justice concerning matters pending in the United States Courts

Today on 5/4/15 I received a follow-up letter from the same author, Ryan Piller, a Gilbert AZ police officer. I & the true author of the two letters is not Piller, I believe a Trevor Nelson of Glendale AZ may be the author. I filed a police complaint against Trevor Nelson's father, Officer Piller Investigated, Nelson senior was arrested in 2012 and then committed suicide, My belief is that Trevor Nelson blames me & Piller for his fathers death

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 4 DAY OF May 2015

Dep Elect ogay
NOTARY PUBLIC/ DEPUTY SHERIFF

X S. Huminski
SIGNED

LCSO Form 74 (August 07, 2008)

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LEE COUNTY SHERIFF'S OFFICE
PROPERTY RECEIPT

EVIDENCE #_____ DATE May 4, 2015 CFS # 15-185251

CHECK ONE ONLY

☒ Physical Evidence ☐ Found ☐ Destroy ☐ Safekeeping

Suspect	Name	DOB	Phone No
☐	Address	Charges Write Threat to Kill/Injure 836.1-3108	

Address/Location Where Property Located/Impounded	Date/Time
24544 KINGFISH ST BONITA SPRINGS, FL	05/04/2015 @ 1450hours

Deputy's Printed Name, ID Number, District and Unit	Detective (If Different)
Elsaid, 08048, South	

☐ Owner ☐ Finder ☒ Victim Address/ZIP Code	Phone No.
Scott Alan Huminski, dob 12/01/1959, 245544 Kingfish St, Bonita Springs FL	(239)300-6656

Item	Qty	Full Description of Property
1	1	White Posted Envelope.
2	2	Two letters to complainant. 15P-26427
3	1	One copy of envelope from prior postage.

Item	Date	Time	Released By	Received By	Location of Property
1	5/5/15	1638	Elsaid 08048		Drop
1	5/12/15	1100	[illegible] South	[illegible] 9280	Evidence
1	[redacted]/15	1129	[illegible]	[illegible]	
1	8 months	1129	[illegible]	[illegible]	Evidence
1	10				

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LCSO Form 026 (revised May 1, 2014)

Incident

Incident: 15-185351 Offenses: 1915 UNUC Misc Entry:

Address: 24544 KINGFISH ST Loc Code: 53

City: BONITA SPRINGS ST: FL ZIP: 34134

Workflow Status

Current: 9

Assigned Individual: CHIAPETTA L Responsible:

Assigned Group: C Zone Supervisor:

Assigned By: ALLEN E

Status: REVSGT TO SGT FOR REVIEW Date: 11:07:07 05/27/15

REPORT DATE: 05/04/2015
CLEARANCE DATE: 05/27/2015
CLEARANCE TYPE:

- ARREST
- WARRANT REQUEST
- EXCEPTIONAL
  - EXTRADITION DECLINED
  - ARREST PRIMARY OFFENSE NO PROSECUTION/SECONDARY OFFENSE
  - DEATH OF OFFENDER
  - VICTIM/WITNESS REFUSE TO COOPERATE
  - PROSECUTION DENIED
  - JUVENILE PERPETRATOR, NO FORMAL CUSTODY
- CLOSED DEATH INVESTIGATION
- X VICTIM UNWILLING TO PROCEED/NO SUSPECT INFORMATION
- UNFOUNDED

F.S.S.: Assault 784.011

SYNOPSIS: THIS INVESTIGATION DID NOT ESTABLISH THE IDENTITY OF THE OFFENDER. THERE IS NOT ENOUGH INFORMATION TO SUPPORT AN ARREST, OR CHARGE AND PROSECUTE THE OFFENDER. THE EXACT LOCATION OF THE OFFENDER IS NOT KNOWN AND I COULD NOT TAKE HIM INTO CUSTODY. ADDITIONALLY, THERE IS A REASON BEYOND LAW ENFORCEMENT CONTROL THAT STOPS ME FROM ARRESTING CHARGING AND PROSECUTING THE OFFENDER AND THAT REASON IS THE FACT THE VICTIM REFUSED TO COOPERATE IN AN ARREST AND/OR PROSECUTION AND SIGNED A COMPLAINT WITHDRAWAL. THEREFORE, THIS CASE IS CLOSED BECAUSE THE VICTIM IS UNWILLING TO PROCEED AND THERE IS NO SUSPECT INFORMATION.

55

Valdeon, Betty

From: Valdeon, Betty on behalf of BKrierPleadings
Sent: Tuesday, April 18, 2017 2:13 PM
To: Krier, Elizabeth
Subject: FW: Judge Krier Sponsors bloody jihad

From: scott huminski [mailto:s_huminski@live.com]
Sent: Tuesday, April 18, 2017 11:54 AM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; Mike Scott <sheriff@sheriffleefl.org>; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com;

1

Exhibits D1

jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con; BKrierPleadings <BKrierPleadings@ca.cjis20.org>
Subject: Judge Krier Sponsors bloody jihad

*** WARNING: This is an EXTERNAL email. DO NOT open attachments or click links from UNKNOWN or UNEXPECTED email. ***
Blood flows from the tip of her pen when justice doesn't. Huminski speaks the the truth in every paper before this crooked judge.

From: scott huminski <s_huminski@live.com>
Sent: Monday, April 10, 2017 3:20 PM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Flnical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com;

jpederson@glendaleaz.com; ksilva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bbianco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; lboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@didlawyers.com; maribel@didlawyers.com; josefina@didlawyers.com; mlowe@glendaleaz.com; kendrake@didlawyers.con

Subject: Huminski affidavit vs. lies of police attorney Harold Brady

This sleazy cop who advised the Surprise police that federal law prohibits release of public records is allegedly holding payments made to Surprise to defraud my public records request. A claim of lost in the mail is a bit lame after the guy already admitted he won't release public documents pursuant to a non-existent federal law.

Here is my 22 page affidavit, which also proves Sheriff Scott's fraud. I have images of both the front and rear of the check accepted by LCSO for public records. I have the date that two LCSO personnel were here at my home, don't delete this data from production. Also don't delete info about the information that was mailed to me from North Carolina that LCSO lied about.

All these little lies add up.

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/affidavit-muckrock-w-attachments.pdf

-- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Saturday, April 8, 2017 12:02 PM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; balen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us;

publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorwelers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Lee crime evidence filed in 20th Cir Court

This is a follow up on the report of crimes in Lee County. Sheriff Scott apparently refuses to look at URLsrelated to Lee county crime. So full downloads detailing criminal conduct in Lee County have been filed in Court and are set forth in full at the below link.

I have attached the information as counsel for Sheriff Scott indicates that the sheriff refuses to consider or investigate crimes documented online. The sheriff now seeks to enjoin my reporting of crimes to law

enforcement with jurisdiction in bonita springs fl. Direct support of the alleged terrorist activities of Trevor Nelson of Glendale AZ.

This is a continuing report to law enforcement of crimes targeting Lee county including the interstate transmission of terrorist death threats, obstruction of justice, fraud by LCSO,, Fraud by Surprise AZ, harassment, interstate transmission of an anthrax-like substance via the U.S. Mails, domestic terrorism. -- scott huminski

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/urls-outpur-with-motion-court-filed.pdf

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From: scott huminski <s_huminski@live.com>
Sent: Friday, April 7, 2017 8:55 AM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.mever@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; la@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; marryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksilva@glendaleaz.com; tphillips@glendaleaz.com; lhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com;

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rralnbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; jhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: lee county crime and terrorism out of control

Now we have sheriff scott's own public records department pulling the fraud/scam of charging for records and refusing to supply them.

Surprise AZ is pulling the same scam as the LCSO by charging for records and refusing to produce. This is criminal fraud in FLorida.

Now we have Nelson targeting witnesses/litigants appearing before Lee county courts with the anthrax letter sent via the u.s. mails.

The list goes on with the LCSO and sheriff scott applauding from the sidelines.

Two gulf access lots are for sale across the street from us, $275,000 each and the creation of this terrorist death zone and crime zone by the sheriff is impacting the economy of this neighborhood.

The domestic terrorism supported by the sheriff and the interstate transmission of death threats and possible terrorist poisons by allegedly Trevor Nelson of Glendale AZ (assisted by the Glendale police) is creating an environment of criminal chaos in Lee county florida. The crimes and terrorism must stop. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Wednesday, April 5, 2017 10:18 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dgloyer@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov;

jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Lee County Florida courts threatened

NOTICE TO DEFENDANTS TO STOP CRIMINAL TORTIOUS CONDUCT INCLUDING OBSTRUCTION OF JUSTICE LEE COUNTY FL

The domestic terrorists could not have been more clear that their campaign of terror was against the courts. death threat # 1 "lawsuits" death threat 2 timed exactly with the appeal in US Court of Appeals NYC, and now the third death letter was issued in coordination with the filing of the instant FL human rights suit.

Scribd has also taken the same stance as in the anthrax letter in mocking my disabilities when it is very clear scribd and the domestic terrorists chose to team up in July 2016, now they are working in unison

Court filing
https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/response-to-scridb-notice-of-hearing.pdf

Sheriff Scott you have been paid for public records. Withholding them is fraud- criminal and civil. You can not charge for a service and then blow off your paid duties under the common law and florida public records law.

Surprise you continue to commit fraud in lee florida after accepting payment for public records and then defrauding me by failing to produce. Do not follow the example of sheriff scott.

Surprise and gilbert, withdraw, rescind or narrowly tailor your lifetime arrest threats. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Saturday, April 1, 2017 7:58 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; jgutridge@sheriffleefl.org; strauria@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_plo@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com;

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mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; biones@glendaleaz.com; tpsalidas@glendaleaz.com; vgrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; lmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@didlawyers.com; maribel@didlawyers.com; josefina@didlawyers.com; mlowe@glendaleaz.com; kendrake@didlawyers.con

Subject: ICSO Mike scott engages in fraud re;public record request

the sheriff charged for public records and now refuses to supply them and lied that I sent payent via email when he received a paper check in the mail from muckrock. stop breaking the law- sheriff scott

https://d3gn0r3afghep.cloudfront.net/foia_files/2017/03/15/3-10-17_MR31908_FIX.pdf

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From: scott huminski <s_huminski@live.com>
Sent: Tuesday, March 14, 2017 7:39 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; idrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; spalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov;

pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; lpederson@glendaleaz.com; ksilva@glendaleaz.com; tphillips@glendaleaz.com; lhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorwelers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; lhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Criminal Fraud Ft. Myers Atty R. Pritt- Sheriff Scott/LCSO looks on

This fort myers attorney is further the criminal fraud scam by the City of Surprise AZ whereby they charge for public records and then refuse to forward them after they get paid. Criminal fraud.

Arrest this attorney for his participation in this fraud scheme. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Monday, March 13, 2017 8:33 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delaxarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; pfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; jgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov;

jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: City of Surprise Attorney (R Pritt) advises fraud - public records violations - litigation

Surprise billing me for public records and surprise has been paid. Their sleazy attorney is advising them to commit fraud against me by not producing the documents.

After Surprise took their own sleazy attorney off the matter (Harold Brady), Pritt is now taking over the dirty work and fraud. This guy should be disbarred. See public records history below, Pritt advising Surprise to violate AZ public records law. Further i offered to settle the case for production of the documents and status on the Debra Riffel july 2016 perjury investigation. Pritt has refused and instead advises Surprise tax payers to support his law firm with legal fees instead of acting morally and turning over the documents. Pritt is unnecessarily billing his true clients (surprise taxpayers) for litigation that only intends to violate AZ records law and perpetrate fraud in florida. see link

https://www.muckrock.com/foi/surprise-9567/public-records-request-surprise-az-police-department-30945/

Public records request Surprise AZ police department

www.muckrock.com

Subject: Public Records Request: Public records request Surprise AZ police department. To Whom It May Concern: Pursuant to the state open records law, Ariz. Rev. Stat ...

From: scott huminski <s_huminski@live.com>
Sent: Friday, March 10, 2017 3:09 PM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; jorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com;

rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bbianco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; lalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tosalidas@glendaleaz.com; vgrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; jhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; itolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; lbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; imichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Huminski v. Robert Pritt violation of attorney ethical precepts

Making deceptive representations to the Court.

Surprise's counsel has been put on formal notice to the Court and a disciplinary complaint will be filed. see

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/motion-to-enlarge-hearing-duration.pdf

Bold deception to the court. He should be disbarred. Note under that all other counsel has an affirmative duty to report known violations of attorney ethics. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Wednesday, March 8, 2017 9:46 PM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; jim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; idrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvalleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov;

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pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Re: Huminski v. City of Surprise, AZ - Case No: 17-CA-000421

Yes, The 18th would work, please advise the court that we can hear that emergency motion for temporary injunction, motion for leave to amend and 2nd motion for leave to amend (to be filed shortly regarding Officer Hector Heredia's lifetime arrest threat against me for contact with Anthony Tsontakis without authorization from tsontaksis in violation of the Florida Constitution) and we can also hear my motion for partial summary judgment against Surprise for charging me for public records and then failing to provide those records - FRAUD in Florida and set forth findings why Surprise refuses to withdraw, rescind or narrowly-tailor the lifetime arrest threat from Ofc. Heredia when Tsontakis requested no such relief.

Consider this my final demand for Surprise to withdraw, rescind or narrowly-tailored the lifetime arrest threat against me for contact of Anthony Tsontakis. Heredia threats originally included Justin M Nelson, which has been mooted by the suicide of Nelson that Surprise is involved in. Harold Brady specifically took actions that prevented medical treatment from reaching the suicidal Nelson. Now Surprise is obstructing my investigation into the murder threats targeting me by Nelson's child, Trevor Nelson, with their fraud related to the release of public records.

-- scott huminski

From: Ortega, Melanie <MOrtega@ralaw.com>
Sent: Wednesday, March 8, 2017 4:10 PM
To: s_huminski@live.com

Cc: Ortega, Melanie; Fox, Jim
Subject: Huminski v. City of Surprise, AZ - Case No: 17-CA-000421

Good afternoon Mr. Huminski:

Our office represents the Defendant, City of Surprise, AZ in the above-referenced matter. We would like to schedule a 30 minute hearing on our Motion to Dismiss before Judge Krier. Please advise is you are available during one of the dates below:

April 3rd @ 9:30 a.m.
April 4th @ 9:30 a.m.
April 18th @ 9:15 a.m.

Once you advise as to which date works for you, I will get the hearing set up. Thank you. Melanie

Melanie K. Ortega
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Main Phone No: 239.649.6200
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Roetzel & Andress, A Legal Professional Association

From: scott huminski [mailto:s_huminski@live.com]
Sent: Wednesday, April 19, 2017 8:10 AM
To: scott huminski <s_huminski@live.com>; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; Mike Scott <sheriff@sheriffleefl.org>; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com;

Exhibit D 2

TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con; BKrierPleadings <BKrierPleadings@ca.cjis20.org>; Haegele, Soledad <SHaegele@CA.CJIS20.ORG>
Subject: terrorisT DEATH TARGETS JUDGE KRIER

*** WARNING: This is an EXTERNAL email. DO NOT open attachments or click links from UNKNOWN or UNEXPECTED email. ***
they haVE Now targetted JUDGE KREIR FOR DEATH

"Hello Scott, It's almost time for you to die. Did you think that I would let you get away with your bullshit and your lawsuits? Writing that letter to my parents was your worst mistake. Enjoy your last few days on earth.I'll be there real soon. Officer Pillar"

A FITTING END TO A JURSIST WHO HAS ORDERED MY MURDER AT THE HANDS OF TREVOR NELSON, ONE MOVE BODY ADDED TO THE DEATH LIST IN THIS CASE.
GIVING MATERIAL ASSISTANCE TO NELSON DESERVES THE DEATH PENALTY

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, April 18, 2017 11:54 AM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org;

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mlowe@glendaleaz.com; kendrake@dldlawyers.con; Bkrierpleadings@ca.cjis20.org
Subject: Judge Krier Sponsors bloody jihad

Blood flows from the tip of her pen when justice doesn't. Huminski speaks the the truth in every paper before this crooked judge.

From: scott huminski <s_huminski@live.com>
Sent: Monday, April 10, 2017 3:20 PM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorirnizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; meikady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmedlarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com;

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Subject: Huminski affidavit vs. lies of police attorney Harold Brady

This sleazy cop who advised the Surprise police that federal law prohibits release of public records is allegedly holding payments made to Surprise to defraud my public records request. A claim of lost in the mail is a bit lame after the guy already admitted he won't release public documents pursuant to a non-existent federal law.

Here is my 22 page affidavit, which also proves Sheriff Scott's fraud. I have images of both the front and rear of the check accepted by LCSO for public records. I have the date that two LCSO personnel were here at my home, don't delete this data from production. Also don't delete info about the information that was mailed to me from North Carolina that LCSO lied about.

All these little lies add up.

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/affidavit-muckrock-w-attachments.pdf

-- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Saturday, April 8, 2017 12:02 PM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; lhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com;

TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; blones@glendaleaz.com; tpsalidas@glendaleaz.com; vgrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; laldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; rcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@didlawyers.com; maribel@didlawyers.com; josefina@dkdlawyers.com; mlowe@glendaleaz.com; kendrake@didlawyers.con

Subject: Lee crime evidence filed in 20th Cir Court

This is a follow up on the report of crimes in Lee County. Sheriff Scott apparently refuses to look at URLsrelated to Lee county crime. So full downloads detailing criminal conduct in Lee County have been filed in Court and are set forth in full at the below link.

I have attached the information as counsel for Sheriff Scott indicates that the sheriff refuses to consider or investigate crimes documented online. The sheriff now seeks to enjoin my reporting of crimes to law enforcement with jurisdiction in bonita springs fl. Direct support of the alleged terrorist activities of Trevor Nelson of Glendale AZ.

This is a continuing report to law enforcement of crimes targeting Lee county including the interstate transmission of terrorist death threats, obstruction of justice, fraud by LCSO,, Fraud by Surprise AZ, harassment, Interstate transmission of an anthrax-like substance via the U.S. Mails, domestic terrorism. -- scott huminski

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/urls-outpur-with-motion-court-filed.pdf

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From: scott huminski <s_huminski@live.com>
Sent: Friday, April 7, 2017 8:55 AM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org;

la@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; l_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvalleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; jhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; belth@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; jhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com;

bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con
Subject: lee county crime and terrorism out of control

Now we have sheriff scott's own public records department pulling the fraud/scam of charging for records and refusing to supply them.

Surprise AZ is pulling the same scam as the LCSO by charging for records and refusing to produce. This is criminal fraud in FLorida.

Now we have Nelson targeting witnesses/litigants appearing before Lee county courts with the anthrax letter sent via the u.s. mails.

The list goes on with the LCSO and sheriff scott applauding from the sidelines.

Two gulf access lots are for sale across the street from us, $275,000 each and the creation of this terrorist death zone and crime zone by the sheriff is impacting the economy of this neighborhood.

The domestic terrorism supported by the sheriff and the interstate transmission of death threats and possible terrorist poisons by allegedly Trevor Nelson of Glendale AZ (assisted by the Glendale police) is creating an environment of criminal chaos in Lee county florida. The crimes and terrorism must stop. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Wednesday, April 5, 2017 10:18 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrpdriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov;

t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; l_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Lee County Florida courts threatened

NOTICE TO DEFENDANTS TO STOP CRIMINAL TORTIOUS CONDUCT INCLUDING OBSTRUCTION OF JUSTICE LEE COUNTY FL

The domestic terrorists could not have been more clear that their campaign of terror was against the courts. death threat # 1 "lawsuits" death threat 2 timed exactly with the appeal in US Court of Appeals NYC, and now the third death letter was issued in coordination with the filing of the instant FL human rights suit.

Scribd has also taken the same stance as in the anthrax letter in mocking my disabilities when it is very clear scribd and the domestic terrorists chose to team up in July 2016, now they are working in unison

Court filing
https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/response-to-scribb-notice-of-hearing.pdf

Sheriff Scott you have been paid for public records. Withholding them is fraud- criminal and civil. You can not charge for a service and then blow off your paid duties under the common law and florida public records law.

Surprise you continue to commit fraud in lee florida after accepting payment for public records and then defrauding me by failing to produce. Do not follow the example of sheriff scott.

Surprise and gilbert, withdraw, rescind or narrowly tailor your lifetime arrest threats. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Saturday, April 1, 2017 7:58 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org;

melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: ICSO Mike scott engages in fraud re;public record request

the sheriff charged for public records and now refuses to supply them and lied that i sent payent via email when he received a paper check in the mail from muckrock. stop breaking the law- sheriff scott

https://d3gn0r3afghep.cloudfront.net/foia_files/2017/03/15/3-10-17_MR31908_FIX.pdf

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From: scott huminski <s_huminski@live.com>
Sent: Tuesday, March 14, 2017 7:39 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.mever@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; gehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvalleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov;

kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; lhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; lalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; lhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Criminal Fraud Ft. Myers Atty R. Pritt- Sheriff Scott/LCSO looks on

This fort myers attorney is further the criminal fraud scam by the City of Surprise AZ whereby they charge for public records and then refuse to forward them after they get paid. Criminal fraud.

Arrest this attorney for his participation in this fraud scheme. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Monday, March 13, 2017 8:33 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov;

mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; jhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; jhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com;

bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con
Subject: City of Surprise Attorney (R Pritt) advises fraud - public records violations - litigation

Surprise billing me for public records and surprise has been paid. Their sleazy attorney is advising them to commit fraud against me by not producing the documents.

After Surprise took their own sleazy attorney off the matter (Harold Brady), Pritt is now taking over the dirty work and fraud. This guy should be disbarred. See public records history below, Pritt advising Surprise to violate AZ public records law. Further i offered to settle the case for production of the documents and status on the Debra Riffel july 2016 perjury investigation. Pritt has refused and instead advises Surprise tax payers to support his law firm with legal fees instead of acting morally and turning over the documents. Pritt is unnecessarily billing his true clients (surprise taxpayers) for litigation that only intends to violate AZ records law and perpetrate fraud in florida. see link

https://www.muckrock.com/foi/surprise-9567/public-records-request-surprise-az-police-department-30945/

Public records request Surprise AZ police department

www.muckrock.com

Subject: Public Records Request: Public records request Surprise AZ police department. To Whom It May Concern: Pursuant to the state open records law, Ariz. Rev. Stat ...

From: scott huminski <s_huminski@live.com>
Sent: Friday, March 10, 2017 3:09 PM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; bellen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinahering@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org;

jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com;

mlowe@glendaleaz.com; kendrake@dldlawyers.con
Subject: Huminski v. Robert Pritt violation of attorney ethical precepts

Making deceptive representations to the Court.

Surprise's counsel has been put on formal notice to the Court and a disciplinary complaint will be filed. see

https://trevormelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/motion-to-enlarge-hearing-duration.pdf

Bold deception to the court. He should be disbarred. Note under that all other counsel has an affirmative duty to report known violations of attorney ethics. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Wednesday, March 8, 2017 9:46 PM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; joren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; meikady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmedlarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvalleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov;

harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bJones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con
Subject: Re: Huminski v. City of Surprise, AZ - Case No: 17-CA-000421

Yes, The 18th would work, please advise the court that we can hear that emergency motion for temporary injunction, motion for leave to amend and 2nd motion for leave to amend (to be filed shortly regarding Officer Hector Heredia's lifetime arrest threat against me for contact with Anthony Tsontakis without authorization from tsontaksis in violation of the Florida Constitution) and we can also hear my motion for partial summary judgment against Surprise for charging me for public records and then failing to provide those records - FRAUD in Florida and set forth findings why Surprise refuses to withdraw, rescind or narrowly-tailor the lifetime arrest threat from Ofc. Heredia when Tsontakis requested no such relief.

Consider this my final demand for Surprise to withdraw, rescind or narrowly-tailored the lifetime arrest threat against me for contact of Anthony Tsontakis. Heredia threats originally included Justin M Nelson, which has been mooted by the suicide of Nelson that Surprise is involved in. Harold Brady specifically took actions that prevented medical treatment from reaching the suicidal Nelson. Now Surprise is obstructing my investigation into the murder

threats targeting me by Nelson's child, Trevor Nelson, with their fraud related to the release of public records.

-- scott huminski

From: Ortega, Melanie <MOrtega@ralaw.com>
Sent: Wednesday, March 8, 2017 4:10 PM
To: s_huminski@live.com
Cc: Ortega, Melanie; Fox, Jim
Subject: Huminski v. City of Surprise, AZ - Case No: 17-CA-000421

Good afternoon Mr. Huminski:

Our office represents the Defendant, City of Surprise, AZ in the above-referenced matter. We would like to schedule a 30 minute hearing on our Motion to Dismiss before Judge Krier. Please advise is you are available during one of the dates below:

April 3rd @ 9:30 a.m.
April 4th @ 9:30 a.m.
April 18th @ 9:15 a.m.

Once you advise as to which date works for you, I will get the hearing set up. Thank you. Melanie

Melanie K. Ortega
Business Litigation Paralegal
[redacted]
850 Park Shore Drive
Trianon Center - 3rd Floor
Naples, FL 34103
Direct Phone No.: 239.649-2721
Main Phone No: 239.649.6200
Fax No.: 239.261.3659
Email: mortega@ralaw.com
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Roetzel & Andress, A Legal Professional Association

Valdeon, Betty

From:	Valdeon, Betty on behalf of BKrierPleadings
Sent:	Thursday, April 20, 2017 11:50 AM
To:	Torain, Jeff; HelpDesk; Krier, Elizabeth
Subject:	FW: Police departments complicit

Another email from Mr Huminski.

Thanks,

Betty Valdeon
Judicial Assistant to
Judge Elizabeth V. Krier
Lee County Justice Center Complex
1700 Monroe Street
Fort Myers, Fl 33901

Positive thoughts generate positive feelings and attract positive life experiences.

From: scott huminski [mailto:s_huminski@live.com]
Sent: Thursday, April 20, 2017 10:31 AM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; Mike Scott <sheriff@sheriffleefl.org>; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov;

Exhibit D3

surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorwelers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rralnbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con; BKrierPleadings <BKrierPleadings@ca.cjis20.org>; Haegele, Soledad <SHaegele@CA.CJIS20.ORG>
Subject: Police departments complicit

*** WARNING: This is an EXTERNAL email. DO NOT open attachments or click links from UNKNOWN or UNEXPECTED email. ***

The following police departments know that every fact/affidavit and attachment i filed in lee court are true, yet they remain silent and LCSO and surprise are engaging in fraud in lee county fl:

AZ - gilbert surprise phoenix glendale MCSO

Sheriff scott is the worse offender and has engaged in criminal fraud related to public record requests and other crimes

this is a report of ongoing crime protected under the first amendment.

police must stop the crimes they are involved in.

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, April 19, 2017 6:25 PM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@fitchfieldcayo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; l_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvalleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tosalidas@glendaleaz.com; vgrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; ibentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@didlawyers.com; maribel@didlawyers.com; josefina@didlawyers.com; mlowe@glendaleaz.com;

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kendrake@dldlawyers.con; Bkrierpleadings@ca.cjis20.org; Haegele, Soledad
Subject: Judge Krier assists fraud of sheriff Mike scott /

This is a report of criminal conduct. I paid LCSO for public records and LCSO refuses to provide the documents. Now this crooked judge KRier has shielded the sheriff from criminal liability by claiming that the conduct of the sheriff is not fraud. This crooked judge also has proclaimed that I can not report these crimes.

fraud. n. the intentional use of deceit, a trick or some dishonest means to deprive another of his/her/its money, property or a legal right.

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, April 19, 2017 8:10 AM
To: scott huminski; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; joren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; bailen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jsoahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; la@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; l_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksilva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com;

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mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; vgrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con; Bkrierpleadings@ca.cjis20.org; Haegele, Soledad
Subject: terrorisT DEATH TARGETS JUDGE KRIER

they haVE Now targetted JUDGE KREIR FOR DEATH

"Hello Scott, It's almost time for you to die. Did you think that I would let you get away with your bullshit and your lawsuits? Writing that letter to my parents was your worst mistake. Enjoy your last few days on earth.I'll be there real soon. Officer Pillar"

A FITTING END TO A JURSIST WHO HAS ORDERED MY MURDER AT THE HANDS OF TREVOR NELSON, ONE MOVE BODY ADDED TO THE DEATH LIST IN THIS CASE.
GIVING MATERIAL ASSISTANCE TO NELSON DESERVES THE DEATH PENALTY

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, April 18, 2017 11:54 AM
To: mayor@gilbertaz.gov; Jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov;

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Subject: Judge Krier Sponsors bloody jihad

Blood flows from the tip of her pen when justice doesn't. Huminski speaks the the truth in every paper before this crooked judge.

From: scott huminski <s_huminski@live.com>
Sent: Monday, April 10, 2017 3:20 PM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; pfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org;

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Subject: Huminski affidavit vs. lies of police attorney Harold Brady

This sleazy cop who advised the Surprise police that federal law prohibits release of public records is allegedly holding payments made to Surprise to defraud my public records request. A claim of lost in the mail is a bit lame after the guy already admitted he won't release public documents pursuant to a non-existent federal law.

Here is my 22 page affidavit, which also proves Sheriff Scott's fraud. I have images of both the front and rear of the check accepted by LCSO for public records. I have the date that two LCSO personnel were here at my home, don't delete this data from production. Also don't delete info about the information that was mailed to me from North Carolina that LCSO lied about.

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All these little lies add up.

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/affidavit-muckrock-w-attachments.pdf

-- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Saturday, April 8, 2017 12:02 PM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; meikady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swalte@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com;

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Subject: Lee crime evidence filed in 20th Cir Court

This is a follow up on the report of crimes in Lee County. Sheriff Scott apparently refuses to look at URLsrelated to Lee county crime. So full downloads detailing criminal conduct in Lee County have been filed in Court and are set forth in full at the below link.

I have attached the information as counsel for Sheriff Scott indicates that the sheriff refuses to consider or investigate crimes documented online. The sheriff now seeks to enjoin my reporting of crimes to law enforcement with jurisdiction in bonita springs fl. Direct support of the alleged terrorist activities of Trevor Nelson of Glendale AZ.

This is a continuing report to law enforcement of crimes targeting Lee county including the interstate transmission of terrorist death threats, obstruction of justice, fraud by LCSO,, Fraud by Surprise AZ, harassment, interstate transmission of an anthrax-like substance via the U.S. Mails, domestic terrorism. -- scott huminski

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/uris-outpur-with-motion-court-filed.pdf

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From: scott huminski <s_huminski@live.com>
Sent: Friday, April 7, 2017 8:55 AM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.mever@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; is@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetrzeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; 99

sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksilva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; vgrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: lee county crime and terrorism out of control

Now we have sheriff scott's own public records department pulling the fraud/scam of charging for records and refusing to supply them.

Surprise AZ is pulling the same scam as the LCSO by charging for records and refusing to produce. This is criminal fraud in FLorida.

Now we have Nelson targeting witnesses/litigants appearing before Lee county courts with the anthrax letter sent via the u.s. mails.

The list goes on with the LCSO and sheriff scott applauding from the sidelines.

Two gulf access lots are for sale across the street from us, $275,000 each and the creation of this terrorist death zone and crime zone by the sheriff is impacting the economy of this neighborhood.

The domestic terrorism supported by the sheriff and the interstate transmission of death threats and possible terrorist poisons by allegedly Trevor Nelson of Glendale AZ (assisted by the Glendale police) is creating an environment of criminal chaos in Lee county florida. The crimes and terrorism must stop. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Wednesday, April 5, 2017 10:18 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; ispahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; strauria@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvalleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; lpederson@glendaleaz.com; ksilva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorwelers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; gdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; blones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM;

ltolmachoff@glendaleaz.com; laldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@didlawyers.com; maribel@didlawyers.com; josefina@didlawyers.com; mlowe@glendaleaz.com; kendrake@didlawyers.con
Subject: Lee County Florida courts threatened

NOTICE TO DEFENDANTS TO STOP CRIMINAL TORTIOUS CONDUCT INCLUDING OBSTRUCTION OF JUSTICE LEE COUNTY FL

The domestic terrorists could not have been more clear that their campaign of terror was against the courts. death threat # 1 "lawsuits" death threat 2 timed exactly with the appeal in US Court of Appeals NYC, and now the third death letter was issued in coordination with the filing of the instant FL human rights suit.

Scribd has also taken the same stance as in the anthrax letter in mocking my disabilities when it is very clear scribd and the domestic terrorists chose to team up in July 2016, now they are working in unison

Court filing
https://trevornelsonazglendaleazibs16gcu2020debrariffel.files.wordpress.com/2017/02/response-to-scribb-notice-of-hearing.pdf

Sheriff Scott you have been paid for public records. Withholding them is fraud- criminal and civil. You can not charge for a service and then blow off your paid duties under the common law and florida public records law.

Surprise you continue to commit fraud in lee florida after accepting payment for public records and then defrauding me by failing to produce. Do not follow the example of sheriff scott.

Surprise and gilbert, withdraw, rescind or narrowly tailor your lifetime arrest threats. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Saturday, April 1, 2017 7:58 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.mever@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lcrimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; idrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov;

jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; l_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@didlawyers.com; maribel@didlawyers.com; josefina@didlawyers.com; mlowe@glendaleaz.com; kendrake@didlawyers.com

Subject: ICSO Mike scott engages in fraud re;public record request

the sheriff charged for public records and now refuses to supply them and lied that i sent payent via email when he received a paper check in the mail from muckrock. stop breaking the law- sheriff scott

https://d3gn0r3afghep.cloudfront.net/foia_files/2017/03/15/3-10-17_MR31908_FIX.pdf

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From: scott huminski <s_huminski@live.com>
Sent: Tuesday, March 14, 2017 7:39 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov;

james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; jhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; jhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Criminal Fraud Ft. Myers Atty R. Pritt- Sheriff Scott/LCSO looks on

This fort myers attorney is further the criminal fraud scam by the City of Surprise AZ whereby they charge for public records and then refuse to forward them after they get paid. Criminal fraud.

Arrest this attorney for his participation In this fraud scheme. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Monday, March 13, 2017 8:33 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; lhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorwelers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bplech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com;

bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con
Subject: City of Surprise Attorney (R Pritt) advises fraud - public records violations - litigation

Surprise billing me for public records and surprise has been paid. Their sleazy attorney is advising them to commit fraud against me by not producing the documents.

After Surprise took their own sleazy attorney off the matter (Harold Brady), Pritt is now taking over the dirty work and fraud. This guy should be disbarred. See public records history below, Pritt advising Surprise to violate AZ public records law. Further i offered to settle the case for production of the documents and status on the Debra Riffel july 2016 perjury investigation. Pritt has refused and instead advises Surprise tax payers to support his law firm with legal fees instead of acting morally and turning over the documents. Pritt is unnecessarily billing his true clients (surprise taxpayers) for litigation that only intends to violate AZ records law and perpetrate fraud in florida. see link

https://www.muckrock.com/foi/surprise-9567/public-records-request-surprise-az-police-department-30945/

Public records request Surprise AZ police department

www.muckrock.com

Subject: Public Records Request: Public records request Surprise AZ police department. To Whom It May Concern: Pursuant to the state open records law, Ariz. Rev. Stat ...

From: scott huminski <s_huminski@live.com>
Sent: Friday, March 10, 2017 3:09 PM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinahering@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; meikady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; 106

information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@didlawyers.com; maribel@didlawyers.com; josefina@didlawyers.com; mlowe@glendaleaz.com; kendrake@didlawyers.con
Subject: Huminski v. Robert Pritt violation of attorney ethical precepts

Making deceptive representations to the Court.

Surprise's counsel has been put on formal notice to the Court and a disciplinary complaint will be filed. see

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/motion-to-enlarge-hearing-duration.pdf

Bold deception to the court. He should be disbarred. Note under that all other counsel has an affirmative duty to report known violations of attorney ethics. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Wednesday, March 8, 2017 9:46 PM

To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; itolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; itolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con
Subject: Re: Huminski v. City of Surprise, AZ - Case No: 17-CA-000421

Yes, The 18th would work, please advise the court that we can hear that emergency motion for temporary injunction, motion for leave to amend and 2nd motion for leave to amend (to be filed shortly regarding Officer Hector Heredia's lifetime arrest threat against me for contact with Anthony Tsontakis without authorization from tsontaksis in violation of the Florida Constitution) and we can also hear my motion for partial summary judgment against Surprise for charging me for public records and then failing to provide those records - FRAUD in Florida and set forth findings why Surprise refuses to withdraw, rescind or narrowly-tailor the lifetime arrest threat from Ofc. Heredia when Tsontakis requested no such relief.

Consider this my final demand for Surprise to withdraw, rescind or narrowly-tailored the lifetime arrest threat against me for contact of Anthony Tsontakis. Heredia threats originally included Justin M Nelson, which has been mooted by the suicide of Nelson that Surprise is involved in. Herold Brady specifically took actions that prevented medical treatment from reaching the suicidal Nelson. Now Surprise is obstructing my investigation into the murder threats targeting me by Nelson's child, Trevor Nelson, with their fraud related to the release of public records.

-- scott huminski

From: Ortega, Melanie <MOrtega@ralaw.com>
Sent: Wednesday, March 8, 2017 4:10 PM
To: s_huminski@live.com
Cc: Ortega, Melanie; Fox, Jim
Subject: Huminski v. City of Surprise, AZ - Case No: 17-CA-000421

Good afternoon Mr. Huminski:

Our office represents the Defendant, City of Surprise, AZ in the above-referenced matter. We would like to schedule a 30 minute hearing on our Motion to Dismiss before Judge Krier. Please advise is you are available during one of the dates below:

April 3rd @ 9:30 a.m.
April 4th @ 9:30 a.m.
April 18th @ 9:15 a.m.

Once you advise as to which date works for you, I will get the hearing set up. Thank you. Melanie

Melanie K. Ortega
Business Litigation Paralegal
850 Park Shore Drive
Trianon Center - 3rd Floor
Naples, FL 34103
Direct Phone No.: 239.649-2721
Main Phone No: 239.649.6200
Fax No.: 239.261.3659
Email: mortega@ralaw.com
www.ralaw.com
Roetzel & Andress, A Legal Professional Association

error, please permanently dispose of the original message and notify Melanie K. Ortega immediately at 239-649-2721. Thank you.

Valdeon, Betty

From: Valdeon, Betty on behalf of BKrierPleadings
Sent: Thursday, April 20, 2017 9:20 AM
To: Krier, Elizabeth; Torain, Jeff; HelpDesk
Subject: FW: Judge Krier assists fraud of sheriff Mike scott /

Another Huminski email for your review.

Thanks,

Betty Valdeon
Judicial Assistant to
Judge Elizabeth V. Krier
Lee County Justice Center Complex
1700 Monroe Street
Fort Myers, Fl 33901

Positive *thoughts* generate positive *feelings* and attract positive life *experiences.*

From: scott huminski [mailto:s_huminski@live.com]
Sent: Wednesday, April 19, 2017 6:26 PM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; Mike Scott <sheriff@sheriffleefl.org>; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; l_thompson@mcso.maricopa.gov;

1

Exhibit D4

surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con; BKrierPleadings <BKrierPleadings@ca.cjis20.org>; Haegele, Soledad <SHaegele@CA.CJIS20.ORG>
Subject: Judge Krier assists fraud of sheriff Mike scott /

*** WARNING: This is an EXTERNAL email. DO NOT open attachments or click links from UNKNOWN or UNEXPECTED email. ***
This is a report of criminal conduct. I paid LCSO for public records and LCSO refuses to provide the documents. Now this crooked judge KRier has shielded the sheriff from criminal liability by claiming that the conduct of the sheriff is not fraud. This crooked judge also has proclaimed that I can not report these crimes.

fraud. n. the intentional use of deceit, a trick or some dishonest means to deprive another of his/her/its money, property or a legal right.

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, April 19, 2017 8:10 AM
To: scott huminski; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; lames.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; l_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksilva@glendaleaz.com; tphillips@glendaleaz.com; jhugh@glendaleaz.com; bturner@glendaleaz.com; itolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorwelers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; baith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; jhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; itolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com;

kendrake@dldlawyers.con; Bkrierpleadings@ca.cjis20.org; Haegele, Soledad
Subject: terrorisT DEATH TARGETS JUDGE KRIER

they haVE Now targetted JUDGE KREIR FOR DEATH

"Hello Scott, It's almost time for you to dIe. Did you think that I would let you get away with your bullshit and your lawsuits? Writing that letter to my parents was your worst mistake. Enjoy your last few days on earth.I'll be there real soon. Officer Pillar"

A FITTING END TO A JURSIST WHO HAS ORDERED MY MURDER AT THE HANDS OF TREVOR NELSON, ONE MOVE BODY ADDED TO THE DEATH LIST IN THIS CASE.
GIVING MATERIAL ASSISTANCE TO NELSON DESERVES THE DEATH PENALTY

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, April 18, 2017 11:54 AM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; lspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com;

mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; belth@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; lhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con; Bkrierpleadings@ca.cjis20.org
Subject: Judge Krier Sponsors bloody jihad

Blood flows from the tip of her pen when justice doesn't. Huminski speaks the the truth in every paper before this crooked judge.

From: scott huminski <s_huminski@live.com>
Sent: Monday, April 10, 2017 3:20 PM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communitvrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov;

Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksilva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; itolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pcva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; scano@glendaleaz.com; bpiech@glendaleaz.com; mcovle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; itolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; help@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Huminski affidavit vs. lies of police attorney Harold Brady

This sleazy cop who advised the Surprise police that federal law prohibits release of public records is allegedly holding payments made to Surprise to defraud my public records request. A claim of lost in the mail is a bit lame after the guy already admitted he won't release public documents pursuant to a non-existent federal law.

Here is my 22 page affidavit, which also proves Sheriff Scott's fraud. I have images of both the front and rear of the check accepted by LCSO for public records. I have the date that two LCSO personnel were here at my home, don't delete this data from production. Also don't delete info about the information that was mailed to me from North Carolina that LCSO lied about.

All these little lies add up.

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/affidavit-muckrock-w-attachments.pdf

-- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Saturday, April 8, 2017 12:02 PM
To: mayor@gilbertaz.gov; lenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov;

randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; jhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; jhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Lee crime evidence filed in 20th Cir Court

This is a follow up on the report of crimes in Lee County. Sheriff Scott apparently refuses to look at URLsrelated to Lee county crime. So full downloads detailing criminal conduct in Lee County have been filed in Court and are set forth in full at the below link.

I have attached the information as counsel for Sheriff Scott indicates that the sheriff refuses to consider or investigate crimes documented online. The sheriff now seeks to enjoin my reporting of crimes to law enforcement with jurisdiction in bonita springs fl. Direct support of the alleged terrorist activities of Trevor Nelson of Glendale AZ.

This is a continuing report to law enforcement of crimes targeting Lee county including the interstate transmission of terrorist death threats, obstruction of justice, fraud by LCSO,, Fraud by Surprise AZ, harassment, interstate transmission of an anthrax-like substance via the U.S. Mails, domestic terrorism. -- scott huminski

https://trevornelsonazglendaleazibs16gcu2020debrariffel.files.wordpress.com/2017/02/urls-outpur-with-motion-court-filed.pdf

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From: scott huminski <s_huminski@live.com>
Sent: Friday, April 7, 2017 8:55 AM
To: mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.mever@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; idrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetcM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com;

jpederson@glendaleaz.com; ksilva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_cio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@didlawyers.com; maribel@didlawyers.com; josefina@didlawyers.com; mlowe@glendaleaz.com; kendrake@didlawyers.con

Subject: lee county crime and terrorism out of control

Now we have sheriff scott's own public records department pulling the fraud/scam of charging for records and refusing to supply them.

Surprise AZ is pulling the same scam as the LCSO by charging for records and refusing to produce. This is criminal fraud in FLorida.

Now we have Nelson targeting witnesses/litigants appearing before Lee county courts with the anthrax letter sent via the u.s. mails.

The list goes on with the LCSO and sheriff scott applauding from the sidelines.

Two gulf access lots are for sale across the street from us, $275,000 each and the creation of this terrorist death zone and crime zone by the sheriff is impacting the economy of this neighborhood.

The domestic terrorism supported by the sheriff and the interstate transmission of death threats and possible terrorist poisons by allegedly Trevor Nelson of Glendale AZ (assisted by the Glendale police) is creating an environment of criminal chaos in Lee county florida. The crimes and terrorism must stop. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Wednesday, April 5, 2017 10:18 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jsidder@norwalkct.org;

mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: Lee County Florida courts threatened

NOTICE TO DEFENDANTS TO STOP CRIMINAL TORTIOUS CONDUCT INCLUDING OBSTRUCTION OF JUSTICE LEE COUNTY FL

The domestic terrorists could not have been more clear that their campaign of terror was against the courts. death threat # 1 "lawsuits" death threat 2 timed exactly with the appeal in US Court of Appeals NYC, and now the third death letter was issued in coordination with the filing of the instant FL human rights suit.

Scribd has also taken the same stance as in the anthrax letter in mocking my disabilities when it is very clear scribd and the domestic terrorists chose to team up in July 2016, now they are working in unison

Court filing
https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/response-to-scribb-notice-of-hearing.pdf

Sheriff Scott you have been paid for public records. Withholding them is fraud- criminal and civil. You can not charge for a service and then blow off your paid duties under the common law and florida public records law.

Surprise you continue to commit fraud in lee florida after accepting payment for public records and then defrauding me by failing to produce. Do not follow the example of sheriff scott.

Surprise and gilbert, withdraw, rescind or narrowly tailor your lifetime arrest threats. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Saturday, April 1, 2017 7:58 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.keily@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; doetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; l_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; 121

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Subject: ICSO Mike scott engages in fraud re;public record request

the sheriff charged for public records and now refuses to supply them and lied that i sent payent via email when he received a paper check in the mail from muckrock. stop breaking the law- sheriff scott

https://d3gn0r3afghep.cloudfront.net/foia_files/2017/03/15/3-10-17_MR31908_FIX.pdf

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From: scott huminski <s_huminski@live.com>
Sent: Tuesday, March 14, 2017 7:39 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; pubilcaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ja@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; idrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; 122

sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; j_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvalleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swalte@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; jhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainboit@glendaleaz.com; dblack@glendaleaz.com; bbianco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swalte@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; jhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@didlawyers.com; maribel@didlawyers.com; josefina@didlawyers.com; mlowe@glendaleaz.com; kendrake@didlawyers.con

Subject: Criminal Fraud Ft. Myers Atty R. Pritt- Sheriff Scott/LCSO looks on

This fort myers attorney is further the criminal fraud scam by the City of Surprise AZ whereby they charge for public records and then refuse to forward them after they get paid. Criminal fraud.

Arrest this attorney for his participation in this fraud scheme. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Monday, March 13, 2017 8:33 AM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; rnscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimize'l@fdle.state.fl.us;

publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; jhugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorwelers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; lhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con

Subject: City of Surprise Attorney (R Pritt) advises fraud - public records violations - litigation

Surprise billing me for public records and surprise has been paid. Their sleazy attorney is advising them to commit fraud against me by not producing the documents.

After Surprise took their own sleazy attorney off the matter (Harold Brady), Pritt is now taking over the dirty work and fraud. This guy should be disbarred. See public records history below, Pritt advising Surprise to violate AZ public records law. Further i offered to settle the case for production of the documents and status

on the Debra Riffel july 2016 perjury investigation. Pritt has refused and instead advises Surprise tax payers to support his law firm with legal fees instead of acting morally and turning over the documents. Pritt is unnecessarily billing his true clients (surprise taxpayers) for litigation that only intends to violate AZ records law and perpetrate fraud in florida. see link

https://www.muckrock.com/foi/surprise-9567/public-records-request-surprise-az-police-department-30945/

Public records request Surprise AZ police department

www.muckrock.com

Subject: Public Records Request: Public records request Surprise AZ police department. To Whom It May Concern: Pursuant to the state open records law, Ariz. Rev. Stat ...

From: scott huminski <s_huminski@live.com>
Sent: Friday, March 10, 2017 3:09 PM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavic@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov; sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; l_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvalleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov;

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kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; lhugh@glendaleaz.com; bturner@glendaleaz.com; itolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; lhugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; itolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmainar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dweiss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con
Subject: Huminski v. Robert Pritt violation of attorney ethical precepts

Making deceptive representations to the Court.

Surprise's counsel has been put on formal notice to the Court and a disciplinary complaint will be filed. see

https://trevornelsonazglendaleazihs16gcu2020debrariffel.files.wordpress.com/2017/02/motion-to-enlarge-hearing-duration.pdf

Bold deception to the court. He should be disbarred. Note under that all other counsel has an affirmative duty to report known violations of attorney ethics. -- scott huminski

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From: scott huminski <s_huminski@live.com>
Sent: Wednesday, March 8, 2017 9:46 PM
To: Ortega, Melanie; mayor@gilbertaz.gov; jenn.daniels@gilbertaz.gov; police@gilbertaz.gov; tim.dorn@gilbertaz.gov; james.richter@gilbertaz.gov; tom.taylor@gilbertaz.gov; michael.bailey@surpriseaz.gov; travis.ashby@surpriseaz.gov; randy.delagarza@surpriseaz.gov; loren.kelly@surpriseaz.gov; hr@surpriseaz.gov; dave.meyer@gilbertaz.gov; ballen@sheriffleefl.org; paula.neuman@phoenix.gov; NMartinez@norwalkct.org; michael.skold@ct.gov; mscott@sheriffleefl.org; sheriff@sheriffleefl.org; bfletcher@sheriffleefl.org; pehlers@sheriffleefl.org; troutte@sheriffleefl.org; communityrelations@sheriffleefl.org; dglover@sheriffleefl.org; lorimizell@fdle.state.fl.us; publicaccess@fdle.state.fl.us; petrinaherring@fdle.state.fl.us; rickswearingen@fdle.state.fl.us; jspahr@norwalkct.org; mdcavlc@uspis.gov; mike_shea@ctd.uscourts.gov; ttaylor@sheriffleefl.org; ia@sheriffleefl.org; ag.mccollum@myfloridalegal.com; tampa.division@ic.fbi.gov; lgutridge@sheriffleefl.org; straurig@sheriffleefl.org; dbrooks@sheriffleefl.org; abaack@sheriffleefl.org; tbabor@sheriffleefl.org; jdrzymala@sheriffleefl.org; dpetraeca@sheriffleefl.org; mrodriguez@sheriffleefl.org; twood@sheriffleefl.org; rshoap@sheriffleefl.org; probinson@sheriffleefl.org; amartin@sheriffleefl.org; melkady@sheriffleefl.org; epalmer@sheriffleefl.org; goodyearpressurewashing@gmail.com; kyle.cohen@usdoj.gov; ryan.pillar@gilbertaz.gov; john.rudy@usdoj.gov; jholloway@sheriffleefl.org; passaro@litchfieldcavo.com; complaints@mcso.maricopa.gov; information@mcso.maricopa.gov; t_williams@mcso.maricopa.gov; s_gibbs@mcso.maricopa.gov;

sheriffsmediarequests@mcso.maricopa.gov; webteam@mcso.maricopa.gov; i_thompson@mcso.maricopa.gov; surplus@mcso.maricopa.gov; j_spurgin@mcso.maricopa.gov; MASH@mcso.maricopa.gov; VANU@MCSO.maricopa.gov; drughotline@mcso.maricopa.gov; drughotline@mcso.maricopa.gov; CAT@mcso.maricopa.gov; BIO@mcso.maricopa.gov; mcsoaccountspayable@mcso.maricopa.gov; D_Munley@MCSO.maricopa.gov; jholloway@sheriffleefl.org; MetzM@dor.state.fl.us; communicationstraining.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; larry.horton@phoenix.gov; gabriella.westfall@phoenix.gov; maryvaleprecinctinput.ppd@phoenix.gov; offdutydetail.ppd@phoenix.gov; nbwgrants.ppd@phoenix.gov; pmbcitizenrequest.ppd@phoenix.gov; recruiting.ppd@phoenix.gov; media.request.ppd@phoenix.gov; warrantprogram.ppd@phoenix.gov; phoenix.tips.ppd@phoenix.gov; mayor.stanton@phoenix.gov; chuck.williams@phoenix.gov; amy.harvel@phoenix.gov; bob.wingenroth@phoenix.gov; dale.whitson@phoenix.gov; dave.harvey@phoenix.gov; harry.markley@phoenix.gov; Sandra.Renteria@phoenix.gov; Michael.Kurtenbach@phoenix.gov; Mary.Roberts@phoenix.gov; Scot.Finical@phoenix.gov; Marchelle.Franklin@phoenix.gov; chief.williams@phoenix.gov; Jared.Taylor@gilbertaz.gov; Eddie.Cook@gilbertaz.gov; Brigette.Peterson@gilbertaz.gov; Victor.Petersen@gilbertaz.gov; Jordan.Ray@gilbertaz.gov; kimberly.davey@surpriseaz.gov; Norma.Chavez@surpriseaz.gov; swaite@glendaleaz.com; Police_pio@glendaleaz.com; jpederson@glendaleaz.com; ksliva@glendaleaz.com; tphillips@glendaleaz.com; ihugh@glendaleaz.com; bturner@glendaleaz.com; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; JClark@GLENDALEAZ.COM; PSU@Glendaleaz.com; GPDRecruitment@glendaleaz.com; RGeisler@glendaleaz.com; mshepherd@glendaleaz.com; alarmcoordinator@glendaleaz.com; tingersoll@glendaleaz.com; mayorweiers@glendaleaz.com; mshepherd@glendaleaz.com; bturner@glendaleaz.com; Explorers@glendaleaz.com; Police_pio@glendaleaz.com; RGeisler@glendaleaz.com; coldcase@glendaleaz.com; GPDRecruitment@glendaleaz.com; rrainbolt@glendaleaz.com; dblack@glendaleaz.com; bblanco@glendaleaz.com; GDominguez@GlendaleAZ.com; aanderson@glendaleaz.com; pdva@glendaleaz.com; jalove@glendaleaz.com; jboberg@glendaleaz.com; swaite@glendaleaz.com; TSmith@GLENDALEAZ.com; PSU@Glendaleaz.com; swalker@glendaleaz.com; jflosman@glendaleaz.com; ccano@glendaleaz.com; bpiech@glendaleaz.com; mcoyle@glendaleaz.com; beith@glendaleaz.com; bjones@glendaleaz.com; tpsalidas@glendaleaz.com; ygrant@glendaleaz.com; jflosman@glendaleaz.com; ggarcia@glendaleaz.com; tdarby@glendaleaz.com; RGeisler@glendaleaz.com; bdurham@glendaleaz.com; bmcmillen@glendaleaz.com; mlowe@glendaleaz.com; eholmstedt@glendaleaz.com; bturner@glendaleaz.com; rlee@glendaleaz.com; ihugh@glendaleaz.com; AMaynes@GLENDALEAZ.COM; ltolmachoff@glendaleaz.com; jaldama@glendaleaz.com; rmalnar@glendaleaz.com; vornelas@glendaleaz.com; schavira@glendaleaz.com; twood@glendaleaz.com; tcoffey@glendaleaz.com; public.records.ppd@phoenix.gov; jbentley@scribd.com; business@scribd.com; hello@scribd.com; press@scribd.com; copyright@scribd.com; bizdev@scribd.com; support@scribd.com; jmichaelnelsonwrites@gmail.com; nutstank23@gmail.com; dwelss@dldlawyers.com; maribel@dldlawyers.com; josefina@dldlawyers.com; mlowe@glendaleaz.com; kendrake@dldlawyers.con
Subject: Re: Huminski v. City of Surprise, AZ - Case No: 17-CA-000421

Yes, The 18th would work, please advise the court that we can hear that emergency motion for temporary injunction, motion for leave to amend and 2nd motion for leave to amend (to be filed shortly regarding Officer Hector Heredia's lifetime arrest threat against me for contact with Anthony Tsontakis without authorization from tsontaksis in violation of the Florida Constitution) and we can also hear my motion for partial summary judgment against Surprise for charging me for public records and then failing to provide those records - FRAUD in Florida and set forth findings why Surprise refuses to withdraw, rescind or narrowly-tailor the lifetime arrest threat from Ofc. Heredia when Tsontakis requested no such relief.

Consider this my final demand for Surprise to withdraw, rescind or narrowly-tailored the lifetime arrest threat against me for contact of Anthony Tsontakis. Heredia threats originally included Justin M Nelson, which has been mooted by the suicide of Nelson that Surprise is involved in. Harold Brady specifically took actions that prevented medical treatment from reaching the suicidal Nelson. Now Surprise is obstructing my investigation into the murder threats targeting me by Nelson's child, Trevor Nelson, with their fraud related to the release of public records.

-- scott huminski

From: Ortega, Melanie <MOrtega@ralaw.com>
Sent: Wednesday, March 8, 2017 4:10 PM
To: s_huminski@live.com
Cc: Ortega, Melanie; Fox, Jim
Subject: Huminski v. City of Surprise, AZ - Case No: 17-CA-000421

Good afternoon Mr. Huminski:

Our office represents the Defendant, City of Surprise, AZ in the above-referenced matter. We would like to schedule a 30 minute hearing on our Motion to Dismiss before Judge Krier. Please advise is you are available during one of the dates below:

April 3rd @ 9:30 a.m.
April 4th @ 9:30 a.m.
April 18th @ 9:15 a.m.

Once you advise as to which date works for you, I will get the hearing set up. Thank you. Melanie

Melanie K. Ortega
Business Litigation Paralegal
850 Park Shore Drive
Trianon Center - 3rd Floor
Naples, FL 34103
Direct Phone No.: 239.649-2721
Main Phone No: 239.649.6200
Fax No.: 239.261.3659
Email: mortega@ralaw.com
www.ralaw.com
Roetzel & Andress, A Legal Professional Association

No. 2D17-4740

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, AZ, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

SUPPLEMENT TO PETITION, 6th AMENDMENT CONFRONTATION CLAUSE

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656 E-mail s_huminski@live.com

SUPPLEMENT TO PETITION, 6th AMENDMENT CONFRONTATION CLAUSE

NOW COMES, Scott Huminski ("Huminski") and supplements his Petition as follows:

1. Huminski's accusers in the criminal matter in the Circuit Court are Sheriff Scott and his staff and Judge Krier. Per order of the Circuit Court, Huminski is forbidden contact with the two accusers in violation of the 6th Amendment. See Petitioner's Supplemental Appendix at pages 1-9 and Petitioners Opening Appendix at pages 6-10.
2. As it is impossible to continue the below litigation in compliance with the Bill of Rights, Huminski's request for dismissal with prejudice of the criminal matter should be granted, despite the State's Attorney's abandonment of the case. See Petitioner's Supplemental Appendix at pages 1-9 and Petitioners Opening Appendix at pages 6-10.

Dated at Bonita Springs, Florida this 20th day of December, 2017.

-/s/- Scott Huminski

_____

Scott Huminski
24544 Kingfish Stret
Bonita Springs FL 34134
(239) 300-6656 S_huminski@live.com

Certificate of Service

I, Scott Huminski certify that on the 20th day of December 2017 this paper was served upon all parties of record pursuant to the Rules.
-/s/- Scott Huminski

_____

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA

v. **CASE NO: 36-2017-MM-000815**

SCOTT ALAN HUMINSKI

REGIONAL COUNSEL'S MOTION TO WITHDRAW
AND REQUEST FOR THE APPOINTMENT OF PRIVATE ATTORNEY

Comes the undersigned attorney on behalf of defendant who moves the court to withdraw as counsel for defendant on account of a conflict of interest. The basis of the conflict is as follows:

☐ This defendant is expected to be called as a state's witness in another case in which ORC is already counsel of record for the other party;

☐ A state's witness in this case is a former client of the ORC and an aspect of the witness' character may be at issue;

☐ The ORC interviewed this defendant and obtained confidential information before discovering a conflict of interest affecting an existing client of the ORC;

☐ The ORC is representing a co-defendant and joint representation is not possible;

☒ Other: _Defendant has directly accused regional counsel of ineffective assistance of counsel, thereby creating an adverse relationship between Regional Counsel and Defendant, and has petitioned the 2nd DCA to order Regional Counsel to appear in the appeal of civil case 17-CA-4740.

Pursuant to Section 27.5303(1)(e), Florida Statutes, the undersigned certifies that there is no viable alternative to withdrawal from representation, and that the ORC or his designee has approved in writing the filing of this motion to withdraw.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by e-mail to the Office of the State Attorney ServiceSAO-Lee@sao.cjis20.org on December 20, 2017.

/s/ Zachary Miller_____
By: Zachary Miller
Assistant Regional Counsel
Fla. Bar No. 118339
2101 McGregor Blvd Ste 101
Fort Myers, FL 33901
Tel. (239) 208-6925
Fax (207) 554-1128

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	12/21/2017	

Attorney: AT Miller, Zachary P

APPEARANCE
____ Failed to Appear
____ Present w/o Attorney
✓ Present w/ Attorney
____ Present by Attorney
____ Present w/ Interpreter
____ Interpreter Services Requested
Language _____
____ Victim/Other _____

PLEA
____ Guilty
____ Not Guilty
____ Nolo Contender
____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
____ Withheld by Judge
____ Adjudicated Guilty
____ Withheld by Clerk
_____

VERDICT
____ Guilty by Judge
____ Not Guilty by Judge
____ Guilty by Jury
____ Not Guilty by Jury
____ Mistrial
_____

DISPOSITION
____ Acquitted
____ Nolle Pros
____ No Information
____ Dismissed
____ Adm.Dismissed
____ Merge & Dismiss

SENTENCE
____ Probation Reporting _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ One Time Cost $_____ Waive COS $_____
____ Report to Probation Today or Upon Release Within _____
____ Probation may terminate early when conditions are met
____ May Transfer Probation to _____
____ May Report to Probation and/or Instruct by Mail
____ Ignition Interlock Device _____ DD/MM/YY
____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
____ Statutory Exception to Vehicle Impound
____ Does Not Own Vehicle ____ Shared Vehicle
____ Other _____
____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
____ No Possession or Consumption of Alcohol or Illicit Substances
____ DUI School - Follow recommendations/Phase ____ I ____ II
____ School to Determine which Phase
____ Sign up w/in _____ days
____ Traffic School 4 Hr / 8Hr / 12 Hr
____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
____ Sign up for Batterer's Intervention Program w/in 30 Days
____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
____ Attend & Complete Program _____
____ DNA Testing Collected ____ in Court ____ at LCJ
____ Other Testing ____ HIV ____ STD _____
____ Defendant Advised of Habitual and/or Felony Status

____ Jail Time _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ Weekend Time Fri 6pm to Sun 6pm
____ Beginning _____
____ Day Work Program* _____ Days
___ Minimum ___ day(s) a week ___ consecutive weeks
____ Credit Time Served _____ DD/MM/YY
____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
____ Defendant Remanded ____ Sentence Suspended
____ DL Suspended/Revoked _____ DD/MM/YY
____ Spec. Conditions - Drive for Work/Business purposes
____ Show Valid Driver's License within _____
____ Produced Valid Driver's License in Court
____ Community Service _____ Hours and/or Pay $_____
____ Must complete _____ hours of community service before buyout
____ Show Proof of Com. Service to Clerk w/in _____
____ Stay Away from arrest location _____
____ No Contact with victim _____
____ State Orally Amends Charge in Open Court
____ Formal Filing of Information is Waived
____ Information Filed in Open Court
____ Successfully Completed Pretrial Diversion Program
____ Judicial Warning
____ Defendant Accepted DV Diversion
____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to 1-8-18

MANDATORY COURT APPEARANCE

For _____ AR _____ DS ✓ TR _____ DA _____ DD _____ DT _____ RH

Time 8:30 (AM) PM Court Room 2A ____ Speedy Trial Waived ____ Speedy Trial Tolled

(JRA) ____ HAS ____ MEG ____ ZMG ____ DSG ____ JMG ____ TPP ____ ABH _____

____ Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** _____

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF APPEARANCE

NOW COMES, Scott Huminski ("Huminski"), and, hereby appears as pro se defense counsel in this matter after 2 motions to recuse from conflict counsel and after conflict counsel lied to Huminski about representation in the 2DCA petition and Conflict Counsel lied to Huminski about bond while this case was on appeal.-

The lies foisted upon Huminski and multiple recusals by conflict council have destroyed the attonry-client relationship and Huminski can not trust conflict counsel. After 6 months of litigation, nothing has been done on Huminski's behalf by counsel other than file 3 recusal motions.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 22nd day of December, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS FOR VIOLATION OF CONFRONTATION CLAUSE

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss this matter as the authors of the orders Huminski is allegedly in contempt of, Judge Krier and Sheriff Scott, his accusors, can not be confronted as there exists no contact and no communication orders in Circuit Court, 17-CA-421. This violates Huminski's right to confrontation under the 6th Amendment.

Examination of Judge Krier or Sheriff Scott constitutes criminal contempt which the prosecution has showed an eagerness to pursue.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 22nd day of December, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

DOCKET NO. 17-MM-815

AKA: STATE V. HUMINSKI

From: scott huminski <s_huminski@live.com>
Sent: Friday, December 22, 2017 2:40 AM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Huminski counsel FIRED 17-mm-815

I will proceed pro se. 2 motions to recuse is quite enough from conflict counsel.

I notify of my pro se appearance. --scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Thursday, December 21, 2017 8:49 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Re: Conflict counsel Neymotib FIRED

After six months of wasting the court's time. No work has been done by this lazy person on my case. --scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Thursday, December 21, 2017 8:36 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Conflict counsel Neymotib must recuse

Atty Neymotin, You showed up in court yesterday with zero preparation. And have refused to file the motions we discussed.
YOU ARE FIRED.

YOU ARE INCOMPETANT
YOU ARE THE EPITOME OF INEFFECTIVE ASSISTANCE OF COUNSEL
-- SCOTT HUMINSKI

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 20, 2017 12:54 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Conflict counsel must recuse

Hi Atty Neymotin,

Your office has advised me to violate the Orders of Judge Krier. The protective order entered by Judge Krier prevents any contact with the Sheriff or his staff. As such, it is criminal contempt for me to interact with court security screeners and bailiffs at the lee court.

Advising me to violate the orders of the Circuit Court is unethical. With that in mind, what is your office's advice for the hearing tomorrow concerning my attendance?

Do i not attend and risk a bench warrant or attend and risk a contempt charge? -- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 20, 2017 11:20 AM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; Smith, Kathleen A; oag.civil.eserve@myfloridalegal.com
Subject: Conflict counsel must recuse

Hi Atty Neymotin,

Your office has performed zero work on the criminal matter and refuses anything and everything I have requested in support of my defense. Assign a different attorney or recuse your off the case. You are still responsible for the 2DCA matter.

Neglect of a legal matter entrusted to your office is an ethical violation. -- scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 20, 2017 11:11 AM
To: jack.smith@townofcary.org; lneymotin@flrc2.org; Kevin5@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; Smith, Kathleen A; oag.civil.eserve@myfloridalegal.com
Subject: Conflict counsel lies to defendant Huminski

Hi Atty Neymotin,

Atty Miller lied to me after the hearing on his motion to recuse. He stated that your office would participate in the pending petition in the 2DCA, 2D17-4740. Lying undermines the attorney/client relationship. -- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 20, 2017 11:04 AM
To: jack.smith@townofcary.org; lneymotin@flrc2.org; Kevin5@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; Smith, Kathleen A; oag.civil.eserve@myfloridalegal.com
Subject: Conflict counsel dodging appeal other misconduct

Hi Atty Neymotin,

Your office is responsible for handling this criminal appeal/petition. This is a criminal contempt case assigned to Z. Miller of your office. This appeal arises directly out of the criminal matter assigned to your office. I must also inform you that I am receiving ineffective assistance of counsel in the underlying criminal matter. The criminal case was pending in the Circuit Court for several months and then was "transferred" to County Court.

Please assign an attorney who knows the below law to my case and assign your appellate people to the appeal. See 2DCA docket below. The criminal case is frivolous and the order involved that I allegedly violated are patently unconstitutional and mandate surrender of constitutional rights -- exceptions to the Collateral Bar Rule, that your office has ignored.

THERE IS NO STATUTE, COURT RULE OR FL AUTHORITY THAT PROVIDES FOR A TRANSFER BETWEEN CIRCUIT AND COUNTY COURTS. YOUR OFFICE'S FAILURE TO RECOGNIZE THIS FUNDAMENTAL ISSUE IS WASTING THE TIME OF ALL AND CONSTITUTES CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE AND wastes judicial resources.

Please recuse off this case if you do not have the staff expertise to handle the issues. Mr. Miller refuses to file motions I have requested based upon the above and other issues. -- scott huminski

17-4740

SCOTT A. HUMINSKI
vs
TOWN OF GILBERT, ARIZONA, ET AL.,

ate	Type	Pleading	Note
0/2017	Petition	SUPPLEMENTAL APPENDIX OR ATTACHMENT	SUPPLEMENT TO PETITION, 6th AMENDMENT CONFRONTATION CLAUSE
8/2017	Motion	Miscellaneous Motion	SUPPLEMENT TO MOTION TO ENJOIN ORDERS BELOW
8/2017	Petition	SUPPLEMENTAL APPENDIX OR ATTACHMENT	PETITIONER'S OPENING APPENDIX VOLUME 2
4/2017	Event	Certificate	SUPPLEMENTAL CERTIFICATE OF SERVICE
1/2017	Motion	Motion for Appointment of Counsel	SECOND MOTION TO RE-PLEAD WITH ASSIST COUNSEL
1/2017	Notice	Notice	NOTICE OF ATTEMPTED DELIVERY OF DISTRICT COURT OF APPE
1/2017	Receipt	Filing Fee $300	: Receipt: 2017 - 1018251 Amount: 300
8/2017	Event	Certificate	AMENDED CERTIFICATE OF SERVICE
8/2017	Notice	Notice of Related Case	
4/2017	Order	deny motion until fee satisfied	
4/2017	Letter		
4/2017	Order	fee - writ; pro se	
4/2017	Order	c of s; mailing addresses	
4/2017	Petition	Petition Filed	
3/2017	Motion	Emergency Motion To Stay	
3/2017	Motion	Miscellaneous Motion	
3/2017	Motion	Motion for Appointment of Counsel	
3/2017	Petition	ORIGINAL APPENDIX OR ATTACHMENT	

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS, CIRCUIT COURT CASE WAS VOID FOR WANT OF JURISDICTION

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves to dismiss because the Circuit Court criminal matter was void ab initio for want of jurisdiction and the so-called *transfer* to county court is infirm as it is impossible to transfer a legal nullity and further there exists no statute, court rule or authority in Florida to initiated a criminal case via an illegal *transfer*. See attached.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 22nd day of December, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICITION

NOW COMES, Scott Huminski ("Huminski"), and, notwithstanding his objection that this Court has no jurisdiction and without waiving jurisdictional issues, moves to dismiss this matter as misdemeanors are the sole jurisdiction of County Courts. Circuit Courts only have jurisdiction of misdemeanors accompanied by a felony charge. Apparently, the Court clerk concurs with this precept as a County Court case has been docketed State v. Huminski with a "MM" designation which only exists in County Court and no criminal case exists for the Circuit Court in the 20th Circuit case search utility. A County Court case does exist. E-Filings made by Huminski have electronically been acknowledged as filed in the County Court.

26.012 Jurisdiction of Circuit Court

(d) Of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged;

34.01 Jurisdiction of County Court

(1)(a) In all misdemeanor cases not cognizable by the circuit courts;

The Supreme Court has recently addressed the issue of proper venue for contempts. The Supreme Court has explained that criminal contempt proceedings arising out of civil litigation are between the public and the defendant, and are not a part of the original cause. Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787, 804 (1987) (reversing criminal contempt judgment against defendants found to have aided or abetted violations of permanent injunction prohibiting infringement of manufacturer's trademark). Concurring, Justice Scalia also noted that the trial court itself cannot prosecute constructive criminal contempt charges. Id. at 816-19 (Scalia, J.,

concurring); Crowe v. Smith, 151 F.3d 217, 227-28 (5th Cir. 1998) ("where criminal contempt is involved, there must actually be an independent prosecutor of some kind, because the district court is not constitutionally competent to fulfill that role on its own"). A motion to show cause *sua sponte* authored by the Court initiated this matter and is the charging document. The constitution demands that the charging document be drafted by the State's Attorney. The charging document in this case is void for lack of compliance with the constitution.

Dated at Bonita Springs, Florida this 1st day of August 2017.

-/s/- Scott Huminski

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24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was e-filed and electronically served, or hand delivered or mailed via First Class Mail , prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 1st day of August, 2017.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss grouded upon the reasons set forth in Huminski's petition before the 2nd District Court of Appeal. See attached and clickable docket below and online at,

https://edca.2dca.org/Docket.aspx?CaseID=105779

	Date	Type	Pleading	Note
	12/20/2017	Disposition	Denied	VILLANTI, KHOUZAM, A
	12/20/2017	Order	denial of prohibition	
	12/20/2017	Order	Deny Miscellaneous Motion-79a	
	12/20/2017	Order	Deny Miscellaneous Motion-79a	
	12/20/2017	Order	Order Denying Stay	
	12/20/2017	Petition	SUPPLEMENTAL APPENDIX OR ATTACHMENT	SUPPLEMENT TO PETIT CONFRONTATION CLAU
	12/18/2017	Motion	Miscellaneous Motion	SUPPLEMENT TO MOTI
	12/18/2017	Petition	SUPPLEMENTAL APPENDIX OR ATTACHMENT	PETITIONER'S OPENIN
	12/14/2017	Event	Certificate	SUPPLEMENTAL CERTI
	12/11/2017	Motion	Motion for Appointment of Counsel	SECOND MOTION TO R COUNSEL
	12/11/2017	Notice	Notice	NOTICE OF ATTEMPTED

				COURT OF APPEAL FEE
	12/11/2017	Receipt	Filing Fee $300	: Receipt: 2017 - 1018
	12/08/2017	Event	Certificate	AMENDED CERTIFICAT
	12/08/2017	Notice	Notice of Related Case	
	12/04/2017	Order	deny motion until fee satisfied	
	12/04/2017	Letter		
	12/04/2017	Order	fee - writ; pro se	
	12/04/2017	Order	c of s; mailing addresses	
	12/04/2017	Petition	Petition Filed	
	12/03/2017	Motion	Emergency Motion To Stay	
	12/03/2017	Motion	Miscellaneous Motion	
	12/03/2017	Motion	Motion for Appointment of Counsel	
	12/03/2017	Petition	ORIGINAL APPENDIX OR ATTACHMENT	

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

No. 2D17-

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, ARIZONA, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

PETITION FOR A WRIT OF PROHIBITION AND A WRIT OF MANDAMUS AND A WRIT OF CORAM NOBIS AND QUO WARRANTO– ALL WRITS JURISDICTION

SCOTT HUMINSKI, PRO SE
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(239) 300-6656
E-mail s_huminski@live.com

Zachary Miller,esq
Regional Conflict
Counsel
zmiller@flrc2.org

BASIS FOR INVOKING JURISDICTION

This Court has original jurisdiction to issue writs of prohibition and mandamus under Article V, section 4(b)(3) of the Florida Constitution, and under Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure.

Huminski also asserts jurisdiction for writ of quo warranto and coram nobis and under "all-writs" jurisdiction. Fla. Const. art. V, §§ 3(b), 4(b).

PREFACE

This petition is related to conduct of recused judge Hon. Elizabeth Krier and is not related to the acts/orders of the currently presiding judge, Hon. Michael McHugh. Petitioner's Appendix filed herewith consists of filed documents in the Circuit Court except for the Complaint to the Florida Commission on Ethics with attachments which is the first document set forth in the appendix. The Appendix mirrors the chronology of the Circuit Court docket except with respect to the ethics complaint. Appendix page numbers are encircled and handwritten.

ISSUES PRESENTED

1. Whether a no "contact and communication" protective order concerning the Lee Sheriff's Office with no exceptions and zero narrow tailoring to a legitimate governmental interest is void ab initio for violation of First

Amendment precepts and Equal Protection and Enforcement of the Laws and constitutes a forbidden prior restraint.

2. Whether acts, orders and rulings of the Court Below are *Void Ab Initio* for lack of all jurisdiction after the case was removed to United States Bankruptcy Court divesting it of all jurisdiction until the matter was remanded back to State court.
3. Whether the criminal prosecution initiated in this matter and litigated in the Circuit Court until 8/14/2017 is *void ab initio* as it is predicated upon alleged violation of the Sheriff's protective order which was a legal nullity from its inception. All acts and orders of Judge Krier were filed in the Circuit Court in her capacity as a Circuit Court judge.
4. Whether the criminal prosecution is barred by two exceptions to the Collateral Bar Rule/Doctrine as the protective order is transparently unconstitutional / illegal and the order requires the surrender of constitutional rights.
5. Whether the Circuit Court criminal matter has not been concluded in a lawful manner, conversely, it has been abandoned by the State's Attorney and should be dismissed with prejudice for want of prosecution as it is the duty of the State's Attorney to see to it that the cases criminally prosecuted by the State's Attorney should be disposed of in a legal and regular manner

without lingering in uncertainty and burdening the litigants and the Courts as finality is the goal of all court matters.

6. Whether the State's Attorney having two identical prosecutions pending in the Circuit Court and County Court with the same allegations (contempt) and grounded upon the same fact violates double jeopardy.

FACT FROM PROCEEDINGS BELOW

This matter was initiated in the Circuit Court grounded upon Scott Huminski's ("Huminski") investigation and State FOIA requests concerning death threats Huminski had received via the U.S. Mails. Lee Sheriff Mike Scott requested and was granted a protective order barring all communication and contact from Huminski. A criminal contempt prosecution was initiated in the Circuit Court for Huminski's alleged contact with the Sheriff via email and via the internet. After several months of litigation of the criminal matter in Circuit Court, some Circuit Court files were placed by the Clerk under a County Court docket without input from the State's Attorney. The Circuit Court criminal matter was never concluded and no statute or court rule empowers the clerk's office to "transfer" a case and initiate a new criminal prosecution. The power to bring a criminal case is reserved for the State's Attorney. The criminal case remains in the Circuit Court and has never been concluded, just apparently abandoned by the State's Attorney. The

filing of a second identical criminal matter in County Court by the clerk violates double jeopardy. The State's Attorney's duty is to bring actions in the correct court, not every Court in the 20th Circuit.

The Sheriff's Protective Order

The Court below granted a motion for protective order by Lee Sheriff Mike Scott. See Petitioner's Appendix ("PETAPP") at page(s) 8-10.

The protective order forbids all contact with the Sheriff and his staff effectively:

1. Excluding Huminski from all public safety service and law enforcement in his town of residence, Bonita Springs, FL without exception. See County Court Order narrowly tailoring a similar pre-trial order with vastly vague and overbroad terms. (See PETAPP at line(s) 6-7)
2. Forbidding Huminski's First Amendment reporting of crime. See PETAPP at line(s) 113.
3. Forbidding Huminski's First Amendment core political criticism of the Sheriff to likely political opponents (members of the Sheriff's Department).

4. Forbidding Service of the Sheriff in a matter pending before the United States Bankruptcy Court whereby the Sheriff and Huminski were both *pro se*. Service was mandated by bankruptcy rule 9027.
5. Forbidding/threatening Huminski concerning his attendance at the Lee Courthouse complex whereby prohibited contact has to be made with the Sheriff's staff who perform security screening and act as bailiffs. Huminski's individual right to courthouse access has been determined in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) and denied once again in the Sheriff's protective order.
6. Huminski is barred from asking the Circuit Court to hear his motions to vacate by the terms of the protective order.
7. Huminski's banishment from the lee courthouse and the protective order's prohibition against filing present an exhaustion of all redress to the indigent Huminski in the Circuit Court who was appointed a public defender by the Circuit Court and is now represented by regional conflict counsel.
8. Huminski is forbidden from serving this petition upon the Sheriff under the terms of the protective order, effectively obstructing justice. See motion to enjoin protective order to allow service filed herewith.

The case below has had all judges assigned disqualify and the last act of the Circuit Court except for multiple recusals and re-assignment orders was on 8/8/2017. Currently, the Chief Judge is assigned to the case, however, Huminski is forbidden a hearing on his pending motions to vacate under the terms of the sheriff's protective order.

ALL ACTS TAKEN WHILE CASE WAS REMOVED TO U.S. BANKRUPTCY COURT ARE VOID AB INITIO

The case below was removed to the United States Bankruptcy Court at 5:02 p.m. on 6/26/2017 and was remanded back to State Court via a federal order docketed in the Circuit Court on 8/8/2017. See PETAPP at line(s) 28-30, 91-94. All acts and orders taken by the Circuit Court in defiance of the federal court's jurisdiction are VOID AB INITIO, ironically, even the recusal of Judge Krier and arraignment of 6/29/2017. (See PETAPP at pages 60-74, 76-82)

MEMORANDUM OF LAW

Removal to Bankruptcy Court

The removal to Bankrutcy Court is a self-executing function of federal law and plainly obvious in the Dockets from the Court Below and the United States Bankruptcy Court. Absent from either the State or Federal record is any motion to remand the case under federal abstention doctrines by the defendants or objection to

the removal. Any objection to federal jurisdiction or removal not pled in the bankruptcy court is waived. 28 U.S.C. §1447(c) All acts and orders of the Circuit Court were entered in a complete absence of jurisdiction as removal divested jurisdiction from the State Court.

At hearing on 6/29/2017, Hon. Judge Krier could not have been more emphatic by stating that "Nothing gets removed from my court -- ever". As all litigants are aware, any claim mentioning the violation of a federal right/privilege can and usually is removed to federal court by insurance defense attorneys under federal question jurisdiction and bankruptcy removal under Rule 9027 is quite common. The Circuit Court's, Judge Krier presiding, position on federal removal is bewildering.

Court Orders – Collateral Bar Rule

A transparently invalid order cannot form the basis for a contempt citation. See 3 Wright, Federal Practice & Procedure Sec. 702 at 815 n. 17 (1982) (collateral bar rule does not apply if the order violated was transparently unconstitutional); State ex rel. Superior Ct. of Snohomish County v. Sperry, 79 Wash.2d 69, 483 P.2d 608 (1971), cert. denied, 404 U.S. 939, 92 S.Ct. 272, 30 L.Ed.2d 252 (contempt citation improper because order violated was transparently void); see also United States v. Dickinson, 465 F.2d 496, 509-10 (5th Cir.1972) (recognizing exception to

collateral bar rule for transparently invalid orders); Ex parte Purvis, 382 So.2d 512, 514 (Ala.1980) (same).

Court orders are not sacrosanct. See Cobbledick v. United States, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940); accord United States v. Ryan, 402 U.S. 530, 91 S.Ct. 1580, 29 L.Ed.2d 85 (1971). In Cobbledick, the Supreme Court ruled that when a motion to quash a subpoena is denied, the movant may either obey its commands or violate them, and, if cited for contempt, properly contest its validity in the contempt proceeding. Cf. Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972); Maness v. Meyers, 419 U.S. 449, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975) These cases involve orders that require the surrender of irretrievable rights and establish that blind obedience to all court orders is not required. See also Nebraska Press Assoc., 427 U.S. at 559, 96 S.Ct. at 2802 ("A prior restraint ... has an immediate and irreversible sanction.") An appeal can not undo the immediate constitutional injury of a prior restraint such as we have in the instant matter. The instant matter does constitute a prior restraint against core political criticism of a politician (Sheriff) and a prior restraint concerning reporting crime to local law enforcement. An order entered by a court clearly without jurisdiction over the contemnors or the subject matter is not protected by the collateral bar rule. United Mine Workers, 330 U.S. at 293, 67 S.Ct. at 695 Were this not the case, a court could wield power over parties or matters obviously not within its authority--a concept

inconsistent with the notion that the judiciary may exercise only those powers entrusted to it by law. The Circuit Court did issue orders and held hearings in a removed case and in violation of the automatic stay of bankruptcy.

Huminski's email publications to large audiences on the topics of report of terrorist death threats originating in Arizona and transmitted into Lee County, report of crime to law enforcement and criticism of politician/sheriff are pure speech and core political protected expression. The principal purpose of the First Amendment's guaranty is to prevent prior restraints. Near, 283 U.S. at 713, 51 S.Ct. at 630 The Supreme Court has declared: "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1577, 29 L.Ed.2d 1 (1971); see also Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963) When, as here, the prior restraint impinges upon the right of the press (Huminski was acknowledge as a Citizen-Reporter, Huminski v. Corsones) to communicate news and involves expression in the form of pure speech--speech not connected with any conduct--the presumption of unconstitutionality is virtually insurmountable. Nebraska Press Assoc., 427 U.S. at 558, 570, 96 S.Ct. at 2802, 2808 (White, J., concurring) Huminski notes his status as a citizen-reporter. See Generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)

The Supreme Court strongly protects "core political speech" as a "value that occupies the highest, most protected position" in the hierarchy of constitutionally-protected speech. R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 422 (1992) (Stevens, J., concurring). See also Burson v. Freeman, 504 U.S. 191, 217 (1992). In defining the core political speech worthy of this elevated level of protection, the Court has broadly included "interactive communication concerning political change.", the essence of Huminski's communications with the sheriff. Meyer v. Grant, 486 U.S. 414, 422 (1988). Huminski's electronic communications objected to the Sheriff's position on interstate terrorist death threats. Huminski has also published his opposition to the sheriff's policies as signage at his home and on the internet. For example, see https://www.youtube.com/watch?v=-dJYlLMBLVk and see generally https://www.youtube.com/channel/UC-y4hdd9G-cN3GxkJIMpF9w and see a google search on the petitioner.

Political speech gets higher protection because it is an essential part of the democratic process. Indeed, evaluating a statute that would have restricted all anonymous leafleting in opposition to a proposed tax, the Supreme Court reflected on the importance of specifically protecting such political speech which applies equally here to Huminski's speech regarding corruption, misconduct and oppression by police and government actors who support the death threats received by Huminski. The First Amendment affords the broadest protection to such political

expression in order "to assure [the]unfettered interchange of ideas for the bringing about of political and social changes desired by the people." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 346-47 (1995), quoting Roth v. United States, 354 U.S. 476, 484 (1957)

Recently, the Supreme Court made it abundantly clear that laws or in this case a court order that burden political speech are subject to strict scrutiny review. Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010), invalidated a federal statute that barred certain independent corporate expenditures for electioneering communications. Highlighting the primacy of political speech, the Court noted that "political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction' furthers a compelling interest and is narrowly tailored to achieve that interest.'" Citizens United, 558 U.S. at 340 (quoting Federal Election Comm'n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 464 (2007)). There exists no compelling reason to silence Huminski's reporting of crime or criticism of the sheriff.

The order and the threats from the Sheriff/Court under State law/Common Law cut off the "unfettered interchange of ideas" in an important place for individual political expression--the Courts and internet. McIntyre, 514 U.S. at 346-

47. Treading upon core First Amendment expression must be accomplished in as minimally a restrictive manner as possible, and should never be done so in the form of an absolute bar on all political expression as is the case at Bar whereby criticism, reporting of crime and civil/bankruptcy litigation has been viewed as a per se criminal activity by the State Court. See Bd. of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 574 (1987) (invalidating a statute because it "reache[d] the universe of expressive activity, and, by prohibiting all protected expression, purport[ed] to create a virtual 'First Amendment Free Zone.' ") (emphasis in original).

Validating a sweeping ban on core political speech would seriously undermine the Supreme Court's stated goal of safeguarding the democratic process. The alleged contact with the Sheriff made by Huminski were related to reporting crime and criticism of a political figure. A constitutional solution should have been to direct the sheriff to delete any emails he considered junk mail. Shutting down Huminski's reporting crime to law enforcement is an extreme remedy that does not survive constitutional scrutiny under vagueness and over-breadth precepts.

Grayned v. The City of Rockford, 408 U.S. 104 (1972) summarized the time, place, manner concept: "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular

time." Time, place, and manner restrictions must withstand intermediate scrutiny. Note that any regulations that would force speakers to change how or what they say do not fall into this category (so the government cannot restrict one medium even if it leaves open another) Ward v. Rock Against Racism, 491 US 781 (1989) held that time, place, or manner restrictions must:

* Be content neutral
* Be narrowly tailored
* Serve a significant governmental interest
* Leave open ample alternative channels for communication

If the government tries to restrain speech before it is spoken, as opposed to punishing it afterward, it must be able to show that punishment afte r the fact is not a sufficient remedy, and show that allowing the speech would "surely result in direct, immediate, and irreparable damage to our Nation and its people" (New York Times Co. v. United States, 403 U.S. 730 (1971)).

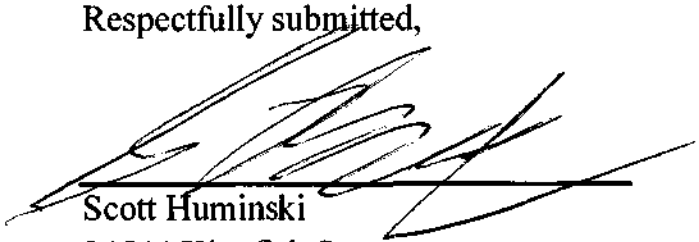
In Bridges v California, 314 U.S. 252 (1941), Mr. Justice Black, for the five-to-four majority, presented clear and present danger as "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterance can be punished"; adding that even this did not "mark the

furthermost constitutional boundaries of protected expression." Bridges v. California, 314 U. S. 252, 263 (1941).

CONCLUSION

For all of the forgoing reasons, the Court should grant the Petitions and issue a Writ of Prohibition, Writ of Mandamus, Writ of Coram Nobis and Writ of Quo Warranto requiring the Circuit Court vacate all acts, orders and rulings entered while the case was removed to U.S. Bankruptcy Court, vacate the protective order as void ab initio for First Amendment violations, order the initiation of the criminal matter *Void Ab Initio* and dismiss it with prejudice and find that the orders involved in this case are exceptions to the Collateral Bar Rule which allows violation of a transparently unconstitutional order and allows violation of an order that requires the surrender of Constitutional rights.

Respectfully submitted,



Scott Huminski
24544 Kingfish Street
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(239) 300-6656
s_huminski@live.com

CERTIFICATE OF SERVICE – FOR PETITION, APPENDIX AND MOTIONS

I HEREBY CERTIFY that on or before December 07, 2017, a true copy of the foregoing and Petitioner's Appendix and Motion to Stay Matters Below and MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER and MOTION TO REPLEAD WITH ASSISTANCE OF COUNSEL have been served pursuant to the Rules upon,

20th Circuit Public Defender's Office (Kevin Sarlo, esq.),

Regional Conflict Counsel (Zachary Miller, esq.),

State's Attorney (ASA Anthony Kunasek, esq.),

Hon. Michael McHugh,

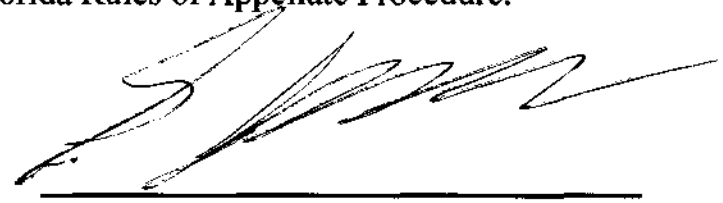
Hon. James Adams,

All parties in 17-CA-421 (except the Sheriff Defendants and Scribd, Inc., defendants whereby service is prohibited by order, see MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER filed herewith which, if granted, would allow service to complete).

Scott Huminski

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.21 (a)(2), I certify that this computer-generated brief/petition is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.



Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	) NO. 17-MM-815	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR CHANGE OF VENUE

NOW COMES, Scott Huminski ("Huminski"), and, moves to for change of venue because he is banished from the Lee court complex by Order of Judge Kier, 17-CA-421, preventing any contact and communication with the Lee Sheriff or his staff.

Huminski should not face trial under threats, duress and draconian court orders that violate Huminski's First Amendment and Due Process rights. See general 2D17-4740. Th,e Sheriff operates the security screening and his staff acts as bailiffs at the court complex.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	) NO. 17-MM-815	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF FIRING OF DEFENSE COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, notices that Atty. Neymotin and her staff, conflict cousel, are fired and discharged from this case for vast incompetence and negligence set forth in papers filed on this day.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

WITHDRAWAL OF WAIVERS OF ARRAIGNMENT

NOW COMES, Scott Huminski ("Huminski"), and, hereby withdraws waivers of arraignment filed by previous counsel in this matter. I was not informed of these waivers, oppose them and formal arraignment occurred on 6/29/2017. They were filed as a product of ignorance of the case facts.

This sort of robotic litigation has no place in this case.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 22nd day of December, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR TRANSCRIPT OF ARRAIGNMENT HEARING, 6/29/2017

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves for the Court/Clerk to supply him a transcript of the arraignment proceedings of 6/29/2017 or to allow Huminski to use the original audio, which he is in possession of at trial.

Dated at Bonita Springs, Florida this 26th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 26th day of December, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

DOCKET NO. 17-MM-815

AKA: STATE V. HUMINSKI

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 27, 2017 2:28 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: atty Neymotin alert the Court TODAY

of issues with the scheduled trial and my pro se status, TODAY. Judge Krier with a conflict of interest (she recused) instituted this litigation. It is bogus. -- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 27, 2017 2:21 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Demand to atty Neymotin for criminal file contents- TODAY

Atty Neymotion, I need a copy of my entire file TODAY, 17-mm-815 via email. Had you filed a proper motion to recuse like the PD did we would not be having this issue. Inquiry into the sheriff's crimes would create conflicts for other clients just as Judge Adams found in the PD recusal.

Krier recused off my cases and then was sent back to collier county. We all know what is going on here. -- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 27, 2017 2:13 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Demand to atty Neymotin

Atty Neymotin, YOU WILL BE CALLED AS A WITNESS IN THE 17-MM-815

I demand to know if there is a trial taking place on 1/8/2017 and who my counsel is.

You are notified that you are now a witness that will be called in the case as well as Mr. Miller. If there is a trial on the 8th I will bring the constitutional defense of ineffective assistance of counsel. Bring all papers related to the case emails from me and the non-existent

response to my emails, I waive all attorney client confidentiality . Send me all the materials related to your office's work on the case immediately scanned to .pdf and emailed, immediately. Time is of the essence.

I further demand that you recuse, in light of my firing you.

6 months of litigation and 3 recusal motions and absolutely no other work done is ineffective assistance of counsel. YOU ARE FIRED. Inform the court and withdraw off the case immediately and prepare to defend your conduct or lack of conduct.

Neglect of a legal matter entrusted to you is a violation of the model code of professional responsibility. -- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 27, 2017 1:25 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Re: Partial witness list Huminski

Eduardo Duarte
LILLIAN E. BILLEWICZ

From: scott huminski <s_huminski@live.com>
Sent: Saturday, December 23, 2017 4:52 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Re: Partial witness list Huminski

daniel bernath

From: scott huminski <s_huminski@live.com>
Sent: Saturday, December 23, 2017 4:48 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Partial witness list Huminski

Judge Krier
Sherifff Scott

LCSO Brian Allen

Of course it is contempt for me to have any contact or communication with these persons per order of Judge Krier. See proposed motion below,

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida

- ## Civil/Criminal Division -

Scott Huminski, for himself)

and for those similarly situated,)

Plaintiff)

v.) DOCKET NO. 17-MM-815

Town of Gilbert, AZ, et al.)

Defendants.) AKA: State v. Huminski

-

MOTION TO DISMISS – ORDERS OF JUDGE KRIER PRODUCTS OF EX PARTE CONTACTS AND BIAS

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss grounded upon Judge Krier's recitation of fact that appeared nowhere in the record concerning the death threats received by Huminski indicative of an illegal ex parte contact with the Judge or simply a creation of the Judge arising out of a forbidden conflict of interest, the same conflict of interest that mandated her recusal from the civil case.

Orders arising out of this judicial misconduct violate Due Process and are Void Ab Initio, they can be disobeyed as they are legal nullities.

Dated at Bonita Springs, Florida this 2nd day of January, 2017.

-/S/- Scott Huminski

_____

Scott Huminski, pro se

24544 Kingfish Street

Bonita Springs, FL 34134

(239) 300-6656

S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 2nd day of January, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

From: scott huminski <s_huminski@live.com>
Sent: Friday, December 22, 2017 4:15 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Anthony

Anthony, If you could respond to my motions in writing, it would be helpful. I can prepare the necessary authorities for when we do have a hearing. This case has been in limbo too long, i apologize for the do nothing conduct of the defense attorneys.

This will now change. -- scott

From: scott huminski <s_huminski@live.com>
Sent: Friday, December 22, 2017 9:46 AM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org;

ValerieZ@pd.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Neymotin I documented your

firing in the docket. Your firing was effective upon your receipt of my email. It now has just been formalized. -- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Friday, December 22, 2017 9:17 AM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Neymotin ignorant of basic law

With my banishment from the lee courthouse. You should have filed a motion to change venue like i just did. This takes no brain power and no understanding of the law. You should step down and I am drafting a professional responsibility complaint against you. Vast incompetence.

You have person's futures in your hands and do not have the basic intelligence to protect the oppressed victims of the legal system. Neymotin, you are truly an evil person. -- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Friday, December 22, 2017 4:16 AM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Neymotin FIRED incompetence

Do not show up at any further proceedings, your negligence has prejudiced this case too long. YOU AND YOUR OFFOFFICE IS OFF THIS CASE

Attached are the pleadings FIRING you for neglect and laziness. I spent 10 minutes drafting the attachments, more work than your office has done for 3 months. If you can not handle a simple misdemeanor, what kind of abusive conduct or you using concerning felonies?

I suggest you review Z. Miller work product on the case and see nothing exists.

Neglect of a legal matter is a violation of the model rules of professional conduct,-- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Friday, December 22, 2017 2:40 AM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org;

zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Huminski counsel FIRED 17-mm-815

I will proceed pro se. 2 motions to recuse is quite enough from conflict counsel.

I notify of my pro se appearance. --scott huminski

From: scott huminski <s_huminski@live.com>
Sent: Thursday, December 21, 2017 3:49 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Re: Conflict counsel Neynotib FIRED

After six months of wasting the court's time. No work has been done by this lazy person on my case. --scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Thursday, December 21, 2017 3:36 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Conflict counsel Neynotib must recuse

Atty Neymotin, You showed up in court yesterday with zero preparation. And have refused to file the motions we discussed.
YOU ARE FIRED.
YOU ARE INCOMPETANT
YOU ARE THE EPITOME OF INEFFECTIVE ASSISTANCE OF COUNSEL
-- SCOTT HUMINSKI

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 20, 2017 12:54 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; oag.civil.eserve@myfloridalegal.com; Smith, Kathleen A
Subject: Conflict counsel must recuse

Hi Atty Neymotin,

Your office has advised me to violate the Orders of Judge Krier. The protective order entered by Judge Krier prevents any contact with the Sheriff or his staff. As such, it is criminal contempt for me to interact with court security screeners and bailiffs at the lee court.

Advising me to violate the orders of the Circuit Court is unethical. With that in mind, what is your office's advice for the hearing tomorrow concerning my attendance?

Do I not attend and risk a bench warrant or attend and risk a contempt charge? -- scott huminski

---

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, December 20, 2017 11:20 AM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org; akunasek@sao.cjis20.org; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; JAdams@ca.cjis20.org; ValerieZ@pd.cjis20.org; MmcHugh@ca.cjis20.org; mdcavic@uspis.gov; Smith, Kathleen A; oag.civil.eserve@myfloridalegal.com
Subject: Conflict counsel must recuse

Hi Atty Neymotin,

Your office has performed zero work on the criminal matter and refuses anything and everything I have requested in support of my defense. Assign a different attorney or recuse your off the case. You are still responsible for the 2DCA matter.

Neglect of a legal matter entrusted to your office is an ethical violation. -- scott huminski

DOCKET NO. 17-MM-815

AKA: STATE V. HUMINSKI

From: scott huminski <s_huminski@live.com>
Subject: Lee Docket Fraud in wake of judge Krier ouster

Scores of cases now have fraudulent dockets containing some or all of the below fraudulent docket entries errors,

1. Listing Hon. Gentile as presiding over hearings that were actually presided over by Krier
2. Listing Hon. Gentile as presiding in cases he never participated in
3. Listing Hon. Gentile as presiding over cases before he became a judge
4. No Krier recusal
5. No assignment orders
6. Fraudulent krier recusal order filed in 17-mm-815, filed in November and back dated to August, Krier or clerk lost original, a copy of a copy was filed months later with a fraudulent date.
7. Only 17-mm-815 had an assignment order when Krier was ousted back to Collier, scores of cases requiring re-assignment orders by administrative judges.
8. see partial sampling below of the scores of cases
9. Lee Court database should not allow inserting back dated documents, it invites corruption.
10. Huminski assignment order issued after hearing with new judge when Huminski pointed out the problem. The case needs to be assigned prior to hearing with a new judge.

These flaws call into the question the integrity of Lee Court records generally and the validity of cases after the hasty departure of Judge Krier after the scandal in the Huminski case whereby Krier lied and indicated an illegal ex parte contact regarding the facts of the case.

Judge Krier never filed a recusal in the County Court. After several months of letting Judge Adams know of this flaw, a copy of a copy of a recusal order was filed and back dated to 8/14/2017. Krier recused on 8/1 and did not file the order on 8/1 or 8/14 or ever. It was filed months later as hearing transcripts will show my reminding Judge Adams that no recusal order existed. Some clerk doctored the docket. This is fraud. The State has unclean hands.

The following cases are identified by party names.

Jonathan McNabb - Judge Gentile did not preside over most of these hearings, Also no recusal of Krier or Assignment Order - fraud on this docket, legality of the judge transfer questionable.

Date	Hearing	Time
11/20/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15

Date	Hearing	Time
10/31/2017	CANCELED-Other Circuit Civil Court - Bocelli, Kimberly Davis	10:00
10/31/2017	Circuit Civil Court - Bocelli, Kimberly Davis	10:15
06/27/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00
03/21/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00
11/08/2016	Circuit Civil Court - Krier, Elizabeth V	9:00
11/04/2015	Circuit Civil Court - Krier, Elizabeth V	8:30
10/27/2015	Circuit Civil Court - Krier, Elizabeth V	8:30
10/07/2015	Circuit Civil Court - Krier, Elizabeth V	8:30
09/08/2015	CANCELED-Other Circuit Civil Court - Crongeyer, Robert L	10:00
09/08/2015	Circuit Civil Court - Krier, Elizabeth V	8:30
08/13/2015	Circuit Civil Court - Krier, Elizabeth V	8:30
06/25/2015	Circuit Civil Court - Crongeyer, Robert L	2:00
12/15/2014	CANCELED-Other Circuit Civil Court - Krier, Elizabeth V	9:00

Annette Cantalupo - Same fraud listing Hon. Gentile presiding when he didn't, no krier recusal, no assignment order

Date	Hearing	Time
11/03/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
11/02/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
11/01/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
10/31/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM

10/30/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
10/17/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
10/16/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
09/18/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
07/17/2017	CANCELED-Other Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
04/19/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
04/04/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
03/13/2017	CANCELED-Other Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
10/19/2016	Circuit Civil Court - Krier, Elizabeth V	9:00 AM
06/27/2016	Circuit Civil Court - Krier, Elizabeth V	9:00 AM
04/13/2016	Circuit Civil Court - Krier, Elizabeth V	9:00 AM
02/02/2016	Circuit Civil Court - Krier, Elizabeth V	9:00 AM

Frederick Heine - Same Problems as above.

Date	Hearing	Time
01/08/2018	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
12/16/2016	CANCELED-Other Circuit Civil Court - Thompson, James R	10:30 AM
10/24/2016	Circuit Civil Court - Kyle, Keith R	11:15 AM

Scott Huminski

Date	Hearing	Time
12/12/2017	Circuit Civil Court - McHugh, Michael T	2:30 PM

Date	Hearing	Time
08/15/2017	CANCELED-Other Circuit Civil Court - Gentile, Geoffrey Henry	1:00 PM
07/31/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM
06/29/2017	Circuit Civil Court - Gentile, Geoffrey Henry	1:30 PM
05/25/2017	Circuit Civil Court - Gentile, Geoffrey Henry	8:30 AM
04/18/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM
04/18/2017	Circuit Civil Court - Gentile, Geoffrey Henry	10:30 AM
04/17/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM

Byron Shannon

Search:

#	Case Number	Citation Number	Description	Type	Status
1	09-CA-002727		Shannon, Byron Plaintiff vs Masterspas Inc Defendant	CA Breach of Contract	Reclosed

Showing 1 to 1 of 1 entries

Colin Roth

Date	Hearing	Time
10/04/2017	CANCELED-Other Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM
06/29/2017	CANCELED-Other Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
06/28/2017	CANCELED-Other Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
05/24/2017	Circuit Civil Court - Gentile, Geoffrey Henry	11:00 AM
05/22/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
05/01/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM

Date	Hearing	Time
04/24/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
04/11/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
03/14/2017	Circuit Civil Court - Gentile, Geoffrey Henry	10:00 AM
03/08/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM
03/08/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
02/14/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM
02/01/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM
10/24/2016	Circuit Civil Court - Krier, Elizabeth V	9:00 AM
01/11/2016	Circuit Civil Court - Krier, Elizabeth V	8:30 AM
01/05/2016	Circuit Civil Court - Krier, Elizabeth V	9:15 AM
12/15/2015	Circuit Civil Court - Krier, Elizabeth V	8:30 AM
12/03/2015	Circuit Civil Court - Krier, Elizabeth V	8:30 AM
10/21/2015	Circuit Civil Court - Krier, Elizabeth V	8:30 AM
09/02/2015	Circuit Civil Court - Krier, Elizabeth V	8:30 AM
07/13/2015	Circuit Civil Court - Krier, Elizabeth V	1:30 PM
07/02/2015	CANCELED-Other Circuit Civil Court - Krier, Elizabeth V	1:30 PM
06/05/2015	Circuit Civil Court - Krier, Elizabeth V	9:00 AM
05/22/2015	CANCELED-Other Circuit Civil Court - Krier, Elizabeth V	8:30 AM
04/20/2015	Circuit Civil Court - Krier, Elizabeth V	1:30 PM
04/20/2015	Circuit Civil Court - Krier, Elizabeth V	3:00 PM

Date	Hearing	Time
02/16/2015	Circuit Civil Court - Krier, Elizabeth V	11:00 AM
02/09/2015	Circuit Civil Court - Krier, Elizabeth V	2:30 PM
02/02/2015	Circuit Civil Court - Krier, Elizabeth V	10:30 AM
01/05/2015	CANCELED-Other Circuit Civil Court - Crongeyer, Robert L	10:45 AM
10/13/2014	CANCELED-Other Circuit Civil Court - Crongeyer, Robert L	11:00 AM

Mary Marchant

CA Contracts and Indebtedness	Case Type:
03/28/2012	Date Filed:
Div I	Location:
362012CA000981A001CH	UCN:
Geoffrey Henry Gentile	Judge:
Disposed	Status:
	Citation Number:
	Appear By Date:

Date	Hearing	Time
05/01/2017	CANCELED-Other Circuit Civil Court - Gentile, Geoffrey Henry	2:30
04/11/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15
12/07/2016	Circuit Civil Court - Krier, Elizabeth V	9:15
06/29/2016	CANCELED-Other Circuit Civil Court - Krier, Elizabeth V	9:00

Date	Hearing	Time
06/27/2016	Circuit Civil Court - Krier, Elizabeth V	9:00
09/02/2015	Circuit Civil Court - Krier, Elizabeth V	8:30
08/17/2015	Circuit Civil Court - Krier, Elizabeth V	9:00
08/17/2015	Circuit Civil Court - Krier, Elizabeth V	8:30
07/06/2015	CANCELED-Other Circuit Civil Court - Krier, Elizabeth V	11:00
01/12/2015	CANCELED-Other Circuit Civil Court - Krier, Elizabeth V	11:00
10/15/2014	Circuit Civil Court - Krier, Elizabeth V	1:30
10/13/2014	CANCELED-Other Circuit Civil Court - Krier, Elizabeth V	2:00

Financial

Date	Description

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

vs.

SCOTT HUMINSKI

Defendant

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

COPY

CC /

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	) NO. 17-MM-815	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR PERMISSION TO DEPOSE SHERIFF SCOTT & Hon. E. KRIER UNDER CONFRONTATION CLAUSE, 6th Amendment

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as set forth in the above title to this paper as he has a right to confront his accusers under the 6th Amendment, these persons are already listed trial witnesses for Huminski. Former counsel was directed to seek this deposition, but, refused.

"***Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because the defendant is obviously guilty.***" Crawford v. Washington, 541 U.S. 36 (2004).

Dated at Bonita Springs, Florida this 28th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 28th day of December, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	) NO. 17-MM-815	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

JURY TRIAL DEMAND

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, demands a jury trial.

Dated at Bonita Springs, Florida this 28th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	) NO. 17-MM-815	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – FRAUD UPON COURT

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves to dismiss based upon the filing of the recusal order of Judge Krier constitutes fraud upon the Court on behalf of the State and Lee Court Clerk as follows:

1. For September and August hearings of 2017, Huminski at heaings alerted Hon. James Adams that the alleged recusal order of Judge Krier had not been filed impacting his jurisdiction. See generally hearing transcripts and Huminski's emails to his attorneys and Huminski spoke to counsel concerning this problem. See Attached and other references on the record.
2. A copy of a copy of a recusal order was filed on or about September 22, 2017 and back-dated to 8/14/2017.
3. Upon information and belief the original recusal order does not exist and Judge Krier was not involved in the filing of the back-dated non-original order of 8/14/2017.

Dated at Bonita Springs, Florida this 28th day of December, 2017.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

Attachment

From: scott huminski <s_huminski@live.com>
Sent: Monday, September 25, 2017 12:23 PM
To: Sarlo,
Kevin; Kathleens@pd.cjis20.org; KatherineT@pd.cjis20.org; stateattorney@sao.cjis20.org; ServiceSAO-LEE@sao.cjis20.org
Subject: Re: 17-mm-815 - hearing request

set the hearing. I filed my appearance. We are going forward with the motions filed and nothing else.

Change of venue and my motion to vacate assignment are imperative. Along with the other motions.

No meeting require. Lets get this moving. The protective order puts me at risk of arrest and obeying the order got me thrown out of the last hearing. Nothing to discuss.

Everybody's time is being wasted. The assignment order was illegal, there was no recusal filed. There was no lawful "transfer" to county court.

Please follow my directions, that deputy engaged in felony obstruction of justice when he kicked me out of the hearing. This is far worse than the petty allegations against me. If the court wishes to construe my motion for change of venue as a motion to dismiss, thats fine.

NO MORE DELAYS. The LCSO has been at my door all weekend long after my neighbor trespassed on my property and engaged in illegal dumping.

NO MORE DELAYS. THese motions need to be heard. Whoever filed Krier's recusal last week did so without her permission, she is barred from acting in the case under the judicial ethical cannons and laches prevent the lat filing. It was untimely.

-- scott huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR SUBPOENA TO ITA NEYMOTIN TO PRODUCE CASE FILE

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves for a subpoena directed to Regional Counsel, Ita Neymotin, esq., to produce the case file in this case and forward it to Huminski for trial preparation as follows:

1. On 12/22/2017 Huminski fired regional counsel for ineffective assistance of counsel and requested that the case file be returned to Huminski for pro se trial preparation.
2. Ita Neymotin, esq. refused to return every call and respond to every email sent by Huminski regarding the criminal case.
3. Ita Neymotin, esq. only performed legal work on 2 issues related to this case in her tenure which was to file 2 motions to recuse. This is the extent of the legal work provided by regional counsel.
4. Ita Neymotin, esq. refused to list trial witnesses set forth in Huminski's emails.
5. Ita Neymotin, esq. refused to alert Huminski that a trial was scheduled for January 8, 2017.
6. Ita Neymotin, esq. refused to file defense motions requested by Huminski in emails.
7. The aforementioned violates the ABA Model Rules of Professional Conduct (2017).

8. The case file supplied by Ita Neymotin, esq. will be used at trial as evidence supporting a Constitutional defense of ineffective assistance of counsel and denial of Huminski's confrontation clause rights.

9. Upon review of authority, this prosecution is the only criminal contempt prosecution existing in Florida history whereby the Judge (Krier) had recused calling into question the propriety of the case and indicating a selective and discriminatory prosecution. This is compounded by Judge Krier's lies at arraignment and her statements which indicate a forbidden *ex parte* contact influencing her positions as she recited fact not on the record concerning the death threats received by Humin ski. The three years of death threats from Trevor Nelson and Debra Riffel sent via the U.S. Mails and Sheriff Scott's decision to ignore this on-going domestic terrorism (contact made by terrorist in December 2017) caused the filing of the civil case.

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – INEFFECTIVE ASSISTANCE OF COUNSEL

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as set for in the above title pursuant to the 6th Amendment and asserts his Motion requesting subpoena directed to Attorney Neymotin filed today in support thereof and asserts the denial of counsel's December recusal motion in support thereof. This appears to be an issue of first impression in Florida concerning this Constitutional affirmative defense asserted at the trial court level.

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY DEFENSE COUNSEL
AND
NOTICE OF CIVIL CLAIMS OF LEGAL MALPRACTICE AND FEDERAL CIVIL RIGHTS VIOLATIONS Re: Atty. Neymotin

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as set forth in the above title to disqualify defense counsel grounded upon Huminski's filings in this case. Huminski notes he spoke with Zachary Miller, esq. today and Mr. Miller did not know of the back-dated recusal order of Judge Krier in this case which strikes at the legitimacy of this prosecution whereby Judge Krier,

- Authored and signed a recusal order in Circuit Court recusing off this **Circuit Court** case on August 1, 2017. See docket 8/14/2017.
- The original order was lost.
- At hearings on August 15 and September 22 Huminski informed the Court of this problem.
- On September 22, 2017 someone at the Court filed a copy of this order and back-dated it to August 14, 2017. This is fraud.
- Judge Krier lied in the hearing of 6/29/2017
- Judge Krier recited fact not on the record concerning the death threats received by Huminski evidencing forbidden ex parte contact/influence.

NOTICE OF CLAIM – FEDERAL LAWSUIT, Ita Neymotin, et al.

Notice is given that Huminski is bringing federal civil rights claims and legal malpractice claims in U.S. District Court against Ita Neymotin, esq., Regional Conflict Counsel and Zachary Miller, esq.. This case involves the exact same courthouse banishment claims that have already been litigated in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005). Ms. Neymotin failed to assert my right to attend court proceedings free of threats of arrest and prosecution in retaliation for merely asserting my First Amendment and Due Process rights in a trial free of duress, threats and coercion and the right to defend myself free of these factors.

Huminski will also bring associated claims against Ms. Neymotin, et al. under the First, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution REQUESTING declaratory relief, actual damages, punitive damages, nominal damages or presumed damages in the same amount yielded in Huminski v. Corsones, $750,000.00 (Seven Hundred and Fifty Thousand Dollars).

The Courthouse banishment set forth in this case is forbidden under a clearly established constitutional right and creates a cloud of illegitimacy concerning this case which Ms. Neymotin refuses to assert. See generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005). Similarly, Ms. Neymotin refuses to assert the corruption in this case evidenced by the back-dating of Judge Krier's recusal order set forth above and the complete corruption of Lee County dockets in cases formerly presided over by Judge Krier and the fraudulent listing of Hon. Gentile as presiding over hearing and cases he was never involved in which also includes Huminski's cases.

Ms Neymotin's representation is a prime example of the problems enunciated in the NACDL paper, Three Minute Justice: Haste and Waste in Florida's Misdemeanor Courts. https://www.nacdl.org/reports/threeminutejustice/

Ms. Neymotin refuses to assert the impropriety and unethical nature of the State's plea offer which includes assurance by Huminski to not engage in civil litigation against persons not parties to this matter converting the plea negotiations into a form of release/dismissal agreement which violates ethical rules. See Notre

Dame law journal on the topic, An Ethical Analysis of Release Dismissal Agreements.
http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1458&context=ndjlepp

Judge Gentile is fraudulently listed as presiding over the arraignment in this case which is indication of extreme corruption and impropriety on the docket which Ms. Neymotion refuses to assert. As the docket reveals, there did not exist 17-mm-815 until 6/30/2017 on 6/29/2017 the only matter that existed was 17-ca-421 which was a criminal/civil hybrid which Ms. Neymotin misrepresents to the Court as civil only in her recusal motion and at hearing. See below docket entries and 6/29

minutes.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

vs.

SCOTT HUMINSKI

Defendant

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

COPY

CC /

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CIVIL ACTION**

Huminski, Scott
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421
Date: **June 29, 2017**
Judge: **Elizabeth V Krier**
Deputy Clerk: **Brenda Horton**
Court Reporter:

MINUTES

Attorney for Plaintiff: **Kevin Sarlo** ☑ Present ☐ Not Present
Attorney for Defendant: **Anthony Kunasek** ☑ Present ☐ Not Present

Hearing Information:

SHOW CAUSE / ARRAIGNMENT PROCEEDING:

-Plea of Not Guilty Entered
-CMC scheduled on 8/15/17 at 1:00 for 10 minutes
-CMC is set to review how the State is proceeding with the case and at that Point we can schedule future hearings. Also to be discussed transfer case From civil to criminal
-Pretrial release without bond / Conditions: Mr. Huminski is to check in with Pretrial officer every 2 weeks, along with the condition to not violate anymore Orders. Only Mr. Huminski's PD or licensed attorney may contact the courts. He must not contact the courts or Sheriff's Department by email

☐ Motion _____ ☐ Granted ☐ Denied ☐ Reserved

Notes:
-Scott Huminski-present
-Copies of orders on file given to Mr. Huminski, Mr. Sarlo, and Mr. Kunasck In court

*Sworn

Date	Hearing	Time
12/12/2017	Circuit Civil Court - McHugh, Michael T	2:30 PM

08/15/2017	CANCELED-Other Circuit Civil Court - Gentile, Geoffrey Henry	1:00 PM
07/31/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM
06/29/2017	Circuit Civil Court - Gentile, Geoffrey Henry	1:30 PM
05/25/2017	Circuit Civil Court - Gentile, Geoffrey Henry	8:30 AM
04/18/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM
04/18/2017	Circuit Civil Court - Gentile, Geoffrey Henry	10:30 AM
04/17/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION OF INTENT TO SEEK INTERLOCUTORY APPEAL IF DISQUALIFICATION OF CONFLICT COUNSEL DENIED
AND
PROPOSED MOTION TO STAY PENDING APPEAL

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, notifies as above pursuant to the attached authority and proposes a Motion to Stay under the theories mentioned in the attached 2DCA ruling if disqualification is denied.

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

Opinion filed November 30, 2016.

MARY ANN LEAKE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. 2D16-2639

Petition for

Writ of Certiorari to the Circuit Court for Polk County; Wayne M. Durden, Judge.

Howard L. Dimmig, II, Public Defender, and Terry Stewart, Assistant Public Defender, Bartow, for Petitioner.

Pamela Jo Bondi, Attorney General, Tallahassee, and Katherine Coombs Cline, Assistant Attorney General, Tampa, for Respondent.

SLEET, Judge.

Mary Ann Leake seeks certiorari review of the trial court's denial of her public defender's motion to withdraw because of a conflict of interest. Because the trial court applied the wrong legal standard when it denied the motion, we grant the petition, quash the order, and remand for further proceedings.

Shortly before Leake's scheduled trial date, the public defender became aware that two of the named victims in the case had previously signed letters of support indicating that they would contribute financially to and sponsor a fundraiser for Public Defender Howard L. Dimmig's campaign for reelection. The public defender informed Leake of the conflict, and Leake requested that counsel file a motion to withdraw. For reasons not clear from the record, the State objected. At the hearing on the motion, the State argued that under MacKenzie v. Super Kids Bargain Store, Inc., 565 So. 2d 1332 (Fla. 1990), two victims' contributions to the public defender's campaign did not create a conflict of interest. In Mackenzie, the supreme court held that a trial judge was not "required to disqualify herself or himself on motion where counsel for a litigant has given a $500 campaign contribution to the political campaign of the trial judge's spouse." Id. at 1340. The State reasoned that if a trial judge had no duty to recuse herself or himself after receiving campaign contributions, then neither should the public defender.

Persuaded by Mackenzie and the State's argument, the trial court denied the motion.

In order to be entitled to certiorari relief, "[a] petitioner must establish (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the trial (3) that cannot be corrected on postjudgment appeal." Parkway Bank v. Fort Myers Armature Works, Inc., 658 So. 2d 646, 648 (Fla. 2d DCA 1995). As this court explained in Young v. State, 189 So. 3d 956 (Fla. 2d DCA 2016), "a trial court order compelling an ethically conflicted attorney to represent a criminal defendant . . . 'constitutes a departure from the essential requirements of the law that would result in an irreparable, material harm to the [certiorari] petitioner that cannot be remedied on final appeal.' " Id. at 959 (alteration in original) (quoting Smith v. State, 156 So. 3d 1119, 1126 (Fla. 1st DCA 2015)). The supreme court "has acknowledged that 'the right to effective assistance of counsel encompasses the right to representation free from actual

conflict.' " Johnson v. State, 78 So. 3d 1305, 1308 (Fla. 2012) (quoting Hunter v. State, 817 So. 2d 786, 791 (Fla. 2002)). And "[a]n actual conflict of interest that adversely affects a lawyer's performance violates a defendant's Sixth Amendment right to effective assistance of counsel." Johnson, 78 So. 3d at 1308. Accordingly, we conclude that Leake has sufficiently alleged a harm that cannot adequately be remedied on appeal, and that this court has jurisdiction.

The trial court departed from the essential requirements of the law when it based its denial of Leake's motion on MacKenzie, 565 So. 2d 1332. In MacKenzie, the supreme court considered whether a judge should have recused herself under section 38.10, Florida Statutes (1987), and Florida Rule of Civil Procedure 1.432. Therefore, Mackenzie is completely inapplicable to the present case, which does not involve the recusal of the trial judge but rather the withdrawal of an attorney in a criminal case under section 27.5303, Florida Statutes (2016), and the Rules Regulating the Florida Bar 4-1.7. The MacKenzie case did not address whether the victims' commitment to sponsor a fundraiser for and contribute to the reelection of the public defender, the employer of defense counsel, would have an adverse impact on defense counsel's representation of the defendant, including but not limited to counsel's ability to adequately confront and cross-examine the victims. The relevant consideration for the trial court here was whether there was an actual conflict and whether that conflict would have an adverse effect on the public defender's representation of Leake. See State v. Alexis, 180 So. 3d 929, 937 (Fla. 2015) ("Some adverse or detrimental effect on the representation . . . is required in order to establish an actual conflict of interest.").

Because the trial court did not apply this standard and instead applied the standard employed in MacKenzie, it deviated from the essential requirements of law. See Price v. Hannahs, 954 So. 2d 97, 100 (Fla. 2d DCA 2007).

Accordingly, we grant the petition, quash the denial of the public defender's motion, and remand for further proceedings consistent with this opinion.

Petition granted; order quashed; remanded.

CASANUEVA and KHOUZAM, JJ., Concur.

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR DISQUALIFICATION OF STATE'S ATTORNEY

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves for disqualification of the State's Attorney as he has proposed what amounts to a release/dismissal agreement condemned in Newton v. Rumery, 480 U.S. 386 (1987) as a no jail no fee plea has the same coercive powers as a dismissal and is further discussed in Notre Dame Law Review, An Ethical Analysis of the Release-dismissal Agreement.

http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1458&context=ndjlepp

Instead of proposing this settlement to me, Ms Neymotin and her surrogates had an affirmative ethical duty to report the ethics violation, not encourage it. As the State's Attorney has announced his retirement, ethical violations and attorney discipline will not prejudice Mr. Russell and he freely violates ethical cannons.

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

In The

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- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Corrected

MOTION FOR DISQUALIFICATION OF STATE'S ATTORNEY

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves for disqualification of the State's Attorney as he has proposed what amounts to a release/dismissal agreement condemned in Newton v. Rumery, 480 U.S. 386 (1987) as a no jail no fee plea has the same coercive powers as a dismissal and is further discussed in Notre Dame Law Review, An Ethical Analysis of the Release-dismissal Agreement.

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Instead of proposing this settlement to me, Ms Neymotin and her surrogates had an affirmative ethical duty to report the ethics violation, not encourage it. As the State's Attorney has announced his retirement, ethical violations and attorney discipline will not prejudice Mr. Russell and he freely violates ethical cannons.

A term of the plea proposed by Mr. Russell is that Huminski agree to end litigation concerning the death threats he has received for 3 years thru December 2017 via the U.S. Mails and other media and to abandon his litigation regarding his right to drive with disabilities arising out of bilateral hip replacements and avascular necrosis of his joints. Besides being unethical it violates the ADA and constitutes State retaliation against the disabled for attempting to get accomodations.

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

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S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA

v. **CASE NO: 36-2017-MM-000815**

SCOTT ALAN HUMINSKI

REGIONAL COUNSEL'S AMENDED MOTION TO WITHDRAW AND REQUEST FOR THE APPOINTMENT OF PRIVATE ATTORNEY

Comes the undersigned attorney on behalf of defendant who moves the court to withdraw as counsel for defendant on account of a conflict of interest. The basis of the conflict is as follows:

1. Undersigned attorney has called the Florida Bar Attorney Ethics hotline, and has been instructed by the Florida Bar, under oral opinion #467221, that attorney should move to withdraw from this case pursuant to Florida Rules of Professional Conduct 4-1.7, because certain communications with client, some confidential and some public, have created, in attorney's opinion, a substantial risk that representation will be limited by personal interest.

2. It is well established, "Where circumstances preclude the trial court's learning whether a conflict of interest has had or will have an impermissible effect, moreover, the motion for leave to withdraw should be granted." *Young v. State*, 189 So. 3d 956, 960 (Fla. 2d DCA 2016)

Pursuant to Section 27.5303(1)(e), Florida Statutes, the undersigned certifies that there is no viable alternative to withdrawal from representation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by e-mail to the Office of the State Attorney ServiceSAO-Lee@sao.cjis20.org on January 1, 2018.

/s/ Zachary Miller
By: Zachary Miller
Assistant Regional Counsel
Fla. Bar No. 118339
2101 McGregor Blvd Ste 101
Fort Myers, FL 33901
Tel. (239) 208-6925
Fax (207) 554-1128

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY Hon. JAMES ADAMS

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as set forth in the above title to disqualify Hon. Judge Adams as this case constitutes criminal obstruction of justice, witness intimidation and witness tampering and the protective orders forming the basis for this case are criminal in nature and, as crimes, are improperly and unethically enforced in any court.

The protective orders of Sheriff Mike Scott and Scribd, Inc. have not been properly tailored to a legitimate governmental interest, are unconstitutional LIFETIME summary punishments and forbid judicial review. The zero tailoring and sweeping nature of the orders impact a broad landscape of constitutional speech and patently violate the First Amendment. See Generally Huminsi's 2DCA petition and motion for rehearing en banc. https://edca.2dca.org/DCADocs/2017/4740/174740_1619_12032017_11415996_e.pdf https://edca.2dca.org/DCADocs/2017/4740/174740_278_12232017_06293292_e.pdf

In light of the incredibly unconstitutional and outright criminal conduct set forth in these two appellate papers, no Judge should take any measures to assist or enforce the conduct of Judge Krier in the protective orders or otherwise. Hon. James Adams should recuse as he lends legitimacy to these criminal protective orders by furtherance of this litigation and refusal to read Huminski's papers. Huminski further supports this motion as follows:

1. As of this date, Huminski has received zero assistance of counsel required under the 6th Amendment and the only achievement of Huminski's counsel has been 3 attorney recusal motions, yet, knowing this trial has been scheduled in 7 days without the listing of defense witnesses, obtaining transcripts, engaging in any discovery and without counsel proffering the glimmer of one defense, the Court has scheduled a trial. This violates Huminski Due Process rights and constitutes an attempt to railroad a criminal defendant who has not had the benefit of counsel concerning trial preparation. Zero trial preparation as of the date of this paper. Furthermore, Huminski was not alerted that there was a trial scheduled until 12/28/2017 as at the last hearing this was discussed in secret to leave the Huminski ignorant of the status of the case. This surprise trial violates Huminski's rights and indicates an improper judicial motive. Court proceedings should not be scheduled to ambush a criminal defendant. Just this week, I was notified of a potential hearing prior to trial which I still have no knowledge of and it is not listed anywhere.
2. The Sheriff's protective order mandates that Huminski evade service, evade arrest, obstruct any legal duty the Sheriff has related to Huminski and engage in criminal escape if Huminski is presented with a situation where escape may be a factor.
3. Even Judge Krier expressed concern at hearing that it was difficult to serve Huminski. This is very true as she issued an order mandating evasion of the LCSO and Huminski obeyed. So obeying her orders is improper as well. This circular logic has no place in any court.
4. If there is an LCSO attempt to pull over Huminski on the roads, Huminski is mandated to initiate a high-speed chase and do anything within his power to evade contact including the use of violence. Huminski is obligated to employ any and all tactics to evade the LCSO in obedience to the protective orders. They need to be narrowly-tailored.

5. The protective orders have obstructed service to the Sheriff and Scribd., Inc. and their staffs in U.S. Bankruptcy Court under Bankruptcy Rule 9027 undermining the intent of U.S. Congress in their promulgation of Bankruptcy statutes and Rules. See filing regarding the disdain of federal jurisdiction by Judge Krier. https://judgeelizabethvkrierleecountyflcorruption.files.wordpress.com/2017/06/tro-scan013.pdf This is criminal obstruction of justice and witness intimidation. Obstruction of lawful court service is criminal. Although Judge Krier believes, "Nothing gets removed from my court – EVER". The Florida efiling portal lists "Frequently filed documents" and underneath lists "NOTICE OF REMOVAL TO U.S. DISTRICT COURT", Judge Krier lied about federal court removal, this Court should seeks to undo the wrongs of Judge Krier, not advance her illegal conduct. Recusal is warranted.
6. The protective orders have obstructed service to the and Scribd., Inc. and their staffs in Florida Second District Court of Appeal, 2d17-4740, Huminski v. Gilbert, et al., undermining the intent of the Florida legislature in their promulgation of statutes and Rules related to appeals. Obstruction of lawful court service is criminal.
7. Indeed, Huminski did not serve defendants/creditors as State and Federal law mandates because of the threats issued by Judge Krier. Her conduct is criminal and enforcement of her orders is patently unethical and possibly criminal.
8. The protective orders pose standing threats, for life, concerning Huminski's access to the Lee Court complex as Huminski is barred from "contact or communication" with the LCSO who act as security screeners and bailiffs at the courthouse. This is criminal obstruction of justice and witness intimidation/tampering.
9. Huminski re-asserts his motion to disqualify defense counsel here and points to the issues that; 1) there is no legal mechanism for transfer from Circuit to County Court, 2) Judge Krier's recusal order was back-dated

and never filed by Judge Krier, 3) There exists no valid County Court charging document, 4) the arraignment hearing of 6/29 was void ab initio as the case had been removed to federal court.

10. Below are criminal codes that the protective orders mandate Huminski violate followed by the obstruction of justice statute that has been per se violated by the issuance of the wildly vague protective orders impacting State and Federal court matters;

843.01 Resisting officer with violence to his or her person.--Whoever knowingly and willfully resists, obstructs, or opposes any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Parole Commission or any administrative aide or supervisor employed by the commission; parole and probation supervisor; county probation officer; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

843.02 Resisting officer without violence to his or her person.--Whoever shall resist, obstruct, or oppose any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Parole Commission or any administrative aide or supervisor employed by the commission; county probation officer; parole and probation supervisor; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

843.03 Obstruction by disguised person.--Whoever in any manner disguises himself or herself with intent to obstruct the due execution of the law, or with the intent to intimidate, hinder, or interrupt any officer, beverage enforcement agent, or other person in the legal performance of his or her duty or the exercise of his or her rights under the constitution or laws of this state, whether such intent is effected or not, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

843.06 Neglect or refusal to aid peace officers.--Whoever, being required in the name of the state by any officer of the Florida Highway Patrol, police officer, beverage enforcement agent, or watchman, neglects or refuses to assist him or her in the execution of his or her office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in case of the rescue or escape of a person arrested upon civil process, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

843.18 Boats; fleeing or attempting to elude a law enforcement officer.--

(1) It is unlawful for the operator of any boat plying the waters of the state, having knowledge that she or he has been directed to stop such vessel by a duly authorized law enforcement officer, willfully to refuse or fail to stop in compliance with such directive or, having stopped in knowing compliance with such a directive, willfully to flee in an attempt to elude such officer. Any person violating this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any violation of this section with respect to any vessel shall constitute such vessel as contraband which may be seized by a law enforcement agency and which shall be subject to forfeiture pursuant to ss. 932.701-932.704.

914.22 Tampering with or harassing a witness, victim, or informant; penalties.—

(1) A person who knowingly uses intimidation or physical force, or threatens another person, or attempts to do so, or engages in misleading conduct toward another person, or offers pecuniary benefit or gain to another person, with intent to cause or induce any person to:

(a) Withhold testimony, or withhold a record, document, or other object, from an official investigation or official proceeding;

(b) Alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official investigation or official proceeding;

(c) Evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official investigation or an official proceeding;

(d) Be absent from an official proceeding to which such person has been summoned by legal process;

(e) Hinder, delay, or prevent the communication to a law enforcement officer or judge of information relating to the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding; or

(f) Testify untruthfully in an official investigation or an official proceeding,

commits the crime of tampering with a witness, victim, or informant.

(2) Tampering with a witness, victim, or informant is a:

(a) Felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a misdemeanor.

(b) Felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s.775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a third degree felony.

(c) Felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a second degree felony.

(d) Felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a first degree felony or a first degree felony punishable by a term of years not exceeding life.

(e) Life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a life or capital felony.

(f) Felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the offense level of the affected official investigation or official proceeding is indeterminable or where the affected official investigation or official proceeding involves a noncriminal investigation or proceeding.

(3) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from:

(a) Attending or testifying in an official proceeding or cooperating in an official investigation;

(b) Reporting to a law enforcement officer or judge the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding;

(c) Arresting or seeking the arrest of another person in connection with an offense; or

(d) Causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or from assisting in such prosecution or proceeding;

or attempts to do so, commits the crime of harassing a witness, victim, or informant.

(4) Harassing a witness, victim, or informant is a:

(a) Misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, where the official investigation or official proceeding affected involves the investigation or prosecution of a misdemeanor.

(b) Felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a third degree felony.

(c) Felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s.775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a second degree felony.

(d) Felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a first degree felony.

(e) Felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a felony of the first degree punishable by a term of years not exceeding life or a prosecution of a life or capital felony.

(f) Felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the offense level of the affected official investigation or official proceeding is indeterminable or where the affected official investigation or official proceeding involves a noncriminal investigation or proceeding.

(5) For the purposes of this section:

(a) An official proceeding need not be pending or about to be instituted at the time of the offense; and

(b) The testimony or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(6) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance:

(a) That the official proceeding before a judge, court, grand jury, or government agency is before a judge or court of the state, a state or local grand jury, or a state agency; or

(b) That the judge is a judge of the state or that the law enforcement officer is an officer or employee of the state or a person authorized to act for or on behalf of the state or serving the state as an adviser or consultant.

WHEREFORE, Hon. James Adams should recuse as his conduct in this case furthers the crime embodied in Judge Krier's protective orders and the crimes mandated that Huminski commit by the orders.

Dated at Bonita Springs, Florida this 1st day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 1st day of January, 2018 to all parties.

-/s/- Scott Huminski

_____

Scott Huminski

Case # 17-MM-815

No. 2D17-4740

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, AZ, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

MOTION FOR REHEARING EN BANC

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656 E-mail s_huminski@live.com

MOTION FOR REHEARING EN BANC

NOW COMES, Scott Huminski ("Huminski") and moves for rehearing en banc as follows:

1. Huminski is forbidden from seeking appeal in the Court below pursuant to order as he is indigent and can not afford an attorney. See Petitioner's Supplemental Appendix at pages 1-9 and Petitioners Opening Appendix at pages 6-10. (preventing pro se filings including Notice of Appeal)
2. This petition will determine if exceptions to the Collateral Bar Rule are effective in Florida, an issue of first impression, in criminal contempt cases.
3. This appeal will determine core First Amendment rights and is a case of first impression concerning the banishment of a citizen from a county courthouse via a protective order procured by the local sheriff. See generally, Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)
4. This appeal will determine if Huminski is banished for life concerning access to public safety by a protective order prohibiting contact and communication with the only local law enforcement agency in violation of the First Amendment and Equal Protection.

5. This appeal will determine if Court orders impacting First Amendment rights have to comply with constitutional requirements of narrow tailoring and reasonable time, place and manner restrictions. See generally Petition.
6. This petition will determine if Circuit Courts must obey the removal of a case to United States District Court (Bankruptcy Court, a unit thereof) or continue to hold proceedings as was the case in the Court below.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/s/- Scott Huminski

_____

Scott Huminski
24544 Kingfish Stret
Bonita Springs FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Service

I, Scott Huminski certify that on the 22nd day of December 2017 this paper was served upon all parties of record pursuant to the Rules.

-/s/- Scott Huminski

_____

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA

v. **CASE NO: 36-2017-MM-000815**

SCOTT ALAN HUMINSKI

REGIONAL COUNSEL'S AMENDED MOTION TO WITHDRAW AND REQUEST FOR THE APPOINTMENT OF PRIVATE ATTORNEY

Comes the undersigned attorney on behalf of defendant who moves the court to withdraw as counsel for defendant on account of a conflict of interest. The basis of the conflict is as follows:

1. Undersigned attorney has called the Florida Bar Attorney Ethics hotline, and has been instructed by the Florida Bar (verification #467221) that this attorney should move to withdraw from this case, pursuant to the Florida Rules of Professional Conduct 4.17. Any further divulgence of information regarding the reason for this motion would involve impermissably divulging information protected by lawyer-client confidentiality.

2. "... Under current law, section 27.5303(1)(a) allows for a limited inquiry into a withdrawal motion caused by representation of multiple defendants whose interests are adverse. **But section 27.5303(1)(a) expressly limits the inquiry to those matters that are not 'confidential'** (Emphasis added). The assistant public defender laid out the legal basis of the conflict in the certification, provided proof that he had contacted the Florida Bar's conflict hotline, and established that he had been diligent in certifying conflict. There is no suggestion on this record that the trial court disbelieved, or had reason to disbelieve, any of these representations." *Young v. State*, 189 So. 3d 956 (Fla. 2d DCA 2016)

"The trial court departed from the essential requirements of the law by inquiring as to attorney-client privileged information as to the nature of the conflict. It was required to grant the motion to withdraw so that Mr. Young would not be forced to proceed to trial with an attorney who is 'ethically conflicted.'" *Young v. State, Id.*

3. The undersigned hereby certifies that there is no viable alternative to withdrawal from representation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by e-mail to the Office of the State Attorney ServiceSAO-Lee@sao.cjis20.org on January 1, 2018.

/s/ Zachary Miller
By: Zachary Miller
Assistant Regional Counsel
Fla. Bar No. 118339
2101 McGregor Blvd Ste 101
Fort Myers, FL 33901
Tel. (239) 208-6925
Fax (207) 554-1128

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STAY PENDING Disposition of REHEARING EN BANC

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves to stay while the 2DCA considers Huminski's motion for rehearing en banc. The relief sought in the 2DCA is dismissal of the criminal matter with prejudice as the State abandoned the Circuit Court criminal case and there was no disposition in the Circuit Court, so the instant criminal matter still exists in the Circuit Court. The State's Attorney should have dismissed the Circuit Court matter and re-filed in county.

Dated at Bonita Springs, Florida this 4th day of January, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR ORDER TO SHOW CAUSE AS TO WHY SHERIIF SCOTT SHOULD NOT BE HELD IN CRIMINAL CONTEMPT FOR OBSTRUCTION OF JUSTICE CONCERNING THESE PROCEEDINGS

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as set forth above because the protective order of Sheriff Scott makes it a crime for Huminski to participate in these proceeding as any "contact or communication" with the Sheriff or his staff is prohibited per order of Judge Krier. Huminski already moved for change of venue in an attempt to shine a sliver of Due Process upon the instant matter, to no avail. Huminski's motion to recuse this Court details some of the crimes that Sheriff Scott has perpetrated upon State and Federal Courts.

Threats, duress, coercion and outright crime targeting litigants by the Sheriff have no place in the operation of the justice system, is conduct prejudicial to the administration of justice and an illegal power grab concerning matters that are reserved for this Court and the judiciary. Who can or can not attend court proceedings and participate as a party to Court proceedings. The Sheriff has already obstructed the 2DCA and U.S. District Court in a belief he is superior to the

U.S. Congress and the Florida legislature, it is time to put an end to his obstruction, witness tampering and witness intimidation, FELONIES, in the instant matter.

Huminski refers the Court to the record in 2D17-4740 in support of his undisputed contention that the Sheriff has engaged in felony crimes targeting the justice system in this and other proceedings, State and Federal. The State brings this case with unclean hands and with a full-on support of the Sheriff's criminal manipulation and interference with Court matters.

Dated at Bonita Springs, Florida this 4th day of January, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR BRADY PRODUCTION OF DOCUMENTS

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves that the State produce all documents authored by the State's Attorney that initiated criminal proceedings in Circuit and County Courts, informations, indictments and any other papers originating from the State's Attorneys office related to this criminal case, notwithstanding Huminski's motion for bill of particulars. Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitley, 514 U.S. 419 (1995), Strickler v. Greene, 527 U.S. 263, 283, 119 S.Ct. 1936, 1949 (1999).

The record indicates that the County Court case was not brought lawfully by the State's Attorney and that there was no disposition of the Circuit Court matter by the Circuit Court or via a voluntary dismissal by the State's Attorney. There appear to be two active identical criminal cases quite contrary to any notion of Due Process, equity or fair play burdening the Courts and defendant.

Dated at Bonita Springs, Florida this 4th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street

Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS, NO CHARGING INFORMATION

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as above and asserting that criminal charges must be brought under oath upon office of the State's Attorney. There does not exist a validly initiated criminal case. The Court is proceeding absent subject matter and personal jurisdiction. See attached proper and legal criminal information. This case was brought in bad faith and is frivolous.

Dated at Bonita Springs, Florida this 4th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA

vs.

TERRANCE L. IRONS

CASE NO: 17-MM-000820 - (ZMG) (ALA)

Race: Black **Sex:** Male
D.O.B.:4/8/1983
SS #: [redacted]

INFORMATION FOR:

1) Conservation Violate Game Fish Rules, F.S. 379.401, Second Degree Misdemeanor
2) Conservation Violate Game Fish Rules, F.S. 379.401, Second Degree Misdemeanor

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

STEPHEN B. RUSSELL, State Attorney of the Twentieth Judicial Circuit of the STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, prosecuting for the STATE OF FLORIDA, in the County of Lee under oath information makes that Terrance L. Irons,

Count(s):

1. On or about June 28, 2017 in Lee County, Florida, did unlawfully violate a rule, regulation, or order of the Florida Fish and Wildlife Conservation Commission, to wit: Size limit-Sheepshead, contrary to F.S. 379.401; F.A.C. 68B-59.003(1),

2. On or about June 28, 2017 in Lee County, Florida, did unlawfully violate a rule, regulation, or order of the Florida Fish and Wildlife Conservation Commission, to wit: Size limit-Snapper, contrary to F.S. 379.401; F.A.C. 68B-14.0035,

against the peace and dignity of the STATE OF FLORIDA,

STEPHEN B. RUSSELL
STATE ATTORNEY

BY: _____
Amanda Lynn Astor
Assistant State Attorney
Florida Bar Number 0124926
2000 Main Street, 6th Floor
Fort Myers, Florida 33901
(239) 533-1000
eService: ServiceSAO-LEE@sao.cjis20.org

STATE OF FLORIDA, COUNTY OF LEE

Personally appeared before me, Amanda Lynn Astor, Assistant State Attorney of the Twentieth Judicial Circuit of the State of Florida, being personally known to me, who being duly sworn, says that this information is filed in good faith and says that the allegations as set forth in the foregoing information, which if true, would constitute the offense therein charged.

_____
Amanda Lynn Astor

Sworn to and Subscribed before me this 12 day of July, 2017, by Amanda Lynn Astor, personally known to me.

HOPE DARDA
Commission # FF 191796
Expires March 7, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

_____ My commission expires: _____
Notary Public

RE: Terrance L. Irons, 17-MM-000820

OFFICE OF THE STATE ATTORNEY
TWENTIETH JUDICIAL CIRCUIT OF FLORIDA
NOTICE TO THE CLERK

TO: Clerk of the Courts, Lee County

RE: Terrance L. Irons, defendant Court Case Number: 17-MM-000820

Race: Black Sex: Male

D.O.B.: 4/8/1983 SSN: [redacted]

Date of Arrest:

Agency Booking Report No.
FWSW17OFF011112

OBTS:

Agency Name: Fish and Wildlife Commission

BOOKING CHARGES

Count(s):

Number of Counts: 2 - Conservation Viol Level 2 Fwc Rule Or Reg 1st Offense, F.S. 379.401 (2b1), Second Degree Misdemeanor

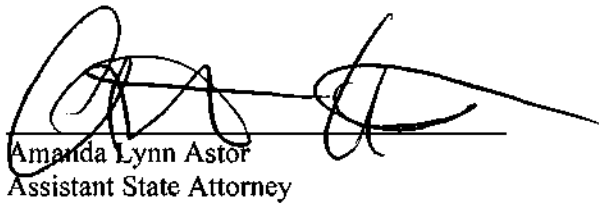
SAO DISPOSITION

Count(s):

1. Filed as Charged: 379.401
   Conservation Violate Game Fish Rules
   Second Degree Misdemeanor
2. Filed as Charged: 379.401
   Conservation Violate Game Fish Rules
   Second Degree Misdemeanor

Distribution:
Clerk of Court
Defendant / Defense Counsel -
Sheriff's Department - Jail
Arresting Agency - Fish and Wildlife Commission
SAO File

STEPHEN B. RUSSELL
STATE ATTORNEY

Date: 7/12/17 BY: 

Amanda Lynn Astor
Assistant State Attorney
Florida Bar Number 0124926
2000 Main Street, 6th Floor
Fort Myers, Florida 33901
(239) 533-1000
eService: ServiceSAO-LEE@sao.cjis20.org

Distribution:
Clerk of Court
Defendant / Defense Counsel -
Sheriff's Department - Jail
Arresting Agency - Fish and Wildlife Commission
SAO File

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS, SHOW CAUSE ORDER FRAUD

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as above because a copy of the show cause order was modified by insertion of a County Court docket number and the non-original copy with hand-written fraudulent modifications was filed in this matter on 6/30/2017. This is fraud and not what Judge Krier signed. The clerk ***can not modify*** Court orders after they are issued. This is just as corrupt as the back-dating of Judge Krier's recusal order. The clerk can not represent that a valid show cause order exists in this case. The conduct of the clerk is criminal. The Lee Clerk's office is hopelessly corrupt.

After notifying current counsel of the fraud in this case, he replied that the system is corrupt and nothing can be done. My obsession to whistle-blow and expose the corruption is why both the public defender and conflict counsel had to withdraw. Exposure of courthouse corruption conflicts with the interests of their other clients who may just wish to accept the corruption and enter a plea. This will likely be the case with any private counsel appointed as well.

See original order attached.

Dated at Bonita Springs, Florida this 5th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Service

Copies of this document and any attachment(s) was served via the court's efiling system on this 5th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

CIVIL CASE CAPTION

SCOTT HUMINSKI,
Plaintiff
v.
TOWN OF Gilbert, AZ, et al

Civil Case No.: 17CA421

Criminal Case No. _____

DESCRIPTION OF SCOTT HUMINSKI	
GENDER: Male RACE: Caucasian HEIGHT: approx. 5 ft 10 in. WEIGHT: ? DOB: 12/1/59	EYE COLOR: ? HAIR COLOR: Brown LAST KNOWN ADDRESS: 24544 Kingfish St. Bonita Springs, FL 34134

ORDER TO SHOW CAUSE

This cause comes before the court for review based upon the alleged conduct of SCOTT HUMINSKI for the issuance of an Order to Show Cause directed to SCOTT HUMINSKI for violation of the Orders set forth below copies of which are attached hereto and made a part hereof.

The Orders that SCOTT HUMINSKI is alleged to be in violation of are:

DATE executed by Court	CASE No.	ORDER TITLE
4/19/17	17CA421	Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order (specifically Paragraphs 1, 2 & 7) – attached hereto as Exhibit A
4/19/17	17CA421	Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STRIKE, SHOW CAUSE ORDER

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as above because of the reasons set forth in Huminski's motion filed today pointing out that the order is fraudulent and modified and that the order mentions attachments which do not exist. The fraudulent show cause order is criminal.

Dated at Bonita Springs, Florida this 5th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Service

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE STATE OF FLORIDA
IN AND FOR LEE COUNTY

STATE OF FLORIDA

vs. CASE NO. 2017-MM-815

Scott Alan Huminski
_____/

NOTICE OF APPEARANCE, WAIVER OF ARRAIGNMENT, WRITTEN PLEA OF NOT GUILTY, AND DEMAND FOR DISCOVERY

COMES NOW, Edward Kelly Office of Criminal Conflict and Civil Regional Counsel, and hereby enters an appearance on behalf of Scott Alan Huminski.

WAVIER OF ARRAIGNMENT. The Defendant, by and through the undersigned attorney, hereby waives the arraignment and requests a jury trial in the above styled action.

WRITTEN PLEA OF NOT GUILTY. The Defendant enters a written plea of Not Guilty pursuant to Rules 3.160(a) and 3.170(a), Fla.R.Crim.P.

DEMAND FOR DISCOVERY. The Defendant demands discovery pursuant to Rule 3.220, Fla.R.Crim.P.

I HEREBY CERTIFY that the original of the foregoing has been furnished to the parties listed below on 01/08/2018:

Office of the State Attorney

/s/ Edward Kelly

Edward Kelly, FL Bar No.871818
Office of Criminal Conflict & Civil Regional Counsel
2101 McGregor Blvd Ste 101
Fort Myers, FL 33901
(239) 208-6925
ekelly@flrc2.org

PD

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	01/08/2018	

Attorney: AT Miller, Zachary P.

APPEARANCE
- ____ Failed to Appear
- ____ Present w/o Attorney
- X Present w/ Attorney
- ____ Present by Attorney
- ____ Present w/ Interpreter
- ____ Interpreter Services Requested
  Language _____
- ____ Victim/Other _____

PLEA
- ____ Guilty
- ____ Not Guilty
- ____ Nolo Contender
- ____ Lesser Offense
  _____
  Degree _____
  Statute _____

ADJUDICATION
- ____ Withheld by Judge
- ____ Adjudicated Guilty
- ____ Withheld by Clerk
  _____

VERDICT
- ____ Guilty by Judge
- ____ Not Guilty by Judge
- ____ Guilty by Jury
- ____ Not Guilty by Jury
- ____ Mistrial
  _____

DISPOSITION
- ____ Acquitted
- ____ Nolle Pros
- ____ No Information
- ____ Dismissed
- ____ Adm.Dismissed
- ____ Merge & Dismiss

SENTENCE
- ____ Probation Reporting _____ DD/MM/YY
- ____ Consecutive/Concurrent with _____
- ____ One Time Cost $_____ Waive COS $_____
- ____ Report to Probation Today or Upon Release Within _____
- ____ Probation may terminate early when conditions are met
- ____ May Transfer Probation to _____
- ____ May Report to Probation and/or Instruct by Mail
- ____ Ignition Interlock Device _____ DD/MM/YY
- ____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
- ____ Statutory Exception to Vehicle Impound
  ___ Does Not Own Vehicle ____ Shared Vehicle
  ____Other_____
- ____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
- ____ No Possession or Consumption of Alcohol or Illicit Substances
- ____ DUI School - Follow recommendations/Phase ____ I ____ II
  ____ School to Determine which Phase
  ____ Sign up w/in _____ days
- ____ Traffic School 4 Hr / 8Hr / 12 Hr
- ____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
- ____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
- ____ Sign up for Batterer's Intervention Program w/in 30 Days
- ____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
- ____ Attend & Complete Program_____
- ____ DNA Testing Collected _____ in Court _____ at LCJ
- ____ Other Testing _____ HIV _____ STD _____
- ____ Defendant Advised of Habitual and/or Felony Status

- ____ Jail Time _____ DD/MM/YY
- ____ Consecutive/Concurrent with _____
- ____ Weekend Time Fri 6pm to Sun 6pm
- ____ Beginning _____
- ____ Day Work Program* _____ Days
  ___Minimum ___ day(s) a week ___ consecutive weeks
- ____ Credit Time Served _____DD/MM/YY
- ____ Credit Time Served Applied to ___ Straight Time
  ___ Weekends ___ Day Work Program
- ____ Defendant Remanded _____ Sentence Suspended
- ____ DL Suspended/Revoked _____ DD/MM/YY
- ____ Spec. Conditions - Drive for Work/Business purposes
- ____ Show Valid Driver's License within _____
- ____ Produced Valid Driver's License in Court
- ____ Community Service _____ Hours and/or Pay $_____
- ____ Must complete _____ hours of community service before buyout
- ____ Show Proof of Com. Service to Clerk w/in _____
- ____ Stay Away from arrest location _____
- ____ No Contact with victim _____
- ____ State Orally Amends Charge in Open Court
- ____ Formal Filing of Information is Waived
- ____ Information Filed in Open Court
- ____ Successfully Completed Pretrial Diversion Program
- ____ Judicial Warning
- ____ Defendant Accepted DV Diversion
- ____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to 2.13.18

MANDATORY COURT APPEARANCE

For _____ AR _____ DS ___X___ TR _____ DA _____ DD _____ DT _____ RH

Time 1:00 AM (PM) Court Room 4A

____Speedy Trial Waived ____ Speedy Trial Tolled

(JRA) ____ HAS ____MEG ____ZMG ____DSG ____JMG ____TPP ____ABH _____

____ Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** _____

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

ORDER / COMMITMENT FORM **COUNTY COURT, LEE COUNTY, FLORIDA**

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge ____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	**Issuing Agency**	**Court Date**	**Court Clerk**
	OTH	01/08/2018	

FINE ASSESSMENTS (statutes indicated)
____ Fine $____ (775.083)
____ 5% Surcharge $____ (938.04)

MANDATORY ASSESSMENTS
____ Court Costs (Include Crime Stoppers & Crime Prevention) (318.18 / 775.083 / 938.01 / 938.03 / 938.05 / 938.06 / 939.185)
__ $220.00 __ Other $____
If Ordered Under - Reason:
____
____ $33.00 Certain Traffic Offense Court Cost (318.17 / 318.18)
____ $135.00 DUI Court Costs (938.07)
____ $70.00 Reckless Driving Court Costs (318.18 / 316.192)
____ $65.00 Racing Court Costs (318.18)
____ $5.00 Leaving the Scene Court Costs (316.061)
____ $195.00 BUI Court Costs (938.07 / 327.35)
____ $201.00 Domestic Violence Trust Fund (938.08)
____ $151.00 Rape Crisis Trust Fund (938.085)
____ $151.00 Crimes Against Minors (938.10)
____ $5000.00 Civil Penalty (796.07)
____ $40.00 Contested By Nonprevailing Party Fee (34.045)

DISCRETIONARY ASSESSMENTS
____ $100.00 FDLE Trust Fund/Statewide Crime Lab (938.25)
____ Investigative Fee $____ to
to __ FDLE __ FMP __ LCSO __ Statewide Pros.
__ Other ____ (938.27)
____ Worthless Check Diversion Fee $____ (832.08)
____ Diversion Cost of Supervision $____ (948.09)

Pay Within ____ DD/MM/YY
____
____
____ Upon release from In-Custody

MOTION HEARINGS
____ Revoke Bond ____ Reinstate Bond
____ Set/Reduce/Increase Bond to ____
____ Suppress ___ Dismiss ___ Continue
____ Expunge/Seal (Outstanding monetary obligations must be addressed in court and the $42.00 fee must be paid to the Clerk's office before the case is officially expunged/sealed.)
____ Withdraw Plea
X Withdraw as Counsel
____ Modify No Contact Order ____ Lift No Contact Order
____ Other ____
Motion Result (Circle One): (Granted) Denied Reserves Ruling

____ State & Defense Stipulate to Suppress the Breath Test Results
____ State Amends Information from BAL of .15 or Above to .08
____ Clerk to Update Case w/ Defendants Information Listed

ATTORNEY FEES & SURCHARGES
____ $50.00 Cost of Prosecution (938.27)
____ $50.00 Public Def Application Fee (27.52) *
Additional Application Fees $____
(Must be addressed on the record)
____ Defense Attorney Costs at Conviction (938.29)
__ $50.00 __ Other $____

RESTITUTION
____ Minimum Payment of $____ per Month
to ____
__ As a Condition of Probation
____ Restitution Ordered $____ to
____
____ Restitution Reduced to Judgment
____ Court Orders Restitution - Reserves on Amount

DISPOSITION OF MONETARY OBLIGATIONS
____ May Convert Fine/Cost ____ All or In Part to Community Service at $10 per Hour
__ Defendant Advised of Notary Requirement for Community Service (For Non-Probationary Sentences)
____ Credit Time Served for Fines/Costs/Fees ____
____ Monetary Obligations Referred to Clerk of Court Collections
____ Monetary Obligations Reduced to Judgment __ Previous Only
____ Monetary Obligations (VOP) __ Carried Forward
____ Defendant to sign up for Payment Plan
____ First Payment Due within 30 Days
____ Waive all Additional Mandatory Costs

WARRANTS/BONDS
____ BW/D6 Ordered Balance $____
____ Issue Bench Warrant ____ MM/DD/YYYY
____ Bond Estreature $____
____ Non-Compliance/Non-Appearance $____
____ Set Aside BW/D6 $____
____ Set Aside Estreature $____
____ Cash Bond to pay Fine/Cost including ____
____ Return Cash Bond to Depositor
____
____ Conflicting Appearance Date Addressed in Court

REVOCATION HEARINGS
____ Defendant Pleas Guilty/Admits Allegations
____ Defendant Pleas Not Guilty/Denies Allegations
____ Adjudicated Guilty ____ Adjudication Withheld
____ Probation Reinstated ____
____ Probation Modified ____
____ Same Terms and Conditions to Apply
____ Probation Revoked & Terminated ____ Probation Terminated
____ COS Fees Due & Owing in the amount $____

Pre-sentence Investigation/Sentencing ____ Full/Partial

If probation has not been imposed, you must pay your financial obligation within the time allowed by the Judge or sign up for the payment plan option offered by the Clerk of Court. If sentenced to Probation, you must adhere to standards as directed.
Failure to comply with any part of this order may result in a suspension of your driver license privilege and/or warrant being issued for your arrest (322.245).
Unpaid financial obligations still remaining 90 days after payment due date will be referred by the Clerk of Court to a collection agency and an additional fee of up to 40% of the outstanding balance owed will be added at that time (28.246).
Mandatory assessments are imposed and shall be included in the judgment without regard to whether the assessment was announced in open court.

Asst. State Attorney M. Hensel | A. Kuusar [signature] Bar No. 1003007/26999 Date ____

Judge James R Adams [signature] Date ____

Rev.05/05/2017

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

PRE-TRIAL OMNIBUS MOTION AND REQUEST FOR HEARING

NOW COMES, Scott Huminski ("Huminski"), and, moves as set borth in the below attached motions already filed in this matter, but never heard.

Huminski has been stripped of assigned counsel only one month prior to hearing without his consent.

Dated at Bonita Springs, Florida this 9th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 9th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS FOR VIOLATION OF CONFRONTATION CLAUSE

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss this matter as the authors of the orders Huminski is allegedly in contempt of, Judge Krier and Sheriff Scott, his accusors, can not be confronted as there exists no contact and no communication orders in Circuit Court. 17-CA-421. This violates Huminski's right to confrontation under the 6th Amendment.

Examination of Judge Krier or Sheriff Scott constitutes criminal contempt which the prosecution has showed an eagerness to pursue.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR TRANSCRIPT OF ARRAIGNMENT HEARING, 6/29/2017

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and. moves for the Court/Clerk to supply him a transcript of the arraignment proceedings of 6/29/2017 or to allow Huminski to use the original audio, which he is in possession of at trial.

Dated at Bonita Springs, Florida this 26th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS, CIRCUIT COURT CASE WAS VOID FOR WANT OF JURISDICTION

NOW COMES, Scott Huminski ("Huminski"), and, hereby moves to dismiss because the Circuit Court criminal matter was void ab initio for want of jurisdiction and the so-called *transfer* to county court is infirm as it is impossible to transfer a legal nullity and further there exists no statute, court rule or authority in Florida to initiated a criminal case via an illegal *transfer*. See attached.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 22nd day of December, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	COUNTY # 17-MM-815
DEFENDANTS.	)	

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICITION

NOW COMES, Scott Huminski ("Huminski"), and, notwithstanding his objection that this Court has no jurisdiction and without waiving jurisdictional issues, moves to dismiss this matter as misdemeanors are the sole jurisdiction of County Courts. Circuit Courts only have jurisdiction of misdemeanors accompanied by a felony charge. Apparently, the Court clerk concurs with this precept as a County Court case has been docketed State v. Huminski with a "MM" designation which only exists in County Court and no criminal case exists for the Circuit Court in the 20th Circuit case search utility. A County Court case does exist. E-Filings made by Huminski have electronically been acknowledged as filed in the County Court

26.012 Jurisdiction of Circuit Court

(d) Of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged;

34.01 Jurisdiction of County Court

(1)(a) In all misdemeanor cases not cognizable by the circuit courts;

The Supreme Court has recently addressed the issue of proper venue for contempts. The Supreme Court has explained that criminal contempt proceedings arising out of civil litigation are between the public and the defendant, and are not a part of the original cause. Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787, 804 (1987) (reversing criminal contempt judgment against defendants found to have aided or abetted violations of permanent injunction prohibiting infringement of manufacturer's trademark). Concurring, Justice Scalia also noted that the trial court itself cannot prosecute constructive criminal contempt charges. Id. at 816-19 (Scalia, J.,

concurring); Crowe v. Smith, 151 F 3d 217, 227-28 (5th Cir. 1998) ("where criminal contempt is involved, there must actually be an independent prosecutor of some kind, because the district court is not constitutionally competent to fulfill that role on its own"). A motion to show cause *sua sponte* authored by the Court initiated this matter and is the charging document. The constitution demands that the charging document be drafted by the State's Attorney. The charging document in this case is void for lack of compliance with the constitution.

Dated at Bonita Springs, Florida this 1st day of August 2017.

-/s/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was e-filed and electronically served, or hand delivered or mailed via First Class Mail , prepaid to the State's Attorney's Office, 2000 Main St., 6th Floor, Ft Myers, Fl 33901 on this 1st day of August, 2017.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS

NOW COMES, Scott Huminski ("Huminski"), and. moves to dismiss grouded upon the reasons set forth in Huminski's petition before the 2nd District Court of Appeal. See attached and clickable docket below and online at,

https://edca.2dca.org/Docket.aspx?CaseID=105779

	Date	Type	Pleading	Note
	12/20/2017	Disposition	Denied	VILLANTI, KHOUZAM,
	12/20/2017	Order	denial of prohibition	
	12/20/2017	Order	Deny Miscellaneous Motion-79a	
	12/20/2017	Order	Deny Miscellaneous Motion-79a	
	12/20/2017	Order	Order Denying Stay	
	12/20/2017	Petition	SUPPLEMENTAL APPENDIX OR ATTACHMENT	SUPPLEMENT TO PETIT CONFRONTATION CLA
	12/18/2017	Motion	Miscellaneous Motion	SUPPLEMENT TO MOTI
	12/18/2017	Petition	SUPPLEMENTAL APPENDIX OR ATTACHMENT	PETITIONER'S OPENIN
	12/14/2017	Event	Certificate	SUPPLEMENTAL CERTI
	12/11/2017	Motion	Motion for Appointment of Counsel	SECOND MOTION TO R COUNSEL
	12/11/2017	Notice	Notice	NOTICE OF ATTEMPTE

1

eFiled-Lee County Clerk of Courts Page 1 0

				COURT OF APPEAL FEE
	12/11/2017	Receipt	Filing Fee $300	: Receipt: 2017 - 1018
	12/08/2017	Event	Certificate	AMENDED CERTIFICAT
	12/08/2017	Notice	Notice of Related Case	
	12/04/2017	Order	deny motion until fee satisfied	
	12/04/2017	Letter		
	12/04/2017	Order	fee - writ; pro se	
	12/04/2017	Order	c of s; mailing addresses	
	12/04/2017	Petition	Petition Filed	
	12/03/2017	Motion	Emergency Motion To Stay	
	12/03/2017	Motion	Miscellaneous Motion	
	12/03/2017	Motion	Motion for Appointment of Counsel	
	12/03/2017	Petition	ORIGINAL APPENDIX OR ATTACHMENT	

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

No. 2D17-

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, ARIZONA, ET AL.,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

PETITION FOR A WRIT OF PROHIBITION AND A WRIT OF MANDAMUS AND A WRIT OF CORAM NOBIS AND QUO WARRANTO– ALL WRITS JURISDICTION

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656
E-mail s huminski@live.com

Zachary Miller,esq
Regional Conflict
Counsel
zmiller@flrc2.org

BASIS FOR INVOKING JURISDICTION

This Court has original jurisdiction to issue writs of prohibition and mandamus under Article V, section 4(b)(3) of the Florida Constitution, and under Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure.

Huminski also asserts jurisdiction for writ of quo warranto and coram nobis and under "all-writs" jurisdiction. Fla. Const. art. V, §§ 3(b), 4(b).

PREFACE

This petition is related to conduct of recused judge Hon. Elizabeth Krier and is not related to the acts/orders of the currently presiding judge, Hon. Michael McHugh. Petitioner's Appendix filed herewith consists of filed documents in the Circuit Court except for the Complaint to the Florida Commission on Ethics with attachments which is the first document set forth in the appendix. The Appendix mirrors the chronology of the Circuit Court docket except with respect to the ethics complaint. Appendix page numbers are encircled and handwritten.

ISSUES PRESENTED

1. Whether a no "contact and communication" protective order concerning the Lee Sheriff's Office with no exceptions and zero narrow tailoring to a legitimate governmental interest is void ab initio for violation of First

Amendment precepts and Equal Protection and Enforcement of the Laws and constitutes a forbidden prior restraint.

2. Whether acts, orders and rulings of the Court Below are *Void Ab Initio* for lack of all jurisdiction after the case was removed to United States Bankruptcy Court divesting it of all jurisdiction until the matter was remanded back to State court.
3. Whether the criminal prosecution initiated in this matter and litigated in the Circuit Court until 8/14/2017 is *void ab initio* as it is predicated upon alleged violation of the Sheriff's protective order which was a legal nullity from its inception. All acts and orders of Judge Krier were filed in the Circuit Court in her capacity as a Circuit Court judge.
4. Whether the criminal prosecution is barred by two exceptions to the Collateral Bar Rule/Doctrine as the protective order is transparently unconstitutional / illegal and the order requires the surrender of constitutional rights.
5. Whether the Circuit Court criminal matter has not been concluded in a lawful manner, conversely, it has been abandoned by the State's Attorney and should be dismissed with prejudice for want of prosecution as it is the duty of the State's Attorney to see to it that the cases criminally prosecuted by the State's Attorney should be disposed of in a legal and regular manner

without lingering in uncertainty and burdening the litigants and the Courts as finality is the goal of all court matters.

6. Whether the State's Attorney having two identical prosecutions pending in the Circuit Court and County Court with the same allegations (contempt) and grounded upon the same fact violates double jeopardy.

FACT FROM PROCEEDINGS BELOW

This matter was initiated in the Circuit Court grounded upon Scott Huminski's ("Huminski") investigation and State FOIA requests concerning death threats Huminski had received via the U.S. Mails. Lee Sheriff Mike Scott requested and was granted a protective order barring all communication and contact from Huminski. A criminal contempt prosecution was initiated in the Circuit Court for Huminski's alleged contact with the Sheriff via email and via the internet. After several months of litigation of the criminal matter in Circuit Court, some Circuit Court files were placed by the Clerk under a County Court docket without input from the State's Attorney. The Circuit Court criminal matter was never concluded and no statute or court rule empowers the clerk's office to "transfer" a case and initiate a new criminal prosecution. The power to bring a criminal case is reserved for the State's Attorney. The criminal case remains in the Circuit Court and has never been concluded, just apparently abandoned by the State's Attorney. The

filing of a second identical criminal matter in County Court by the clerk violates double jeopardy. The State's Attorney's duty is to bring actions in the correct court, not every Court in the 20th Circuit.

The Sheriff's Protective Order

The Court below granted a motion for protective order by Lee Sheriff Mike Scott. See Petitioner's Appendix ("PETAPP") at page(s) 8-10.

The protective order forbids all contact with the Sheriff and his staff effectively:

1. Excluding Huminski from all public safety service and law enforcement in his town of residence, Bonita Springs, FL without exception. See County Court Order narrowly tailoring a similar pre-trial order with vastly vague and overbroad terms. (See PETAPP at line(s) 6-7)
2. Forbidding Huminski's First Amendment reporting of crime. See PETAPP at line(s) 113.
3. Forbidding Huminski's First Amendment core political criticism of the Sheriff to likely political opponents (members of the Sheriff's Department).

4. Forbidding Service of the Sheriff in a matter pending before the United States Bankruptcy Court whereby the Sheriff and Huminski were both *pro se*. Service was mandated by bankruptcy rule 9027.
5. Forbidding/threatening Huminski concerning his attendance at the Lee Courthouse complex whereby prohibited contact has to be made with the Sheriff's staff who perform security screening and act as bailiffs. Huminski's individual right to courthouse access has been determined in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) and denied once again in the Sheriff's protective order.
6. Huminski is barred from asking the Circuit Court to hear his motions to vacate by the terms of the protective order.
7. Huminski's banishment from the lee courthouse and the protective order's prohibition against filing present an exhaustion of all redress to the indigent Huminski in the Circuit Court who was appointed a public defender by the Circuit Court and is now represented by regional conflict counsel.
8. Huminski is forbidden from serving this petition upon the Sheriff under the terms of the protective order, effectively obstructing justice. See motion to enjoin protective order to allow service filed herewith.

The case below has had all judges assigned disqualify and the last act of the Circuit Court except for multiple recusals and re-assignment orders was on 8/8/2017. Currently, the Chief Judge is assigned to the case, however, Huminski is forbidden a hearing on his pending motions to vacate under the terms of the sheriff's protective order.

ALL ACTS TAKEN WHILE CASE WAS REMOVED TO U.S. BANKRUPTCY COURT ARE VOID AB INITIO

The case below was removed to the United States Bankruptcy Court at 5:02 p.m. on 6/26/2017 and was remanded back to State Court via a federal order docketed in the Circuit Court on 8/8/2017. See PETAPP at line(s) 28-30, 91-94. All acts and orders taken by the Circuit Court in defiance of the federal court's jurisdiction are VOID AB INITIO, ironically, even the recusal of Judge Krier and arraignment of 6/29/2017. (See PETAPP at pages 60-74, 76-82)

MEMORANDUM OF LAW

Removal to Bankruptcy Court

The removal to Bankrutcy Court is a self-executing function of federal law and plainly obvious in the Dockets from the Court Below and the United States Bankruptcy Court. Absent from either the State or Federal record is any motion to remand the case under federal abstention doctrines by the defendants or objection to

the removal. Any objection to federal jurisdiction or removal not pled in the bankruptcy court is waived. 28 U.S.C. §1447(c) All acts and orders of the Circuit Court were entered in a complete absence of jurisdiction as removal divested jurisdiction from the State Court.

At hearing on 6/29/2017, Hon. Judge Krier could not have been more emphatic by stating that "Nothing gets removed from my court -- ever". As all litigants are aware, any claim mentioning the violation of a federal right/privilege can and usually is removed to federal court by insurance defense attorneys under federal question jurisdiction and bankruptcy removal under Rule 9027 is quite common. The Circuit Court's, Judge Krier presiding, position on federal removal is bewildering.

Court Orders – Collateral Bar Rule

A transparently invalid order cannot form the basis for a contempt citation. See 3 Wright, Federal Practice & Procedure Sec. 702 at 815 n. 17 (1982) (collateral bar rule does not apply if the order violated was transparently unconstitutional); State ex rel. Superior Ct. of Snohomish County v. Sperry, 79 Wash.2d 69, 483 P.2d 608 (1971), cert. denied, 404 U.S. 939, 92 S.Ct. 272, 30 L.Ed.2d 252 (contempt citation improper because order violated was transparently void); see also United States v. Dickinson, 465 F.2d 496, 509-10 (5th Cir.1972) (recognizing exception to

collateral bar rule for transparently invalid orders); Ex parte Purvis, 382 So.2d 512, 514 (Ala.1980) (same).

Court orders are not sacrosanct. See Cobbledick v. United States, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940); accord United States v. Ryan, 402 U.S. 530, 91 S.Ct. 1580, 29 L.Ed.2d 85 (1971). In Cobbledick, the Supreme Court ruled that when a motion to quash a subpoena is denied, the movant may either obey its commands or violate them, and, if cited for contempt, properly contest its validity in the contempt proceeding. Cf. Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972); Maness v. Meyers, 419 U.S. 449, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975) These cases involve orders that require the surrender of irretrievable rights and establish that blind obedience to all court orders is not required. See also Nebraska Press Assoc., 427 U.S. at 559, 96 S.Ct. at 2802 ("A prior restraint ... has an immediate and irreversible sanction.") An appeal can not undo the immediate constitutional injury of a prior restraint such as we have in the instant matter. The instant matter does constitute a prior restraint against core political criticism of a politician (Sheriff) and a prior restraint concerning reporting crime to local law enforcement. An order entered by a court clearly without jurisdiction over the contemnors or the subject matter is not protected by the collateral bar rule. United Mine Workers, 330 U.S. at 293, 67 S.Ct. at 695 Were this not the case, a court could wield power over parties or matters obviously not within its authority--a concept

inconsistent with the notion that the judiciary may exercise only those powers entrusted to it by law. The Circuit Court did issue orders and held hearings in a removed case and in violation of the automatic stay of bankruptcy.

Huminski's email publications to large audiences on the topics of report of terrorist death threats originating in Arizona and transmitted into Lee County, report of crime to law enforcement and criticism of politician/sheriff are pure speech and core political protected expression. The principal purpose of the First Amendment's guaranty is to prevent prior restraints. Near, 283 U.S. at 713, 51 S.Ct. at 630 The Supreme Court has declared: "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1577, 29 L.Ed.2d 1 (1971); see also Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963) When, as here, the prior restraint impinges upon the right of the press (Huminski was acknowledge as a Citizen-Reporter, Huminski v. Corsones) to communicate news and involves expression in the form of pure speech--speech not connected with any conduct--the presumption of unconstitutionality is virtually insurmountable. Nebraska Press Assoc., 427 U.S. at 558, 570, 96 S.Ct. at 2802, 2808 (White, J., concurring) Huminski notes his status as a citizen-reporter. See Generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)

The Supreme Court strongly protects "core political speech" as a "value that occupies the highest, most protected position" in the hierarchy of constitutionally-protected speech. R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 422 (1992) (Stevens, J., concurring). See also Burson v. Freeman, 504 U.S. 191, 217 (1992). In defining the core political speech worthy of this elevated level of protection, the Court has broadly included "interactive communication concerning political change.", the essence of Huminski's communications with the sheriff. Meyer v. Grant, 486 U.S. 414, 422 (1988). Huminski's electronic communications objected to the Sheriff's position on interstate terrorist death threats. Huminski has also published his opposition to the sheriff's policies as signage at his home and on the internet. For example, see https://www.youtube.com/watch?v=-dJYlLMBLVk and see generally https://www.youtube.com/channel/UC-v4hdd9Gi-cN3GxkJIMpF9w and see a google search on the petitioner.

Political speech gets higher protection because it is an essential part of the democratic process. Indeed, evaluating a statute that would have restricted all anonymous leafleting in opposition to a proposed tax, the Supreme Court reflected on the importance of specifically protecting such political speech which applies equally here to Huminski's speech regarding corruption, misconduct and oppression by police and government actors who support the death threats received by Huminski. The First Amendment affords the broadest protection to such political

expression in order "to assure [the]unfettered interchange of ideas for the bringing about of political and social changes desired by the people." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 346-47 (1995), quoting Roth v. United States, 354 U.S. 476, 484 (1957)

Recently, the Supreme Court made it abundantly clear that laws or in this case a court order that burden political speech are subject to strict scrutiny review. Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010), invalidated a federal statute that barred certain independent corporate expenditures for electioneering communications. Highlighting the primacy of political speech, the Court noted that "political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction' furthers a compelling interest and is narrowly tailored to achieve that interest.'" Citizens United, 558 U.S. at 340 (quoting Federal Election Comm'n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 464 (2007)). There exists no compelling reason to silence Huminski's reporting of crime or criticism of the sheriff.

The order and the threats from the Sheriff/Court under State law/Common Law cut off the "unfettered interchange of ideas" in an important place for individual political expression--the Courts and internet. McIntyre, 514 U.S. at 346-

47. Treading upon core First Amendment expression must be accomplished in as minimally a restrictive manner as possible, and should never be done so in the form of an absolute bar on all political expression as is the case at Bar whereby criticism, reporting of crime and civil/bankruptcy litigation has been viewed as a per se criminal activity by the State Court. See Bd. of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 574 (1987) (invalidating a statute because it "reache[d] the universe of expressive activity, and, by prohibiting all protected expression, purport[ed] to create a virtual 'First Amendment Free Zone.' ") (emphasis in original).

Validating a sweeping ban on core political speech would seriously undermine the Supreme Court's stated goal of safeguarding the democratic process. The alleged contact with the Sheriff made by Huminski were related to reporting crime and criticism of a political figure. A constitutional solution should have been to direct the sheriff to delete any emails he considered junk mail. Shutting down Huminski's reporting crime to law enforcement is an extreme remedy that does not survive constitutional scrutiny under vagueness and over-breadth precepts.

Grayned v. The City of Rockford, 408 U.S. 104 (1972) summarized the time, place, manner concept: "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular

time." Time, place, and manner restrictions must withstand intermediate scrutiny. Note that any regulations that would force speakers to change how or what they say do not fall into this category (so the government cannot restrict one medium even if it leaves open another) Ward v. Rock Against Racism, 491 US 781 (1989) held that time, place, or manner restrictions must:

* Be content neutral
* Be narrowly tailored
* Serve a significant governmental interest
* Leave open ample alternative channels for communication

If the government tries to restrain speech before it is spoken, as opposed to punishing it afterward, it must be able to show that punishment after the fact is not a sufficient remedy, and show that allowing the speech would "surely result in direct, immediate, and irreparable damage to our Nation and its people" (New York Times Co. v. United States, 403 U.S. 730 (1971)).

In Bridges v California, 314 U.S. 252 (1941), Mr. Justice Black, for the five-to-four majority, presented clear and present danger as "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterance can be punished"; adding that even this did not "mark the

furthermost constitutional boundaries of protected expression." Bridges v. California, 314 U. S. 252, 263 (1941).

CONCLUSION

For all of the forgoing reasons, the Court should grant the Petitions and issue a Writ of Prohibition, Writ of Mandamus, Writ of Coram Nobis and Writ of Quo Warranto requiring the Circuit Court vacate all acts, orders and rulings entered while the case was removed to U.S. Bankruptcy Court, vacate the protective order as void ab initio for First Amendment violations, order the initiation of the criminal matter *Void Ab Initio* and dismiss it with prejudice and find that the orders involved in this case are exceptions to the Collateral Bar Rule which allows violation of a transparently unconstitutional order and allows violation of an order that requires the surrender of Constitutional rights.

Respectfully submitted,

Scott Huminski
24544 Kingfish Street
Bonita Springs, FL. 34134
(239) 300-6656
s_huminski@live.com

CERTIFICATE OF SERVICE – FOR PETITION, APPENDIX AND MOTIONS

I HEREBY CERTIFY that on or before December 07, 2017, a true copy of the foregoing and Petitioner's Appendix and Motion to Stay Matters Below and MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER and MOTION TO REPLEAD WITH ASSISTANCE OF COUNSEL have been served pursuant to the Rules upon,

20th Circuit Public Defender's Office (Kevin Sarlo, esq.),

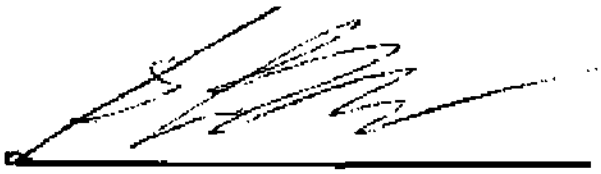
Regional Conflict Counsel (Zachary Miller, esq.),

State's Attorney (ASA Anthony Kunasek, esq.),

Hon. Michael McHugh,

Hon. James Adams,

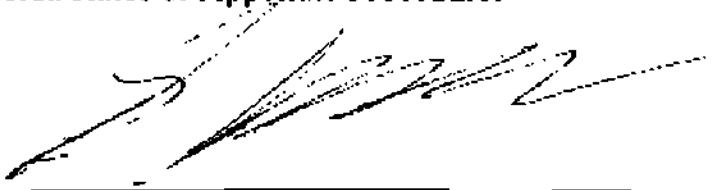
All parties in 17-CA-421 (except the Sheriff Defendants and Scribd, Inc., defendants whereby service is prohibited by order, see MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER filed herewith which, if granted, would allow service to complete).



Scott Huminski

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.21 (a)(2), I certify that this computer-generated brief/petition is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.



Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	) NO. 17-MM-815	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR CHANGE OF VENUE

NOW COMES, Scott Huminski ("Huminski"), and, moves to for change of venue because he is banished from the Lee court complex by Order of Judge Kier, 17-CA-421, preventing any contact and communication with the Lee Sheriff or his staff.

Huminski should not face trial under threats, duress and draconian court orders that violate Huminski's First Amendment and Due Process rights. See general 2D17-4740. The Sheriff operates the security screening and his staff acts as bailiffs at the court complex.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 22nd day of December, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.,	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR PERMISSION TO DEPOSE SHERIFF SCOTT & Hon. E. KRIER UNDER CONFRONTATION CLAUSE, 6th Amendment

NOW COMES. Scott Huminski ("Huminski"), PRO SE, and, moves as set forth in the above title to this paper as he has a right to confront his accusers under the 6th Amendment, these persons are already listed trial witnesses for Huminski. Former counsel was directed to seek this deposition, but, refused.

"***Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because the defendant is obviously guilty.***" Crawford v. Washington, 541 U.S. 30 (2004).

Dated at Bonita Springs, Florida this 28th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

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AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	) NO. 17-MM-815	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

JURY TRIAL DEMAND

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, demands a jury trial.

Dated at Bonita Springs, Florida this 28th day of December, 2017.

-/S/- Scott Huminski

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Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

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Scott Huminski

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PLAINTIFF	) NO. 17-MM-815	
TOWN OF GILBERT, AZ, ET AL.,	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – FRAUD UPON COURT

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and. moves to dismiss based upon the filing of the recusal order of Judge Krier constitutes fraud upon the Court on behalf of the State and Lee Court Clerk as follows:

1. For September and August hearings of 2017, Huminski at hearings alerted Hon. James Adams that the alleged recusal order of Judge Krier had not been filed impacting his jurisdiction. See generally hearing transcripts and Huminski's emails to his attorneys and Huminski spoke to counsel concerning this problem. See Attached and other references on the record.
2. A copy of a copy of a recusal order was filed on or about September 22, 2017 and back-dated to 8/14/2017.
3. Upon information and belief the original recusal order does not exist and Judge Krier was not involved in the filing of the back-dated non-original order of 8/14/2017.

Dated at Bonita Springs, Florida this 28th day of December, 2017.

-/S/- Scott Huminski

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-/s/- Scott Huminski

_____

Scott Huminski

Attachment

From: scott huminski <s_huminski@live.com>
Sent: Monday, September 25, 2017 12:23 PM
To: Sarlo,
Kevin; Kathleens@pd.cjs20.org; Katherine~@pd.cjs20.org; stateattorney@sao.cjs20.org; ServiceSAO-LEE@sao.cjs20.org
Subject: Re: 17-mm-815 - hearing request

set the hearing. I filed my appearance. We are going forward with the motions filed and nothing else.

Change of venue and my motion to vacate assignment are imperative. Along with the other motions.

No meeting require. Lets get this moving. The protective order puts me at risk of arrest and obeying the order got me thrown out of the last hearing. Nothing to discuss.

Everybody's time is being wasted. The assignment order was illegal, there was no recusal filed. There was no lawful "transfer" to county court.

Please follow my directions, that deputy engaged in felony obstruction of justice when he kicked me out of the hearing. This is far worse than the petty allegations against me. If the court wishes to construe my motion for change of venue as a motion to dismiss, thats fine.

NO MORE DELAYS. The LCSO has been at my door all weekend long after my neighbor trespassed on my property and engaged in illegal dumping.

NO MORE DELAYS. THese motions need to be heard. Whoever filed Krier's recusal last week did so without her permission, she is barred from acting in the case under the judicial ethical cannons and laches prevent the lat filing. It was untimely.

-- scott huminski

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PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR SUBPOENA TO ITA NEYMOTIN TO PRODUCE CASE FILE

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves for a subpoena directed to Regional Counsel, Ita Neymotin, esq., to produce the case file in this case and forward it to Huminski for trial preparation as follows:

1. On 12/22/2017 Huminski fired regional counsel for ineffective assistance of counsel and requested that the case file be returned to Huminski for pro se trial preparation.
2. Ita Neymotin, esq. refused to return every call and respond to every email sent by Huminski regarding the criminal case.
3. Ita Neymotin, esq. only performed legal work on 2 issues related to this case in her tenure which was to file 2 motions to recuse. This is the extent of the legal work provided by regional counsel.
4. Ita Neymotin, esq. refused to list trial witnesses set forth in Huminski's emails.
5. Ita Neymotin, esq. refused to alert Huminski that a trial was scheduled for January 8, 2017.
6. Ita Neymotin, esq. refused to file defense motions requested by Huminski in emails.
7. The aforementioned violates the ABA Model Rules of Professional Conduct (2017).

8. The case file supplied by Ita Neymotin, esq. will be used at trial as evidence supporting a Constitutional defense of ineffective assistance of counsel and denial of Huminski's confrontation clause rights.

9. Upon review of authority, this prosecution is the only criminal contempt prosecution existing in Florida history whereby the Judge (Krier) had recused calling into question the propriety of the case and indicating a selective and discriminatory prosecution. This is compounded by Judge Krier's lies at arraignment and her statements which indicate a forbidden *ex parte* contact influencing her positions as she recited fact not on the record concerning the death threats received by Humin ski. The three years of death threats from Trevor Nelson and Debra Riffel sent via the U.S. Mails and Sheriff Scott's decision to ignore this on-going domestic terrorism (contact made by terrorist in December 2017) caused the filing of the civil case.

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

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24544 Kingfish Street
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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

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AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.,	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – INEFFECTIVE ASSISTANCE OF COUNSEL

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as set for in the above title pursuant to the 6th Amendment and asserts his Motion requesting subpoena directed to Attorney Neymotin filed today in support thereof and asserts the denial of counsel's December recusal motion in support thereof. This appears to be an issue of first impression in Florida concerning this Constitutional affirmative defense asserted at the trial court level.

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 29th day of December, 2017 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY DEFENSE COUNSEL
AND
NOTICE OF CIVIL CLAIMS OF LEGAL MALPRACTICE AND FEDERAL CIVIL RIGHTS VIOLATIONS Re: Atty. Neymotin

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as set forth in the above title to disqualify defense counsel grounded upon Huminski's filings in this case. Huminski notes he spoke with Zachary Miller, esq. today and Mr. Miller did not know of the back-dated recusal order of Judge Krier in this case which strikes at the legitimacy of this prosecution whereby Judge Krier,

- Authored and signed a recusal order in Circuit Court recusing off this **Circuit Court** case on August 1, 2017. See docket 8/14/2017.
- The original order was lost.
- At hearings on August 15 and September 22 Huminski informed the Court of this problem.
- On September 22, 2017 someone at the Court filed a copy of this order and back-dated it to August 14, 2017. This is fraud.
- Judge Krier lied in the hearing of 6/29/2017
- Judge Krier recited fact not on the record concerning the death threats received by Huminski evidencing forbidden ex parte contact/influence.

NOTICE OF CLAIM – FEDERAL LAWSUIT, Ita Neymotin, et al.

Notice is given that Huminski is bringing federal civil rights claims and legal malpractice claims in U.S. District Court against Ita Neymotin, esq., Regional Conflict Counsel and Zachary Miller, esq.. This case involves the exact same courthouse banishment claims that have already been litigated in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005). Ms. Neymotin failed to assert my right to attend court proceedings free of threats of arrest and prosecution in retaliation for merely asserting my First Amendment and Due Process rights in a trial free of duress, threats and coercion and the right to defend myself free of these factors.

Huminski will also bring associated claims against Ms. Neymotin, et al. under the First, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution REQUESTING declaratory relief, actual damages, punitive damages, nominal damages or presumed damages in the same amount yielded in Huminski v. Corsones, $750,000.00 (Seven Hundred and Fifty Thousand Dollars).

The Courthouse banishment set forth in this case is forbidden under a clearly established constitutional right and creates a cloud of illegitimacy concerning this case which Ms. Neymotin refuses to assert. See generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005). Similarly, Ms. Neymotin refuses to assert the corruption in this case evidenced by the back-dating of Judge Krier's recusal order set forth above and the complete corruption of Lee County dockets in cases formerly presided over by Judge Krier and the fraudulent listing of Hon. Gentile as presiding over hearing and cases he was never involved in which also includes Huminski's cases.

Ms Neymotin's representation is a prime example of the problems enunciated in the NACDL paper. Three Minute Justice: Haste and Waste in Florida's Misdemeanor Courts. https://www.nacdl.org/reports/threeminutejustice/

Ms. Neymotin refuses to assert the impropriety and unethical nature of the State's plea offer which includes assurance by Huminski to not engage in civil litigation against persons not parties to this matter converting the plea negotiations into a form of release/dismissal agreement which violates ethical rules. See Notre

Dame law journal on the topic, An Ethical Analysis of Release Dismissal Agreements.
http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1458&context=ndjlepp

Judge Gentile is fraudulently listed as presiding over the arraignment in this case which is indication of extreme corruption and impropriety on the docket which Ms. Neymotion refuses to assert. As the docket reveals, there did not exist 17-mm-815 until 6/30/2017 on 6/29/2017 the only matter that existed was 17-ca-421 which was a criminal/civil hybrid which Ms. Neymotin misrepresents to the Court as civil only in her recusal motion and at hearing. See below docket entries and 6/29

minutes.

8/14/2017 2:57 PM Lee County Clerk of Courts

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

vs

SCOTT HUMINSKI

Defendant

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 11th day of August, 2017

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

COPY

06/29/2017 4:55 PM Filed by Lee County Clerk of Courts

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CIVIL ACTION**

Huminski, Scott
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421
Date: **June 29, 2017**
Judge: **Elizabeth V Krier**
Deputy Clerk: **Brenda Horton**
Court Reporter:

MINUTES

Attorney for Plaintiff: **Kevin Sarlo** ☑ Present ☐ Not Present
Attorney for Defendant: **Anthony Kunasek** ☑ Present ☐ Not Present

Hearing Information:

SHOW CAUSE / ARRAIGNMENT PROCEEDING:

-Plea of Not Guilty Entered
-CMC scheduled on 8/15/17 at 1:00 for 10 minutes
-CMC is set to review how the State is proceeding with the case and at that Point we can schedule future hearings. Also to be discussed transfer case From civil to criminal
-Pretrial release without bond / Conditions: Mr. Huminski is to check in with Pretrial officer every 2 weeks, along with the condition to not violate anymore Orders. Only Mr. Huminski's PD or licensed attorney may contact the courts. He must not contact the courts or Sheriff's Department by email

☐ Motion _____ ☐ Granted ☐ Denied ☐ Reserved

Notes:
-Scott Huminski-present
-Copies of orders on file given to Mr. Huminski, Mr. Sarlo, and Mr. Kunasek In court

*Sworn

Date	Hearing	Time
12/12/2017	Circuit Civil Court - McHugh, Michael T	2:30 PM

08/15/2017	CANCELED Other Circuit Civil Court - Gentile, Geoffrey Henry	1:00 PM
07/21/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM
06/20/2017	Circuit Civil Court - Gentile, Geoffrey Henry	1:30 PM
05/25/2017	Circuit Civil Court - Gentile, Geoffrey Henry	8:30 AM
04/18/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM
04/18/2017	Circuit Civil Court - Gentile, Geoffrey Henry	10:30 AM
04/17/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.,	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION OF INTENT TO SEEK INTERLOCUTORY APPEAL IF DISQUALIFICATION OF CONFLICT COUNSEL DENIED
AND
PROPOSED MOTION TO STAY PENDING APPEAL

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, notifies as above pursuant to the attached authority and proposes a Motion to Stay under the theories mentioned in the attached 2DCA ruling if disqualification is denied.

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

Opinion filed November 30, 2016.

MARY ANN LEAKE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. 2D16-2639

Petition for

Writ of Certiorari to the Circuit Court for Polk County; Wayne M. Durden, Judge.

Howard L. Dimmig, II, Public Defender, and Terry Stewart, Assistant Public Defender, Bartow, for Petitioner.

Pamela Jo Bondi, Attorney General, Tallahassee, and Katherine Coombs Cline, Assistant Attorney General, Tampa, for Respondent.

SLEET, Judge.

Mary Ann Leake seeks certiorari review of the trial court's denial of her public defender's motion to withdraw because of a conflict of interest. Because the trial court applied the wrong legal standard when it denied the motion, we grant the petition, quash the order, and remand for further proceedings.

2

Shortly before Leake's scheduled trial date, the public defender became aware that two of the named victims in the case had previously signed letters of support indicating that they would contribute financially to and sponsor a fundraiser for Public Defender Howard L. Dimmig's campaign for reelection. The public defender informed Leake of the conflict, and Leake requested that counsel file a motion to withdraw. For reasons not clear from the record, the State objected. At the hearing on the motion, the State argued that under MacKenzie v. Super Kids Bargain Store, Inc., 565 So. 2d 1332 (Fla. 1990), two victims' contributions to the public defender's campaign did not create a conflict of interest. In Mackenzie, the supreme court held that a trial judge was not "required to disqualify herself or himself on motion where counsel for a litigant has given a $500 campaign contribution to the political campaign of the trial judge's spouse." Id. at 1340. The State reasoned that if a trial judge had no duty to recuse herself or himself after receiving campaign contributions, then neither should the public defender.

Persuaded by Mackenzie and the State's argument, the trial court denied the motion.

In order to be entitled to certiorari relief, "[a] petitioner must establish (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the trial (3) that cannot be corrected on postjudgment appeal." Parkway Bank v. Fort Myers Armature Works, Inc., 658 So. 2d 646, 648 (Fla. 2d DCA 1995). As this court explained in Young v. State, 189 So. 3d 956 (Fla. 2d DCA 2016), "a trial court order compelling an ethically conflicted attorney to represent a criminal defendant . . . 'constitutes a departure from the essential requirements of the law that would result in an irreparable, material harm to the [certiorari] petitioner that cannot be remedied on final appeal.' " Id. at 959 (alteration in original) (quoting Smith v. State, 156 So. 3d 1119, 1126 (Fla. 1st DCA 2015)). The supreme court "has acknowledged that 'the right to effective assistance of counsel encompasses the right to representation free from actual

conflict.' " Johnson v. State, 78 So. 3d 1305, 1308 (Fla. 2012) (quoting Hunter v. State, 817 So. 2d 786, 791 (Fla. 2002)). And "[a]n actual conflict of interest that adversely affects a lawyer's performance violates a defendant's Sixth Amendment right to effective assistance of counsel." Johnson, 78 So. 3d at 1308. Accordingly, we conclude that Leake has sufficiently alleged a harm that cannot adequately be remedied on appeal, and that this court has jurisdiction.

The trial court departed from the essential requirements of the law when it based its denial of Leake's motion on MacKenzie, 565 So. 2d 1332. In MacKenzie, the supreme court considered whether a judge should have recused herself under section 38.10, Florida Statutes (1987), and Florida Rule of Civil Procedure 1.432. Therefore, Mackenzie is completely inapplicable to the present case, which does not involve the recusal of the trial judge but rather the withdrawal of an attorney in a criminal case under section 27.5303, Florida Statutes (2016), and the Rules Regulating the Florida Bar 4-1.7. The MacKenzie case did not address whether the victims' commitment to sponsor a fundraiser for and contribute to the reelection of the public defender, the employer of defense counsel, would have an adverse impact on defense counsel's representation of the defendant, including but not limited to counsel's ability to adequately confront and cross-examine the victims. The relevant consideration for the trial court here was whether there was an actual conflict and whether that conflict would have an adverse effect on the public defender's representation of Leake. See State v. Alexis, 180 So. 3d 929, 937 (Fla. 2015) ("Some adverse or detrimental effect on the representation . . . is required in order to establish an actual conflict of interest.").

Because the trial court did not apply this standard and instead applied the standard employed in MacKenzie, it deviated from the essential requirements of law. See Price v. Hannahs, 954 So. 2d 97, 100 (Fla. 2d DCA 2007).

Accordingly, we grant the petition, quash the denial of the public defender's motion, and remand for further proceedings consistent with this opinion.

Petition granted; order quashed; remanded.

CASANUEVA and KHOUZAM, JJ., Concur.

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.,	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR DISQUALIFICATION OF STATE'S ATTORNEY

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves for disqualification of the State's Attorney as he has proposed what amounts to a release/dismissal agreement condemned in Newton v. Rumery, 480 U.S. 386 (1987) as a no jail no fee plea has the same coercive powers as a dismissal and is further discussed in Notre Dame Law Review, An Ethical Analysis of the Release-dismissal Agreement.

http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1458&context=ndjlepp

Instead of proposing this settlement to me, Ms Neymotin and her surrogates had an affirmative ethical duty to report the ethics violation, not encourage it. As the State's Attorney has announced his retirement, ethical violations and attorney discipline will not prejudice Mr. Russell and he freely violates ethical cannons.

Dated at Bonita Springs, Florida this 29th day of December, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.,	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Corrected

MOTION FOR DISQUALIFICATION OF STATE'S ATTORNEY

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves for disqualification of the State's Attorney as he has proposed what amounts to a release/dismissal agreement condemned in Newton v. Rumery, 480 U.S. 386 (1987) as a no jail no fee plea has the same coercive powers as a dismissal and is further discussed in Notre Dame Law Review, An Ethical Analysis of the Release-dismissal Agreement.

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Instead of proposing this settlement to me, Ms Neymotin and her surrogates had an affirmative ethical duty to report the ethics violation, not encourage it. As the State's Attorney has announced his retirement, ethical violations and attorney discipline will not prejudice Mr. Russell and he freely violates ethical cannons.

A term of the plea proposed by Mr. Russell is that Huminski agree to end litigation concerning the death threats he has received for 3 years thru December 2017 via the U.S. Mails and other media and to abandon his litigation regarding his right to drive with disabilities arising out of bilateral hip replacements and avascular necrosis of his joints. Besides being unethical it violates the ADA and constitutes State retaliation against the disabled for attempting to get accomodations.

Dated at Bonita Springs, Florida this 29th day of December, 2017.

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-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA

v. **CASE NO: 36-2017-MM-000815**

SCOTT ALAN HUMINSKI

REGIONAL COUNSEL'S AMENDED MOTION TO WITHDRAW AND REQUEST FOR THE APPOINTMENT OF PRIVATE ATTORNEY

Comes the undersigned attorney on behalf of defendant who moves the court to withdraw as counsel for defendant on account of a conflict of interest. The basis of the conflict is as follows:

1. Undersigned attorney has called the Florida Bar Attorney Ethics hotline, and has been instructed by the Florida Bar, under oral opinion #467221, that attorney should move to withdraw from this case pursuant to Florida Rules of Professional Conduct 4-1.7, because certain communications with client, some confidential and some public, have created, in attorney's opinion, a substantial risk that representation will be limited by personal interest.

2. It is well established, "Where circumstances preclude the trial court's learning whether a conflict of interest has had or will have an impermissible effect, moreover, the motion for leave to withdraw should be granted." *Young v. State*, 189 So. 3d 956, 960 (Fla. 2d DCA 2016)

Pursuant to Section 27.5303(1)(c), Florida Statutes, the undersigned certifies that there is no viable alternative to withdrawal from representation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by e-mail to the Office of the State Attorney ServiceSAO-Lee@sao.cjis20.org on January 1, 2018.

/s/ Zachary Miller
By: Zachary Miller
Assistant Regional Counsel
Fla. Bar No. 118339
2101 McGregor Blvd Ste 101
Fort Myers, FL 33901
Tel. (239) 208-6925
Fax (207) 554-1128

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.,	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY Hon. JAMES ADAMS

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as set forth in the above title to disqualify Hon. Judge Adams as this case constitutes criminal obstruction of justice, witness intimidation and witness tampering and the protective orders forming the basis for this case are criminal in nature and, as crimes, are improperly and unethically enforced in any court.

The protective orders of Sheriff Mike Scott and Scribd. Inc. have not been properly tailored to a legitimate governmental interest, are unconstitutional LIFETIME summary punishments and forbid judicial review. The zero tailoring and sweeping nature of the orders impact a broad landscape of constitutional speech and patently violate the First Amendment. See Generally Huminsi's 2DCA petition and motion for rehearing en banc. https://edca.2dca.org/DCADocs/2017/4740/174740_1619_12032017_11153996_e.pdf https://edca.2dca.org/DCADocs/2017/4740/174740_278_12232017_06293292_e.pdf

In light of the incredibly unconstitutional and outright criminal conduct set forth in these two appellate papers, no Judge should take any measures to assist or enforce the conduct of Judge Krier in the protective orders or otherwise. Hon. James Adams should recuse as he lends legitimacy to these criminal protective orders by furtherance of this litigation and refusal to read Huminski's papers. Huminski further supports this motion as follows:

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1. As of this date, Huminski has received zero assistance of counsel required under the 6th Amendment and the only achievement of Huminski's counsel has been 3 attorney recusal motions, yet, knowing this trial has been scheduled in 7 days without the listing of defense witnesses, obtaining transcripts, engaging in any discovery and without counsel proffering the glimmer of one defense, the Court has scheduled a trial. This violates Huminski Due Process rights and constitutes an attempt to railroad a criminal defendant who has not had the benefit of counsel concerning trial preparation. Zero trial preparation as of the date of this paper. Furthermore, Huminski was not alerted that there was a trial scheduled until 12/28/2017 as at the last hearing this was discussed in secret to leave the Huminski ignorant of the status of the case. This surprise trial violates Huminski's rights and indicates an improper judicial motive. Court proceedings should not be scheduled to ambush a criminal defendant. Just this week, I was notified of a potential hearing prior to trial which I still have no knowledge of and it is not listed anywhere.
2. The Sheriff's protective order mandates that Huminski evade service, evade arrest, obstruct any legal duty the Sheriff has related to Huminski and engage in criminal escape if Huminski is presented with a situation where escape may be a factor.
3. Even Judge Krier expressed concern at hearing that it was difficult to serve Huminski. This is very true as she issued an order mandating evasion of the LCSO and Huminski obeyed. So obeying her orders is improper as well. This circular logic has no place in any court.
4. If there is an LCSO attempt to pull over Huminski on the roads, Huminski is mandated to initiate a high-speed chase and do anything within his power to evade contact including the use of violence. Huminski is obligated to employ any and all tactics to evade the LCSO in obedience to the protective orders. They need to be narrowly-tailored.

5. The protective orders have obstructed service to the Sheriff and Scribd., Inc. and their staffs in U.S. Bankruptcy Court under Bankruptcy Rule 9027 undermining the intent of U.S. Congress in their promulgation of Bankruptcy statutes and Rules. See filing regarding the disdain of federal jurisdiction by Judge Krier. https://judgelizabethykrierleecountyflcorruption.files.wordpress.com/2017/08/tro-scan0113.pdf This is criminal obstruction of justice and witness intimidation. Obstruction of lawful court service is criminal. Although Judge Krier believes, "Nothing gets removed from my court EVER". The Florida efiling portal lists "Frequently filed documents" and underneath lists "NOTICE OF REMOVAL TO U.S. DISTRICT COURT", Judge Krier lied about federal court removal. this Court should seeks to undo the wrongs of Judge Krier, not advance her illegal conduct. Recusal is warranted.
6. The protective orders have obstructed service to the and Scribd., Inc. and their staffs in Florida Second District Court of Appeal, 2d17-4740, Huminski v. Gilbert, et al., undermining the intent of the Florida legislature in their promulgation of statutes and Rules related to appeals. Obstruction of lawful court service is criminal.
7. Indeed, Huminski did not serve defendants/creditors as State and Federal law mandates because of the threats issued by Judge Krier. Her conduct is criminal and enforcement of her orders is patently unethical and possibly criminal.
8. The protective orders pose standing threats, for life, concerning Huminski's access to the Lee Court complex as Huminski is barred from "contact or communication" with the LCSO who act as security screeners and bailiffs at the courthouse. This is criminal obstruction of justice and witness intimidation/tampering.
9. Huminski re-asserts his motion to disqualify defense counsel here and points to the issues that: 1) there is no legal mechanism for transfer from Circuit to County Court. 2) Judge Krier's recusal order was back-dated

and never filed by Judge Krier, 3) There exists no valid County Court charging document, 4) the arraignment hearing of 6/29 was void ab initio as the case had been removed to federal court.

10. Below are criminal codes that the protective orders mandate Huminski violate followed by the obstruction of justice statute that has been per se violated by the issuance of the wildly vague protective orders impacting State and Federal court matters:

843.01 Resisting officer with violence to his or her person.--Whoever knowingly and willfully resists, obstructs, or opposes any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Parole Commission or any administrative aide or supervisor employed by the commission; parole and probation supervisor; county probation officer; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

843.02 Resisting officer without violence to his or her person.--Whoever shall resist, obstruct, or oppose any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Parole Commission or any administrative aide or supervisor employed by the commission; county probation officer; parole and probation supervisor; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

843.03 Obstruction by disguised person.--Whoever in any manner disguises himself or herself with intent to obstruct the due execution of the law, or with the intent to intimidate, hinder, or interrupt any officer, beverage enforcement agent, or other person in the legal performance of his or her duty or the exercise of his or her rights under the constitution or laws of this state, whether such intent is effected or not, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

843.06 Neglect or refusal to aid peace officers.--Whoever, being required in the name of the state by any officer of the Florida Highway Patrol, police officer, beverage enforcement agent, or watchman, neglects or refuses to assist him or her in the execution of his or her office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in case of the rescue or escape of a person arrested upon civil process, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

843.18 Boats; fleeing or attempting to elude a law enforcement officer.--

(1) It is unlawful for the operator of any boat plying the waters of the state, having knowledge that she or he has been directed to stop such vessel by a duly authorized law enforcement officer, willfully to refuse or fail to stop in compliance with such directive or, having stopped in knowing compliance with such a directive, willfully to flee in an attempt to elude such officer. Any person violating this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any violation of this section with respect to any vessel shall constitute such vessel as contraband which may be seized by a law enforcement agency and which shall be subject to forfeiture pursuant to ss. 932.701-932.704.

914.22 Tampering with or harassing a witness, victim, or informant; penalties.–

(1) A person who knowingly uses intimidation or physical force, or threatens another person, or attempts to do so, or engages in misleading conduct toward another person, or offers pecuniary benefit or gain to another person, with intent to cause or induce any person to:

(a) Withhold testimony, or withhold a record, document, or other object, from an official investigation or official proceeding;

(b) Alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official investigation or official proceeding;

(c) Evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official investigation or an official proceeding;

(d) Be absent from an official proceeding to which such person has been summoned by legal process;

(e) Hinder, delay, or prevent the communication to a law enforcement officer or judge of information relating to the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding; or

(f) Testify untruthfully in an official investigation or an official proceeding,

commits the crime of tampering with a witness, victim, or informant.

(2) Tampering with a witness, victim, or informant is a:

(a) Felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a misdemeanor.

(b) Felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s.775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a third degree felony.

(c) Felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a second degree felony.

(d) Felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a first degree felony or a first degree felony punishable by a term of years not exceeding life.

(e) Life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a life or capital felony.

(f) Felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the offense level of the affected official investigation or official proceeding is indeterminable or where the affected official investigation or official proceeding involves a noncriminal investigation or proceeding.

(3) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from:

(a) Attending or testifying in an official proceeding or cooperating in an official investigation;

(b) Reporting to a law enforcement officer or judge the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding;

(c) Arresting or seeking the arrest of another person in connection with an offense; or

(d) Causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or from assisting in such prosecution or proceeding;

or attempts to do so, commits the crime of harassing a witness, victim, or informant.

(4) Harassing a witness, victim, or informant is a:

(a) Misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, where the official investigation or official proceeding affected involves the investigation or prosecution of a misdemeanor.

(b) Felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a third degree felony.

(c) Felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s.775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a second degree felony.

(d) Felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a first degree felony.

(e) Felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a felony of the first degree punishable by a term of years not exceeding life or a prosecution of a life or capital felony.

(f) Felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the offense level of the affected official investigation or official proceeding is indeterminable or where the affected official investigation or official proceeding involves a noncriminal investigation or proceeding.

(5) For the purposes of this section:

(a) An official proceeding need not be pending or about to be instituted at the time of the offense; and

(b) The testimony or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(6) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance:

(a) That the official proceeding before a judge, court, grand jury, or government agency is before a judge or court of the state, a state or local grand jury, or a state agency; or

(b) That the judge is a judge of the state or that the law enforcement officer is an officer or employee of the state or a person authorized to act for or on behalf of the state or serving the state as an adviser or consultant.

WHEREFORE, Hon. James Adams should recuse as his conduct in this case furthers the crime embodied in Judge Krier's protective orders and the crimes mandated that Huminski commit by the orders.

Dated at Bonita Springs, Florida this 1st day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 1st day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

No. 2D17-4740

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, AZ, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

MOTION FOR REHEARING EN BANC

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656 E-mail s_huminski@live.com

MOTION FOR REHEARING EN BANC

NOW COMES, Scott Huminski ("Huminski") and moves for rehearing en banc as follows:

1. Huminski is forbidden from seeking appeal in the Court below pursuant to order as he is indigent and can not afford an attorney. See Petitioner's Supplemental Appendix at pages 1-9 and Petitioners Opening Appendix at pages 6-10. (preventing pro se filings including Notice of Appeal)
2. This petition will determine if exceptions to the Collateral Bar Rule are effective in Florida, an issue of first impression, in criminal contempt cases.
3. This appeal will determine core First Amendment rights and is a case of first impression concerning the banishment of a citizen from a county courthouse via a protective order procured by the local sheriff. See generally, Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)
4. This appeal will determine if Huminski is banished for life concerning access to public safety by a protective order prohibiting contact and communication with the only local law enforcement agency in violation of the First Amendment and Equal Protection.

5. This appeal will determine if Court orders impacting First Amendment rights have to comply with constitutional requirements of narrow tailoring and reasonable time, place and manner restrictions. See generally Petition.
6. This petition will determine if Circuit Courts must obey the removal of a case to United States District Court (Bankruptcy Court, a unit thereof) or continue to hold proceedings as was the case in the Court below.

Dated at Bonita Springs, Florida this 22nd day of December, 2017.

-/s/- Scott Huminski

Scott Huminski
24544 Kingfish Stret
Bonita Springs FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Service

I, Scott Huminski certify that on the 22nd day of December 2017 this paper was served upon all parties of record pursuant to the Rules.

-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.,	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STAY PENDING Disposition of REHEARING EN BANC

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves to stay while the 2DCA considers Huminski's motion for rehearing en banc. The relief sought in the 2DCA is dismissal of the criminal matter with prejudice as the State abandoned the Circuit Court criminal case and there was no disposition in the Circuit Court, so the instant criminal matter still exists in the Circuit Court. The State's Attorney should have dismissed the Circuit Court matter and re-filed in county.

Dated at Bonita Springs, Florida this 4th day of January, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR ORDER TO SHOW CAUSE AS TO WHY SHERIF SCOTT SHOULD NOT BE HELD IN CRIMINAL CONTEMPT FOR OBSTRUCTION OF JUSTICE CONCERNING THESE PROCEEDINGS

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as set forth above because the protective order of Sheriff Scott makes it a crime for Huminski to participate in these proceeding as any "contact or communication" with the Sheriff or his staff is prohibited per order of Judge Krier. Huminski already moved for change of venue in an attempt to shine a sliver of Due Process upon the instant matter, to no avail. Huminski's motion to recuse this Court details some of the crimes that Sheriff Scott has perpetrated upon State and Federal Courts.

Threats, duress, coercion and outright crime targeting litigants by the Sheriff have no place in the operation of the justice system, is conduct prejudicial to the administration of justice and an illegal power grab concerning matters that are reserved for this Court and the judiciary. Who can or can not attend court proceedings and participate as a party to Court proceedings. The Sheriff has already obstructed the 2DCA and U.S. District Court in a belief he is superior to the

U.S. Congress and the Florida legislature, it is time to put an end to his obstruction, witness tampering and witness intimidation, FELONIES, in the instant matter.

Huminski refers the Court to the record in 2D17-4740 in support of his undisputed contention that the Sheriff has engaged in felony crimes targeting the justice system in this and other proceedings, State and Federal. The State brings this case with unclean hands and with a full-on support of the Sheriff's criminal manipulation and interference with Court matters.

Dated at Bonita Springs, Florida this 4th day of January, 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR BRADY PRODUCTION OF DOCUMENTS

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves that the State produce all documents authored by the State's Attorney that initiated criminal proceedings in Circuit and County Courts, informations, indictments and any other papers originating from the State's Attorneys office related to this criminal case, notwithstanding Huminski's motion for bill of particulars. Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitley, 514 U.S. 419 (1995), Strickler v. Greene, 527 U.S. 263, 283, 119 S.Ct. 1936, 1949 (1999).

The record indicates that the County Court case was not brought lawfully by the State's Attorney and that there was no disposition of the Circuit Court matter by the Circuit Court or via a voluntary dismissal by the State's Attorney. There appear to be two active identical criminal cases quite contrary to any notion of Due Process, equity or fair play burdening the Courts and defendant.

Dated at Bonita Springs, Florida this 4th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street

Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

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The record indicates that the County Court case was not brought lawfully by the State's Attorney and that there was no disposition of the Circuit Court matter by the Circuit Court or via a voluntary dismissal by the State's Attorney. There appear to be two active identical criminal cases quite contrary to any notion of Due Process, equity or fair play burdening the Courts and defendant.

Dated at Bonita Springs, Florida this 4th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street

eFiled Lee County Clerk of Courts Page 91

Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.,	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS, NO CHARGING INFORMATION

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as above and asserting that criminal charges must be brought under oath upon office of the State's Attorney. There does not exist a validly initiated criminal case. The Court is proceeding absent subject matter and personal jurisdiction. See attached proper and legal criminal information. This case was brought in bad faith and is frivolous.

Dated at Bonita Springs, Florida this 4th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA

vs.

TERRANCE L. IRONS

CASE NO: 17-MM-000820 - (ZMG)
(ALA)

Race: Black **Sex:** Male
D.O.B.: 4/8/1983
SS #: [redacted]

INFORMATION FOR:

1) Conservation Violate Game Fish Rules, F.S. 379.401, Second Degree Misdemeanor
2) Conservation Violate Game Fish Rules, F.S. 379.401, Second Degree Misdemeanor

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

STEPHEN B. RUSSELL, State Attorney of the Twentieth Judicial Circuit of the STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, prosecuting for the STATE OF FLORIDA, in the County of Lee under oath information makes that Terrance L. Irons,

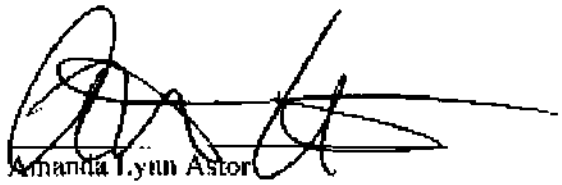
Count(s):

1. On or about June 28, 2017 in Lee County, Florida, did unlawfully violate a rule, regulation, or order of the Florida Fish and Wildlife Conservation Commission, to wit: Size limit-Sheepshead, contrary to F.S. 379.401; F.A.C. 68B-59.003(1),

2. On or about June 28, 2017 in Lee County, Florida, did unlawfully violate a rule, regulation, or order of the Florida Fish and Wildlife Conservation Commission, to wit: Size limit-Snapper, contrary to F.S. 379.401; F.A.C. 68B-14.0035,

against the peace and dignity of the STATE OF FLORIDA,

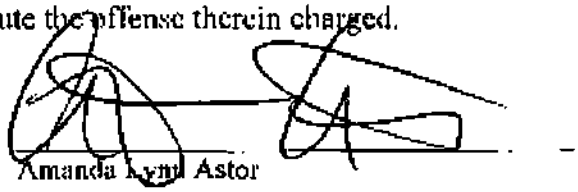
STEPHEN B. RUSSELL
STATE ATTORNEY

BY: 

Amanda Lynn Astor
Assistant State Attorney
Florida Bar Number 0124926
2000 Main Street, 6th Floor
Fort Myers, Florida 33901
(239) 533-1000
eService: ServiceSAO-LEE@sao.cjis20.org

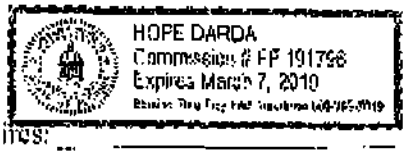
STATE OF FLORIDA, COUNTY OF LEE

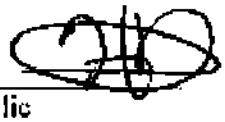
Personally appeared before me, Amanda Lynn Astor, Assistant State Attorney of the Twentieth Judicial Circuit of the State of Florida, being personally known to me, who being duly sworn, says that this information is filed in good faith and says that the allegations as set forth in the foregoing information, which if true, would constitute the offense therein charged.



Amanda Lynn Astor

Sworn to and Subscribed before me this 12 day of July, 2017, by Amanda Lynn Astor, personally known to me.





Notary Public My commission expires:

RE: Terrance L. Irons, 17-MM-000820

OFFICE OF THE STATE ATTORNEY
TWENTIETH JUDICIAL CIRCUIT OF FLORIDA
NOTICE TO THE CLERK

TO: Clerk of the Courts, Lee County

RE: Terrance L. Irons, defendant Court Case Number: 17-MM-000820

Race: Black Sex: Male

D.O.B.: 4/8/1983 SSN: [redacted]

Date of Arrest:

Agency Booking Report No.
FWSW17OFF011112

OBTS:

Agency Name: Fish and Wildlife Commission

BOOKING CHARGES

Count(s):

Number of Counts: 2 - Conservation Viol Level 2 Fwc Rule Or Reg 1st Offense, F.S. 379.401 (2b1), Second Degree Misdemeanor

SAO DISPOSITION

Count(s):

1. Filed as Charged: 379.401
Conservation Violate Game Fish Rules
Second Degree Misdemeanor
2. Filed as Charged: 379.401
Conservation Violate Game Fish Rules
Second Degree Misdemeanor

Distribution:
Clerk of Court
Defendant / Defense Counsel -
Sheriff's Department - Jail
Arresting Agency - Fish and Wildlife Commission
SAO File

STEPHEN B. RUSSELL
STATE ATTORNEY

Date: 7/12/17 BY:

Amanda Lynn Astor
Assistant State Attorney
Florida Bar Number 0124926
2000 Main Street, 6th Floor
Fort Myers, Florida 33901
(239) 533-1000
eService: ServiceSAO-LJF@sao.cjis20.org

Distributions:
Clerk of Court
Defendant / Defense Counsel -
Sheriff's Department - Jail
Arresting Agency - Fish and Wildlife Commission
SAO File

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS, SHOW CAUSE ORDER FRAUD

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as above because a copy of the show cause order was modified by insertion of a County Court docket number and the non-original copy with hand-written fraudulent modifications was filed in this matter on 6/30/2017. This is fraud and not what Judge Krier signed. The clerk ***can not modify*** Court orders after they are issued. This is just as corrupt as the back-dating of Judge Krier's recusal order. The clerk can not represent that a valid show cause order exists in this case. The conduct of the clerk is criminal. The Lee Clerk's office is hopelessly corrupt.

After notifying current counsel of the fraud in this case, he replied that the system is corrupt and nothing can be done. My obsession to whistle-blow and expose the corruption is why both the public defender and conflict counsel had to withdraw. Exposure of courthouse corruption conflicts with the interests of their other clients who may just wish to accept the corruption and enter a plea. This will likely be the case with any private counsel appointed as well.

See original order attached.

Dated at Bonita Springs, Florida this 5th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

Certificate of Service

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-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

CIVIL CASE CAPTION

SCOTT HUMINSKI,
Plaintiff
v.
TOWN OF Gilbert, AZ, et al

Civil Case No.: 17CA421

Criminal Case No. _____

DESCRIPTION OF SCOTT HUMINSKI	
GENDER: Male	EYE COLOR: ?
RACE: Caucasian	HAIR COLOR: Brown
HEIGHT: approx. 5 ft 10 in.	LAST KNOWN ADDRESS: 24544 Kingfish St.
WEIGHT: ?	Bonita Springs, FL 34134
DOB: 12/1/59	

ORDER TO SHOW CAUSE

This cause comes before the court for review based upon the alleged conduct of SCOTT HUMINSKI for the issuance of an Order to Show Cause directed to SCOTT HUMINSKI for violation of the Orders set forth below copies of which are attached hereto and made a part hereof.

The Orders that SCOTT HUMINSKI is alleged to be in violation of are:

DATE executed by Court	CASE No.	ORDER TITLE
4/19/17	17CA421	Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order (specifically Paragraphs 1, 2 & 7) – attached hereto as Exhibit A
4/19/17	17CA421	Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STRIKE, SHOW CAUSE ORDER

NOW COMES, Scott Huminski ("Huminski"), PRO SE, and, moves as above because of the reasons set forth in Huminski's motion filed today pointing out that the order is fraudulent and modified and that the order mentions attachments which do not exist. The fraudulent show cause order is criminal.

Dated at Bonita Springs, Florida this 5th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR THE ISSUANCE OF SUBPOENAS TO MANDATE ATTENDANCE AT TRIAL

NOW COMES, Scott Huminski ("Huminski"), and, moves forth the issuance of subpoenas manating their appearance at trial under the 6th Amendment and as witnesses for the defense,

Sheriff Mike Scott (6th amendment confrontation)

Judge Elizabeth Krier (6th amendment confrontation)

Marc Kavic, USPIS Postal Inspector

Brian Allen, LCSO

Tracey Woods, Glendale AZ police department

Harold Brady, Surprise AZ police Department

Ryan Pillar, Gilbert AZ Police Department

Tim Dorn, Gilbert AZ Police Department

Huminski has been stripped of assigned counsel only one month prior to hearing without his consent.

Dated at Bonita Springs, Florida this 9th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street

Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO COMPEL ATTORNEY ED KELLY TO APPEAR AS DEFENSE COUNSEL UNDER THE 6TH AMENDMENT

NOW COMES, Scott Huminski ("Huminski"), and, moves to compel the appearance of edkellyatlaw@aol.com who is listed as defense counsel in the Court Database.

Dated at Bonita Springs, Florida this 9th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR TRANSCRIPTS – 6/29/2017, 8/15/2017, 9/22/2017

NOW COMES, Scott Huminski ("Huminski"), and, moves for transcripts of hearings as set forth above.

Dated at Bonita Springs, Florida this 9th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR ISSUANCE OF SUBPOENA FOR STEPHEN RUSSELL TO MANDATE APPEARANCE AT TRIAL

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above. Mr. Russell can testify as to the procedure used to initiate prosecutions and his office's willingness to rely upon fraudulent court orders covertly modified and back dated with other irregulatities.

Dated at Bonita Springs, Florida this 9th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 9th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR SUBPOENA OF PUBLIC DEFENDER AND CONFLICT COUNSEL CASE FILES

NOW COMES, Scott Huminski ("Huminski"), and, moves for subpoens requesting the case files be forwarded to Huminski for his trial preparation and for proof of the ineffective assistance of counsel at the trial court level.

Dated at Bonita Springs, Florida this 9th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR APPOINTMENT OF COUNSEL UNDER THE SIXTH AMENDMENT

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above and likely counsel would be as follows;

Dated at Bonita Springs, Florida this 9th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY JUDGE JAMES ADAMS SIXTH AMENEMENT VIOLATIONS

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above. If Huminski was charged as a serial killer who engaged in cannibalism he would have the right to counsel. In this dubious victimless misdemeanor prosecution, Huminski's right to counsel is mandatory as well. Judge Adam's zeal to schedule an ambush trial on 1/8/2017 and then decision to strip Huminski of counsel and force him to trial in a month when the judge allowed counsel 6 months of preparation for Huminski's counsel which Huminski has no benefit of is indicative of animus or bias.

Dated at Bonita Springs, Florida this 9th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF WITHDRAWAL OF WAIVER OF ARRAIGNMENT

NOW COMES, Scott Huminski ("Huminski"), and, withdraws all waivers of arraignment because the case was arraigned on 6/29/2017 and no discussion occurred with any attorney after 6/29 concerning arraignment. Huminski does not know the person who filed a waiver on 1/8/2018.

Dated at Bonita Springs, Florida this 9th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR SUBPOENA OF JUDGE JAMES ADAMS AND NOTICE OF JUDGE ADAMS AS WITNESS

NOW COMES, Scott Huminski ("Huminski"), and, moves and notifies as set forth above concerning the violation of Huminski Sixth Amendment right to counsel and his Sixth Amendment rights to confront his accusers. Judge Adams must appear as a witness and testify as to the constitutional deprivations.

Dated at Bonita Springs, Florida this 10th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MEMORANDUM IN SUPPORT OF MOTION FOR SUBPOENA OF JUDGE JAMES ADAMS AND NOTICE OF JUDGE ADAMS AS WITNESS

NOW COMES, Scott Huminski ("Huminski"), and, states he exhaustively searched State and Federal case law and authorities and has found no tribunal that has endorsed suspension of Sixth Amendment rights to counsel and confrontation as is the law of this case per order of Hon. James Adams.

The State's Attorney is invited supply any authority supporting the destruction of the Bill of Rights' protections/privileges and rights of criminal defendants.

Dated at Bonita Springs, Florida this 10th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL COUNTY
IN AND FOR LEE COUNTY, FLORIDA CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA

v. **CASE NO: 2017-MM-815**

SCOTT ALAN HUMINSKI

ORDER

On January 8, 2018, the Court considered the Regional Counsel's Motion to Withdraw, and is of the opinion that said motion be GRANTED.

Signed and entered this 11 day of Jan, 2018

James R Adams
Honorable Judge James R. Adams

cc: Office of Regional Counsel
State Attorney
Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

SUPPLEMENT TO MOTION FOR JUDICIAL RECUSAL

NOW COMES, Scott Huminski ("Huminski"), and, moves for judicial recusal as the Court stated it stripped Huminski of counsel because he was at fault for recusal of defense counsel.

To the contrary. both former counsel of Huminski clearly, in writing, recused as the representation of Huminski created a conflict of interest concerning their other clients. An improper motive and judicial bias ***per se*** exists as is clear from the misrepresentation of the reasons for defense counsel recusal by the Court.

Dated at Bonita Springs, Florida this 12th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 12th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR HEARING – DENIAL OF HUMINSKI'S SIXTH AMENDMENT RIGHT TO COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, seeks a hearing on the stripping of Huminski's right to counsel and states he exhaustively searched State and Federal case law and authorities and has found no tribunal that has endorsed suspension of Sixth Amendment rights to counsel and confrontation as is the law of this case per order of Hon. James Adams.

The State's Attorney is invited supply any authority supporting the destruction of the Bill of Rights' protections/privileges and rights of criminal defendants.

Dated at Bonita Springs, Florida this 12th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 12th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski $Molly123

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR COURT SUPPLIED PRINTED COPIES OF ENTIRE RECORD FOR USE AT TRIAL

NOW COMES, Scott Huminski ("Huminski"), and, moves for six copies of the entire record (numbered) for use at trial, notwithstanding Huminski's objection of the abolition of the Sixth Amendment in this case by the Court indicating improper motive and judicial bias.

Dated at Bonita Springs, Florida this 12th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski $Molly123

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	CIVIL ACTION
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	

MOTION FOR ADA ACCOMMODATIONS

NOW COMES, Scott Huminski ("Huminski"), and, moves for accommodations under the ADA as he is fully disabled on social security disability with PTSD, Anxiety Disorder, Bi-polar depression and is being evaluated for early onset Alzheimer's.

As an accommodation, Huminski requests that all hearings be transcribed and that he be allowed to respond to issues brought up at hearing in writing within a week of the hearing. Huminski has difficultly responding and analyzing situations on the spot, especially in a tense adversarial setting such as a criminal prosecution. Without accommodations Huminski will be severely prejudiced.

Huminski also requests all motions that he files be responded to in writing by the State's Attorney and that he be allowed a to file a written reply withing 10 days to the State's Attorney opposition prior to hearing.

Huminski has been deemed fully disabled by the Social Security Administration for approximately 9 years. Attached hereto are exhibits verifying Huminski's complete disability.

Dated at Bonita Springs, Florida this 13th day of August 2017.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 13th day of August, 2017.

-/s/- Scott Huminski

_____

Scott Huminski

disability benefit payments or lump sum awards. You must also report any new payments you receive.

Your New Benefit Amount

BENEFICIARY'S NAME: SCOTT A HUMINSKI

Your Social Security benefits will increase by 0.3% percent in 2017 because of a rise in the cost of living. You can use this letter as proof of your benefit amount if you need to apply for food, rent, or energy assistance. You can also use it to apply for bank loans or for other business. Keep this letter with your important financial records.

How Much Will I Get And When?

• Your monthly amount (before deductions) is	$1,583.00
• The amount we deduct for Medicare medical insurance is (If you did not have Medicare as of November 17, 2016, or if someone else pays your premium, we show $0.00.)	$126.00
• The amount we deduct for your Medicare prescription drug plan is (We will notify you if the amount changes in 2017. If you did not elect withholding as of November 1, 2016, we show $0.00.)	$0.00
• The amount we deduct for voluntary Federal tax withholding is (If you did not elect voluntary tax withholding as of November 17, 2016, we show $0.00.)	$0.00
• After we take any other deductions, you will receive on or about Jan. 3, 2017.	$1,457.00

If you disagree with any of these amounts, you must write to us within 60 days from the date you receive this letter. We would be happy to review the amounts.

If you receive a paper check and want to switch to an electronic payment, please visit the Department of the Treasury's Go Direct website at ***www.godirect.org*** online.

What If I Have Questions?

- Visit our website at ***www.socialsecurity.gov*** for more information about Social Security.
- Call us toll-free at **1-800-772-1213** (TTY **1-800-325-0778**) if you have questions. If you

FACTS ABOUT YOUR 2016 SOCIAL SECURITY BENEFIT STATEMENT

Your 2016 Social Security Benefit Statement is on the back of this form. Use it, along with the information below, to see if part of your Social Security benefits may be taxable.

What You Need To Do
Use the 2016 statement on the reverse with the Internal Revenue Service (IRS) Notice 703 below, to see if any of your Social Security benefits are taxable.

Box 2–"Social Security Number" shows the Social Security number of the person shown in Box 1, if we have the number.

Box 3–"Benefits Paid in 2016" shows the total amount

Box 4–"Benefits Repaid to SSA in 2016"– shows the total amount of benefits you repaid us in 2016. We show items that apply to you in the column headed "Description of Amount in Box 4."

FORM SSA-[redacted] – SOCIAL SECURITY BENEFIT STATEMENT

2016 • PART OF YOUR SOCIAL SECURITY BENEFITS SHOWN IN BOX 5 MAY BE TAXABLE INCOME
• SEE THE REVERSE FOR MORE INFORMATION.

Box 1. Name

SCOTT A HUMINSKI

Box 2. Beneficiary's Social Security Number

[redacted]

Box 3. Benefits Paid in 2016	Box 4. Benefits Repaid to SSA in 2016	Box 5. Net Benefits for 2016 (Box 3 minus Box 4)
$18,018.80	NONE	$18,946.80

DESCRIPTION OF AMOUNT IN BOX 3

Paid by check or direct deposit	$17,972.10
Medicare Part B premiums deducted from your benefits	$97.10
Total Additions	$18,946.80
Benefits For 2016	$18,946.80

DESCRIPTION OF AMOUNT IN BOX 4

NONE

Box 6. Voluntary Federal Income Tax Withheld

NONE

Box 7. Address

SCOTT A HUMINSKI
24544 KINGFISH ST
BONITA SPRINGS FL 34134-7112

Box 8. Claim Number (Use this number if you need to contact SSA.)

[redacted]

Form SSA-1099-SM (1-2017)

DO NOT RETURN THIS FORM TO SSA OR IRS

Medicare Summary Notice
for Part B (Medical Insurance)

The Official Summary of Your Medicare Claims from the Centers for Medicare & Medicaid Services

SCOTT A HUMINSKI
PO BOX 10224
NAPLES FL 34101-0224

THIS IS NOT A BILL

Notice for Scott A Huminski

Medicare Number	**XXX-XX-4327A**
Date of This Notice	**December 11, 2015**
Claims Processed Between	**September 11 – December 11, 2015**

Your Deductible Status

Your deductible is what you must pay for most health services before Medicare begins to pay.

Part B Deductible: You have now met your **$147.00** deductible for 2015.

Be Informed!

Get your Medicare Summary Notices (MSNs) in a new and exciting way - electronic delivery! Access your electronic MSNs (eMSNs) monthly at MyMedicare.gov. Go paperless and help Medicare save money! Login to MyMedicare.gov to sign up. Need help? Call 1-800-MEDICARE (1-800-633-4227) TTY (1-877-486-2048).

Your Claims & Costs This Period

Did Medicare Approve All Services?	**NO**
Number of Services Medicare Denied	**9**

See claims starting on page 3. Look for **NO** in the "Service Approved?" column. See the last page for how to handle a denied claim.

Total You May Be Billed	**$1,769.64**

Providers with Claims This Period

July 30 – August 20, 2015
Gladiolus Surgery Cente

August 12 – October 7, 2015
Swf Associates IN Podiatric M

September 9, 2015
Holiday Cvs LLC

¿Sabía que puede recibir este aviso y otro tipo de ayuda de Medicare en español? Llame y hable con un agente en español.
如果您要用普通话, 请致电此电话号码, 然后选择 "agent" 并说 "Mandarin" **1-800-MEDICARE (1-800-633-4227)**

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO ADOPT AUTHORITY RE: HUMINSKI COURTHOUSE BANISHMENT

NOW COMES, Scott Huminski ("Huminski"), and, moves that the Court adopt the authority of Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) concerning the courthouse banishment targeting Huminski by the Sheriff's protective order.

Huminski further asserts the attached amicus brief filed in Corsones to establish that courthouse banishment is unconstitutional.

Dated at Bonita Springs, Florida this 12th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

No. 02-6150, 02-6199, 02-6201

In the
United States Court of Appeals
for the Second Circuit

SCOTT HUMINSKI

Plaintiff-Appellant/Cross-Appellee

v.

HON. NANCY CORSONES, HON. M. PATRICIA ZIMMERMAN, AND KAREN PREDOM,

Defendants-Appellees/Cross-Appellants,

and

SHERIFF R. J. ELRICK, AND RUTLAND COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellees,

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF VERMONT

BRIEF OF *AMICUS CURIAE* THE THOMAS JEFFERSON CENTER FOR THE PROTECTION OF FREE EXPRESSION IN SUPPORT OF PLAINTIFF-APPELLANT'S REQUEST FOR REVERSAL OF THE DISTRICT COURT DECISION

Counsel for *Amicus Curiae*
J. Joshua Wheeler
Robert M. O'Neil
The Thomas Jefferson Center for
the Protection of Free Expression
400 Peter Jefferson Place
Charlottesville, VA 22911-8691
(434) 295-4784

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SCOTT HUMINSKI

Plaintiff-Appellant/Cross-Appellee,

v.

HON. NANCY CORSONES, HON. M. PATRICIA ZIMMER, AND KAREN PREDOM

Defendants-Appellees/Cross-Appellants,

SHERIFF R. J. ELRICK AND RUTLAND COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellees

DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

Pursuant to 2nd Cir. R. 26.1, The Thomas Jefferson Center for the Protection of Free Expression (Name of Party)

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? No

   If the answer is YES, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? No

   If the answer is YES, list the identity of such corporation and the nature of the financial interest:

_____ March 6, 2003
(Signature of Counsel) (Date)

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TABLE OF AUTHORITIES

CASES **Page(s)**

CONSTITUTION

INTEREST OF *AMICUS CURIAE*

The Thomas Jefferson Center for the Protection of Free Expression is a nonprofit, nonpartisan organization in Charlottesville, Virginia. Founded in 1990, the Center has as its sole mission the protection of freedom of speech and press from threats of different forms. The Center pursues that mission in several ways, notably by filing *amicus curiae* briefs in federal and state courts in cases that raise important free expression issues.

SUMMARY OF FACTS

Plaintiff-Appellant Scott Huminski is a self-described amateur reporter. In the past, he has regularly attended state court proceedings and publicized what be believed to be judicial misconduct by placing critical placards in the windows of his house and his automobile. On May 24, 1999, Mr. Huminski parked his car in the parking lot of the Rutland, Vermont, District Court. Prominently displayed on the vehicle were signs with messages that were highly critical of a state district court judge. Law enforcement officers and court employees directed Huminski either to remove the signs or move the vehicle. When he refused to accede to either demand, he was served with two

notices of trespass. Although both these initial notices were withdrawn, a third trespass notice was served on him five days later. That notice barred Huminski from entering upon "[a]ll lands and property under the control of the Supreme Court and the Commissioner of Buildings and General Services, including the Rutland District Court, parking areas, and lands."

Mr. Huminski brought this action in the United States District Court for the District of Vermont, claiming a violation of his First Amendment rights under 42 U.S.C. § 1983. Included among the defendants named in the complaint were the Rutland County Sheriff's Department, Rutland County Deputy Sheriff R. J. Elrick, Vermont District Court Manager Karen Predom, and Vermont District Court Judges M. Patricia Zimmerman and Nancy Corsones. Upon review of the district court's dismissal of claims against certain defendants, this Court dismissed the appeal for lack of appellate jurisdiction. *Huminski v. Rutland Police Department*, 221 F.3d 357 (2d Cir. 2000). On remand, the district court granted Mr. Huminski's motion for a preliminary injunction. *Huminski v. Rutland County, et. al.*, 134 F. Supp. 2d 362 (D. Vt. 2001) (hereinafter "*Huminski I*"). Subsequently, in ruling on motions for summary judgment filed by the plaintiff and each of the defendants, the district court granted the motions of the Rutland County Sheriff's

Department and Deputy Sheriff Elrick but denied those of the other defendants and Mr. Huminski. *Huminski v. Rutland County, et. al.*, 211 F. Supp. 2d 520 (D. Vt. 2002) (hereinafter "*Huminski II*"). This appeal followed.

SUMMARY OF ARGUMENT

The judgment of the district court fails in three major respects adequately to recognize substantial First Amendment interests that were abridged by the action of Vermont officials in excluding a citizen from any and all access to courtrooms throughout the state. First, the Supreme Court has consistently ruled that access to the courts is protected by the First Amendment, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) – most clearly to the criminal courtroom, but implicitly to civil proceedings as well. Second, in exceptional situations where (despite the presumption of openness) access to the courtroom may be limited or restricted, the Supreme Court has insisted upon a clear and content-neutral rationale, specific and detailed findings made in open court, and a resumption of access as soon as the conditions that warrant its denial have passed. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982).

Third, and perhaps most disturbing, the judgment of the district court fails to recognize the incompatibility with First Amendment rights of denying a

citizen access to any public place in retaliation or reprisal for his expression of views that are critical of government or its officers. When the public official who is the object of that criticism actually plays a part in closing the doors, as in the present case, the dissonance with settled First Amendment principles is starkly clear, as this Court has consistently recognized. *E.g., Naucke v. City of Park Hills*, 284 F.3d 923, 927 (2d Cir. 2002); *Singer v. Fulton County Sheriff*, 63 F.3d 110, 120 (2d Cir. 1995).

Because of the district court's manifest departure from settled First Amendment principles, *amicus* respectfully urges reversal of the judgment below, and a remand for further proceedings consistent with the recognition of such principles.

I. ACCESS TO A COURTROOM MAY SELDOM BE DENIED CONSISTENT WITH THE SETTLED FIRST AMENDMENT RIGHT TO OBSERVE JUDICIAL PROCEEDINGS.

The issue before this Court is whether a citizen may be barred from proceedings of all types in any and every courtroom in the State of Vermont. Such an exclusion is unprecedented, at least in recent times. For nearly a quarter century, a citizen's right of access to the courtroom has been settled beyond doubt. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980);

Bowden v. Keane, 237 F.3d 125, 129 (2d Cir. 2001) (recognizing the First Amendment right of access to "a courtroom whose doors are open to any members of the public inclined to observe a trial.") The basis for citizen access is clearest with respect to criminal proceedings, but implicitly extends to civil proceedings as well. In the present case, no such distinction need be considered since the challenged exclusion covers proceedings of all types, both civil and criminal.

There are circumstances in which denial of access to the courts may be temporarily curtailed to preserve vital interests of the judicial process. Certain pre-trial proceedings may be closed to the press and the public for compelling reasons, *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982), although any such closure must be preceded by a hearing in open court at which specific and detailed findings must be made to support so drastic an exclusion. *Cf. Guzman v. Scully*, 80 F.3d 772, 775-76 (2d Cir. 1996). In very limited circumstances, protests and demonstrations in or near a courtroom may be regulated to ensure the fairness and impartiality of the judicial process.

Within the courtroom, a trial judge is clearly empowered to preserve the order and integrity of his or her court – by citing for contempt, in extremis, any person who physically or verbally disrupts judicial proceedings. Such

disruption must almost invariably occur within the courtroom to constitute actionable contempt; the Supreme Court's ruling in *Bridges v. California*, 314 U.S. 252 (1941) makes clear the First Amendment hazards of permitting any legal sanctions to be imposed on out-of-court statements, however critical of and unwelcome they may be to a trial judge.

Apart from actual disruption, there is at least one situation in which a particular person may be barred from entering the courtroom until a specific moment; a witness whose testimony is pending may be denied access to the courtroom during earlier stages of the case. Such an exclusion, either to ensure the order and integrity of judicial proceedings, or to preserve untainted the testimony of a future witness, poses no affront to a citizen's First Amendment rights to attend and observe events in a courtroom.

The stark contrast between situations such as these and the case now before this Court illustrate how very novel and unprecedented is Mr. Huminski's plight. What Mr. Huminski did that got him barred from all Vermont courtrooms was to display in his car a sign containing comments that were critical of, and offensive to, a district court judge, and the subsequent parking of that car in the Rutland court parking lot. Such an affront is a far cry indeed from the type of in-court disruption that might warrant a contempt

citation. Nor is there any possible analogy to the special circumstances under which all members of the press and the public might be temporarily asked to leave a courtroom – apart from the absence of any of the specific and detailed findings which would be pre-requisite to any such limited closure. Nor is there any suggestion here of any possible actions on Mr. Huminski's part-- an apology, recantation or some other form of penance -- which might dissolve the ban and reinstate his access to Vermont's courtrooms. Under these conditions, the judgment of the district court failed adequately to recognize the grave departure of the challenged action from well settled and fully applicable First Amendment principles.

II. A CITIZEN MAY NOT BE EXCLUDED FROM A PUBLIC PLACE IN RETALIATION FOR CRITICIZING A GOVERNMENT OFFICIAL WHO MANAGES THE SITE.

In its most recent ruling, the district court noted "disputed material facts" concerning the basis on which Huminski had been barred from the Vermont courts. *Huminski II,* 211 F. Supp. 2d at 542. Despite strong, and initially dispositive, evidence of official reprisal or retaliation for voicing unwelcome criticism of a state trial judge, a claim of courtroom security subsequently

entered the equation and brought about the apparent "dispute." *See id.* at 529-531.

Reliance on the security rationale seems untenable for two distinct reasons. For one, the district court found unequivocally in *Huminski I* that "the Defendants' decision to execute the notices of trespass and to immediately eject Huminski from the courthouse was based exclusively on their displeasure with the van's display," adding that "[defendants] do not allege that Huminski engaged in any other type of conduct or speech that might have threatened violence, created a nuisance, or interfered with orderly administration of justice." 134 F. Supp. 2d at 363. While the district court's most recent opinion fails to accept the full implications of that finding, citing instead a possible security concern, the earlier ruling seems as dispositive as it is unambiguous.

The second reason for rejecting the asserted "security" rationale is closely related. The record simply contains no evidence that would support such a basis for barring Huminski from any courtroom. Surely nothing in the unwelcome signs on the van, displayed in May, 1999, could be said to have threatened the security or the integrity of any judicial proceeding; at most such admittedly irreverent and intemperate accusations could tarnish the dignity or stature of a judge – hardly a threat to the security of that judge or of

proceedings in her courtroom. Nor could anything contained in communications after the trespass notice – letters to other state officials, and statements in a complaint to the Judicial Conduct Board – be deemed inimical to security, apart from the fact that such statements are clearly within a citizen's right to petition government for redress of grievances as well as to speak freely on important public issues. Thus there seems little doubt that the only viable basis for taking action against Mr. Huminski's was the offending nature of the signs he displayed on the van in the parking lot.

This Court has affirmed the central principle that rejects such an official reprisal as the one challenged here: "[C]riticism of public officials lies at the very core of speech protected by the First Amendment ... Retaliation by a government actor in response to . . . an exercise of First Amendment rights" violates constitutional protections. *See Naucke v. City of Park Hills*, 284 F.3d 923, 927 (2d Cir. 2002); *see also Singer v. Fulton County Sheriff*, 63 F.3d 110, 120 (2d Cir. 1995) ("allegation of retaliatory prosecution goes to the core of the First Amendment.")

Accordingly, barring a citizen from a governmental facility because he had spoken critically of state government or any of its officials would run directly contrary to this Court's persistent conviction that "[t]he strongest

protection of the First Amendment's free speech guarantee goes to the right to critici[ze] government or advocate change in government policy." *Velazquez v. Legal Services Corp.*, 164 F.3d 757, 771 (2d Cir. 1999), *aff'd*, 531 U.S. 533 (2001). When the official who was the target or object of the criticism plays a role in such retaliatory sanction, as is clearly the case here, First Amendment concerns about reprisal for unwelcome expression is substantially compounded.

Finally, the reversal of this ruling would in no way deprive state judges or law enforcement officials of needed authority to maintain the order and integrity of judicial proceedings. Behavior in a courtroom which disrupts legal proceedings may surely be the subject of contempt proceedings. The occasional need to clear a courtroom of press and public to protect an especially sensitive facet of the process is well recognized –as are the procedures by which to establish the basis for such temporary or limited closure. However, none of the circumstances justifying use of such procedures are present in this case.

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully urges this Court to reverse the judgment of the district court, and to remand the case for further proceedings consistent with settled First Amendment principles.

Respectfully submitted,

J. Joshua Wheeler
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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P.32(a)(7)(B) because: This brief contains 2,139 words, excluding the parts of the brief exempted by Fed.R. App. P.32(a)(7)(B)(iii) or

2. This brief complies with the typeface requirements of Fed. R. App. P. 32 (a)(5) and the type style requirements of Fed. R. App. P. 32 (a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 Times New Roman.

J. Joshua Wheeler
Attorney for *Amicus Curiae*

Dated: March 6, 2003

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Appellate Procedure 25, the undersigned hereby certifies that the requisite number of copies of the foregoing Motion for Leave to File and Brief of Amicus Curiae and were dispatched (First Class, postage prepaid) this 6th day of March, 2003 by United States Postal Service for delivery to the Clerk of Court and counsel for Plaintiff-Appellant/Cross-Appellee and Defendants-Appellees/Cross Appellants and Defendants-Appellees at the following addresses:

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Counsel for *Amicus Curiae*

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

RE-NEWED MOTION TO ASSERT PRIOR MOTIONS
And
Motion to Appoint Counsel

NOW COMES, Scott Huminski ("Huminski"), and, re-news, re-asserts and moves as set forth in all papers filed by Huminski since the inception of this litigation. Especially, all papers filed after Huminski fired counsel on12/22/2017 and Huminski moves for the appointment of counsel under the 6th Amendment.

Dated at Bonita Springs, Florida this 12th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 12th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO COMPEL JUDICIAL ASSISTANT "LISA" TO SCHEDULE A MOTIONS HEARING and ADDRESS HUMINSKI'S TRIAL SUBPOENA REQUESTS

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as the refusal of "Lisa" to schedule a motions hearing obstructs justice in this matter and the failure to address Huminski's request for subpoenas for State's Attorney Russell, Judge Krier, Sheriff Scott and U.S. Postal Inspector Marc Cavic prejudice Huminski's ability to defend himself in this matter -- a matter grounded solely upon a fraudulent doctored show cause order illegally filed on 6/30/2017 by the State's Attorney or a court employee. A show cause order that is not only a FRAUD, but, it fails to meet any statutory requirements for a charging document in Florida.

Dated at Bonita Springs, Florida this 17th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
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S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 17th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER STRIKING NOTICE OF APPEARANCE AND DENYING REQUESTS FOR APPOINTMENT OF COUNSEL

THIS CAUSE comes before the Court on a notice of appearance filed by Regional Counsel on January 8, 2018, Defendant's "Motion To Compel Attorney Ed Kelly To Appear As Defense Counsel Under The 6th Amendment" and Defendant's "Motion For Appointment Of Counsel Under The Sixth Amendment," both filed January 9, 2018. The Court granted Regional Counsel's amended motion to withdraw at a hearing on January 8, 2018. The notice of appearance is moot in light of the granted motion to withdraw.

To the extent Defendant requested new appointed counsel, the Court finds that Defendant has waived his right to counsel. The record reflects numerous correspondence by Defendant to appointed counsel. He appears to believe his appointed attorneys did not know what they were doing, because they did not do what he wanted done. Defendant hounded his attorneys with useless law and demands for motions or depositions, even when such requests were unviable, unethical, or frivolous. In one request, Defendant demanded he be able to act as counsel during depositions he wanted conducted, so he could ask the questions he wanted asked.

It seems that Defendant believes he knows more than trained, experienced, and licensed attorneys, and believes appointed counsel is ineffective when they do not do everything he wants. Such behavior can be construed as forfeiture of Defendant's right to appointed counsel. Jackson

v. State, 34 Fla. L. Weekly D193 (Fla. 3d DCA 2009) (Defendant's recalcitrance antagonism and even personal attacks upon . . . court-appointed attorneys, all of whom were required to withdraw, rendered it obvious that he simply would not permit himself to be represented by anyone and amounted to a binding forfeiture or waiver of that right); U.S. v. McLeod, 53 F.3d 322 (C.A.11, 1995); Watson v. State, 718 So. 2d 253 (Fla. 2d DCA 1998) *receded from on other grounds by* Waller v. State, 911 So. 2d 226 (Fla. 2d DCA 2005). When a defendant insists on discharge of appointed counsel without good cause, a trial court does not err in advising counsel that the State may not be required to appoint a substitute. Williams v. State, 427 So. 2d 768 (Fla. 2d DCA 1983) *receded from on other grounds by* Bowen v. State, 677 So. 2d 863 (Fla. 2d DCA 1996); Perkins v. State, 585 So. 2d 390, 392 (Fla. 1st DCA 1991), *disapproved on other grounds by* Heuss v. State, 687 So. 2d 823 (Fla.1996). Defendant's unreasonable refusal to accept court appointed counsel is the equivalent of a request for self-representation. State v. Young, 626 So. 2d 655 (Fla.1993); Jones v. State, 449 So. 2d 253 (Fla.1984); Mitchell v. State, 407 So. 2d 1005 (Fla. 5th DCA 1981); McCall v. State, 481 So. 2d 1231 (Fla. 1st DCA 1985).

Based on his antagonistic behavior towards appointed counsel to date, which has forced both the Public Defender and Regional Counsel to seek withdrawal, the Court finds that Defendant has waived his right to counsel.

Accordingly, it is

ORDERED AND ADJUDGED that Regional Counsel's notice of appearance filed January 8, 2018 is STRICKEN, as moot, and Defendant's requests for appointment of new counsel are denied.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 17 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; Office of Regional Counsel, 2101 McGregor Blvd., Ste. 101, Ft. Myers, FL 33901; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 18th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DISMISSING PLEADINGS REGARDING COUNSEL

THIS CAUSE comes before the Court on the Public Defender's "Motion To Strike Order Appointing The Public Defender" filed August 23, 2017, and Defendant's: "Notice Of PD Insufficient Knowledge Of Federal Removal, Bankruptcy Law And Federal Absention" filed September 4, 2017, "Opposition To Motion To Strike – Motion Is Moot" filed September 4, 2017, "Notice Of Appearance Pro Se Co-Counsel" filed September 22, 2017, "Motion To Disqualify Kevin Sarlo" filed September 26, 2017, Motion To Dismiss – Defense Counsel Refuses To Participate" filed October 6, 2017, "Motion To Disqualify Z. Miller, Esq." filed October 18, 2017, "Notice Of Appearance As Pro Se Co-Counsel" filed October 28, 2017, "Motion To Disqualify Conflict Counsel Zachary Miller, Esq. and Motion To Dismiss" filed November 15, 2017, "Notice Of Firing Of Defense Counsel" filed December 22, 2017, "Notice Of Appearance" filed December 22, 2017, "Notice Of Firing Of Conflict Counsel" filed December 22, 2017, "Motion To Disqualify Defense Counsel" and "Motion To Dismiss – Ineffective Assistance Of Counsel" filed December 29, 2017.

In light of the Court's permitting the withdrawal of both the Public Defender and Regional Counsel, the pleadings are moot. As to Defendant's pleadings regarding acting as co-counsel, "a criminal defendant does not have a constitutional right to "hybrid" representation – that is, to be represented by both counsel and by himself." Whiting v. State, 929 So. 2d 673, 674 (Fla. 5th DCA 2006).

Accordingly, it is

ORDERED AND ADJUDGED that the above pleadings are DISMISSED, as moot.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 17 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 18th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DISMISSING PLEADINGS REGARDING CHARGING DOCUMENT AND ARRAIGNMENT

THIS CAUSE comes before the Court on and Defendant's "Motion To Dismiss For Lack Of Subject Matter Jurisdiction" filed August 1, 2017, "Motion To Dismiss – No Information, Indictment Or Other Charging Document Exists In County Court – No County Court Arraignment Exists" filed August 22, 2017, "Notice Of Void Transfer From Circuit Court To County Court" filed August 23, 2017, "Notice Of Pendency Of This Matter In Circuit Court, Not County Court" filed August 27, 2017, "Notice Of Incorrect Docketing and Motion To Vacate Arraignment" filed August 30, 2017, "Motion To Dismiss – No Valid Arraignment Filed In Notice" filed September 21, 2017, "Motion To Dismiss – No Valid Charging Document" filed September 21, 2017, "Motion To Dismiss, Circuit Court Case Was Void For Want Of Jurisdiction" filed December 22, 2017, "Motion To Dismiss, No Charging Information" filed January 4, 2018, "Motion To Dismiss, Show Cause Order Fraud" filed January 5, 2018, and "Motion To Strike, Show Cause Order" filed January 5, 2018.

"An order to show cause is the charging document in a criminal contempt proceeding, just as an information is the charging document in a criminal case." Martin v. Pinellas County, 483 So. 2d 445, 447 (Fla. 2d DCA 1986). It can be initiated by the judge whose orders were violated, sua sponte. Cone v. Gillson, 861 So. 2d 1210 (Fla. 2d DCA 2003); Fla. R. Crim. P.

3.840(a). An order to show cause was filed June 5, 2017. To the extent that Defendant argued that no attachments were included with the order to show cause, this appears to be an error on the part of the Clerk failing to scan the attachments during filing, as the attachments appear in the order to show cause filed in Case 17-CA-421 on May 25, 2017.

To the extent Defendant argued he was not arraigned, the record refutes this claim, as indicated by the court minutes from June 29, 2017, and an "Order On Arraignment" filed July 10, 2017. Defendant was arraigned on June 29, 2017, at which time he entered a plea of not guilty, and was advised of his right to counsel.

Circuit and county courts have jurisdiction to hear criminal contempt cases. Schaab v. State, 33 So.3d 763 (Fla. 4th DCA 2010). There is no error in the proceeding being administratively transferred to a county court case number, rather than maintained within the separate civil case. Accordingly, it is

ORDERED AND ADJUDGED that the above pleadings are DISMISSED, as moot.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 17 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 17th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,
Plaintiff,
vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,
Defendant.
_____/

ORDER DENYING MOTION TO DISQUALIFY JUDGE

THIS CAUSE comes before the Court on Defendant's "Supplement To Motion For Judicial Recusal," filed January 12, 2018. Having reviewed the motion in accordance with Fla. R. Jud. Admin. 2.330, it is

ORDERED AND ADJUDGED that Defendant's motion to disqualify is DENIED, as legally insufficient.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 17 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished to: **Scott Huminski**, 24544 Kingfish St., Bonita Springs, FL 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL 33902-0399; and **Court Administration (XIV)**, 1700 Monroe St., Ft. Myers, FL 33901; this 18th day of January, 2018.

LINDA DOGGETT
CLERK OF COURT
By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING IN PART MOTION FOR RECORDS

THIS CAUSE comes before the Court on Defendant's "Motion For Transcript Of Arraignment Hearing 6/29/2017" filed December 26, 2017, "Motion For Subpoena To Ita Neymotin To Produce Case File" filed December 29, 2017, "Motion For Transcripts – 6/29/2017, 8/15/2017, 9/22/2017" filed January 9, 2018, "Motion For Subpoena Of Public Defender And Conflict Counsel Case Files" filed January 9, 2018, and "Motion For Court Supplied Printed Copies Of Entire Record For Use At Trial," filed January 12, 2018.

The Court notes that the entire case file is available to the public for viewing and copying at the Clerk's office. Defendant failed to provide any legal support for why any copies, much less six copies, of the case file should be provided to him at public expense. There is no provision for free copies of records, even for indigent litigants, and the custodian of public records shall furnish copies of public records "upon payment of the fee prescribed by law." Fla. Stat. §119.07(1)(a). To the extent discovery exists in this case, the State shall provide Defendant a copy of discovery.

To the extent Defendant seeks transcripts of court proceedings, Defendant has failed to establish how transcripts of routine court proceedings are reasonable and necessary to his defense to a contempt charge.

To the extent Defendant seeks records from prior defense counsel, the Public Defender and Regional Counsel are only required to produce without cost deposition or hearing transcripts that have been already created at public expense. Dumas v. Marrero, 864 So. 2d 531 (Fla. 5th DCA 2004). The portions of the case files related to the attorneys' performance of professional services are the property of the attorney, and Defendant must make payment arrangements with the agencies for production of those portions of the files. Id. Such material includes pleadings, reports, case preparation material, and state supplied discovery.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED, except that the State shall provide to Defendant a copy of any existing discovery in this case.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 17 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; Office of Regional Counsel, 2101 McGregor Blvd., Ste. 101, Ft. Myers, FL 33901; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 18th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS TO DISQUALIFY JUDGE

THIS CAUSE comes before the Court on Defendant's "Motion To Disqualify Hon. James Adams," filed January 1, 2017, and "Motion To Disqualify Judge James Adams Sixth Amenement [sic] Violations," filed January 9, 2018. Having reviewed the motions in accordance with Fla. R. Jud. Admin. 2.330, it is

ORDERED AND ADJUDGED that Defendant's motions to disqualify are DENIED, as legally insufficient.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 17 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished to: **Scott Huminski,** 24544 Kingfish St., Bonita Springs, FL 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL 33902-0399; and **Court Administration (XIV)**, 1700 Monroe St., Ft. Myers, FL 33901; this 18th day of January, 2018.

LINDA DOGGETT
CLERK OF COURT

By: _____
Deputy Clerk

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STRIKE ORDERS NOT SERVED UPON DEFENDANT

NOW COMES, Scott Huminski ("Huminski"), and, moves to strike orders of 12/27/2017 and 1/8/2018 and any other orders not served upon Huminski in violation of Due Process.

Dated at Bonita Springs, Florida this 18th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 18th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STRIKE SHOW CAUSE ORDER AS FRAUD UPON THE COURT

NOW COMES, Scott Huminski ("Huminski"), and, moves to strike the show cause order of 6/30/2017 as follows:

1. On 6/30 a court employee or prosecutor printed out Judge Krier's order of 6/5 from the Circuit Court, 17-ca-421.
2. This person then handwrote the docket number 17-mm-815 on the order and filed it in this case to make it appear as a valid order issued in this matter on 6/30 even though the judge's signature is dated 6/5.
3. This case did not exist on 6/5 when Judge Krier signed the order in Circuit Court.
4. The person who made this fraudulent filing forgot to file the attachments to the show cause order, 117 pages of attachments.
5. The support of the above by the Court exhibits extreme animus or bias on the part of the Court, it is an abuse of government power that the founders tried so hard to prevent and represents a disdain for the Bill of Rights.

Dated at Bonita Springs, Florida this 18th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

RENEWED MOTION FOR BILL OF PARTICULARS

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above because there do not exist enough factual allegations on the record to allow Huminski to mount a defense or to support a criminal charge. The only paper on the record that could be construed as a charging document is a show cause order that was taken from another case, fraudulently doctored and filed in this matter.

Dated at Bonita Springs, Florida this 18th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 18th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

SECOND BRADY MOTION

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above requesting the name of the person who handwrote the docket number on the show cause order filed in this case on 6/30/2017 and filed the altered order in the instant matter. See case law on pending first Brady motion.

Dated at Bonita Springs, Florida this 18th day of January, 2018.

-/S/- Scott Huminski

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(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 18th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF DEFENSE'S ZERO KNOWLEDGE OF THE CONTENT OF 12/27/2017 ORDER

NOW COMES, Scott Huminski ("Huminski"), and, notifies as above. His former counsel refuses to provide him with the case file and this Court has not ruled on Huminski's motions to obtain his case files.

Dated at Bonita Springs, Florida this 18th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

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TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

SUPPLEMENTAL MOTION FOR RECUSAL OF STATE'S ATTORNEY OR DISQUALIFICATION OF STATE'S ATTONEY
And
MOTION TO REFER THIS CASE TO THE ATTORNEY GENERAL FOR PROSECUTION

NOW COMES, Scott Huminski ("Huminski"), and, moves that the State's Attorney recuse himself under the Rules of Professional Conduct or that he be disqualified as follows:

1. SHOW CAUSE ORDER
2. On 6/30/2017 a court employee or prosecutor printed out Judge Krier's order of 6/5 from the Circuit Court, 17-ca-421.
3. This person then handwrote the docket number 17-mm-815 on the order and filed it in this case to make it appear as a valid order issued in this matter on 6/30 even though the judge's signature is dated 6/5.
4. The order of 6/30 was not marked as "COPY" in a further attempt to add legitimacy to the fraudulent filing.
5. This case did not exist on 6/5 when Judge Krier signed the order in Circuit Court.
6. The person who made this fraudulent filing forgot to file the attachments to the show cause order, 117 pages of attachments.

7. The support of the above by the State's Attorney exhibits extreme animus or bias on his part, it is an abuse of government power that the founders tried so hard to prevent and represents a disdain for the Bill of Rights and prevents orderly and legitimate practice of prosecutorial functions and constitutes conduct prejudicial to the administration of justice.
8. JUDGE KRIER RECUSAL ORDER
9. Judge Krier's recusal order of 8/1/2017 was lost.
10. At hearing of 8/15 and 9/22, Huminski alerted the Court to this issue which impacts jurisdiction of the County Court.
11. On 9/22 the prosecutor or a court employee printed out a copy of the 8/1 recusal order.
12. The recusal order is marked twice as "COPY".
13. This person proceeded to file the copy of a copy on 9/22 and back-dated the filing to 8/14 and held out the fraudulent filing as legitimate.
14. 8/14 was chosen as a fraudulent filing date to make the hearing of 8/15 seem legitimate when it was not as Judge Krier still presided, absent a legitimate recusal order, not Judge Adams.
15. See para. 7 above regarding ethical and other factors related to State's Attorney Russell.
16. HUMINSKI INTERVENOR STATUS IN RUSSELL V. WATERMAN BROADCASTING, ET AL.
17. To advance his financial goals, Mr. Russell intends to silence Huminski via this criminal litigation.
18. Huminski's position in Russell v. Waterman is that it is impossible for Russell's reputation to be any lower in the eyes of the public in light of the fact set forth herein and that there is no legitimate possibility that there are any legitimate damages suffered by Mr. Russell and his lawsuit is frivolous.
19. Indeed, Mr. Russell offered Huminski a plea settlement specifying no jail and no costs to Huminski if Huminski agreed to stop whistleblowing and stop engaging in core political speech contained in his litigation.

20. This plea offer constitutes extortion to further the financial status of Mr. Russell in the Waterman case.
21. See attached Notre Dame Law Journal on the ethical problems with Mr. Russell's conduct.
22. CRIMES OF SHERIFF SCOTT
23. Mr. Russell is thoroughly familiar with crimes of Sheriff Scott, embodied in the Sheriff's protective order.
24. The protective order has obstructed justice (service) of Sheriff Scott in the United States Bankruptcy Court as mandated by **RULE** 9027. Obstruction of service mandated by Court Rules promulgated by the U.S. Congress is criminal. Obstructing service instead of hiring counsel saves the Sheriff costs and fees related to litigation.
25. The protective order has obstructed justice (service) of Sheriff Scott in the Florida Second District Court of Appeal, 2D17-4740. Obstruction of service mandated by Court Rules promulgated by the Florida legislature is criminal. Obstructing service instead of hiring counsel saves the Sheriff costs and fees related to litigation.
26. The protective order has obstructed justice, tampered with witness (Huminski) and intimidated witness (Huminski) by threatening him with arrest and prosecution for attending hearings and testifying at the Lee Courthouse complex as the Sheriff's order banishes Huminski from the complex **FOR LIFE** because it prohibits any "contact or communication" with Sheriff's staff who run the security screening and act as bailiffs at the courthouse. This conduct patently violates Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005). Mr. Russell's disdain for well established constitutional law is problematic.
27. Mr. Russell has chosen to support and/or acquiesce to the vast crimes of the Sheriff to obtain his goal of silencing Huminski for pecuniary benefit. See also para. 7 above.
28. As this court filing is public record, Mr. Russell's claims in the Waterman case fail and are frivolous. Nothing can damage the reputation of Mr. Russell more than material herein.

WHEREFORE, Huminski requests this relief and the referral of this matter to the Attorney General's Office as there is a strong suggestion of official crime by Sheriff Scott and State's Attorney Russell.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

_____

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-/s/- Scott Huminski

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Scott Huminski

Attachments:

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An Ethical Analysis of the Release-Dismissal Agreement

Erin P. Bartholomy

AN ETHICAL ANALYSIS OF THE RELEASE-DISMISSAL AGREEMENT

ERIN P. BARTHOLOMY*

I. INTRODUCTION

A phenomenon exists in the criminal justice world which allows a prosecutor to strike a bargain with a criminal defendant, permitting them both to cut their losses and walk away from a mutually bad situation. On occasions where arrested individuals may have been wronged by public officials in the course of their arrests, prosecutors may legally agree to dismiss defendants' criminal charges in exchange for releases by the defendants of any civil claims arising from the arrests.

The release-dismissal agreement, and variations upon its theme,[1] have been the subject of controversy for several years. Its supporters rely on the obvious efficiency embodied in the situation. Despite this efficiency, such agreements are dangerous, detrimental to the criminal justice system, and against the better interests of society.

This article will examine cases in which the agreements appear and the law which currently allows their existence. It will argue that although the agreements have been allowed by the United States Supreme Court, they are unethical and should be prohibited by the individual state ethics organizations governing the practice of law. Section II presents specific factual situations involving release-dismissal agreements. Section III outlines the historical legal treatment of these agreements as well as their current legal status since the Supreme Court's analysis of the issue. Section IV considers legal ethics and professional responsibility and argues that, according to established norms of our profession, these agreements should not be allowed. Finally, Section V proposes that individual state ethics bodies should, as the Colorado Bar Association has done, promulgate rules prohibiting public prosecutors from entering into release-dismissal agreements.

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* B.A. 1988, University of Notre Dame; J.D. 1993, Notre Dame Law School; Thos. J. White Scholar 1991-93. My gratitude to my family, for their love and support, and to the *Journal* staff and Professor Robinson for all their help and guidance.

1. *See* Jones v. Taber, 648 F.2d 1201 (9th Cir. 1980); *see also infra* notes 5-8 and accompanying text.

II. THE SITUATION: CASES IN WHICH THE RELEASE-DISMISSAL AGREEMENT APPEARS

Several instances where release-dismissal agreements have been used will help illustrate the troubling consequences of allowing prosecutors to release alleged criminals in exchange for promises not to file civil complaints. Note that in each instance cited, the beneficiaries of the agreement are the alleged criminal and the allegedly abusive state official.

(1) In 1990, Jose Mendoza, a Salem, Oregon, man who was shot in the face during a drug raid, says he was forced to give up any claim against the state in exchange for the dismissal of criminal charges.[2] On the advice of his own attorney,[3] the 39-year old man, who did not speak English, signed an agreement to release the state of any civil liability for medical bills incurred in treating the wounds to his face. In return for his release of civil liability, the charges against Jose Mendoza, including attempted murder, were dismissed.[4]

(2) Robert Jones filed civil rights claims against the county of Multnomah, Oregon, relating to actions that occurred while he was being held in that county's jail awaiting post-conviction sentencing.[5] Jones alleged that "[o]n the night of July 3, 1976, he was taken from his cell, stripped, gagged, bound, chained to a wall, hosed with cold water and beaten with a night stick. The incident lasted 3 to 5 hours."[6] Prison officials then placed Jones in a special segregation facility[7] and held him there for nineteen days. On July 22, without any prior notice, Jones met with a deputy county counsel and a claims adjuster. At that meeting, Jones accepted $500 in return for his release of all civil claims arising from the beating of July 3.[8]

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2. *Man Says He Was Pressured to Drop Claim with State*, UPI, June 2, 1990.

3. "Portland lawyer Angel Lopez, who represented Mendoza on the civil issue, said he understood his client's feelings. 'What it comes down to is that we were prepared to do what needed to be done to get him out of this criminal problem he was in,' Lopez said. 'I advised him of the probabilities of winning in a civil suit. They don't look too hot.' " *Id.*

4. *Id.*

5. Jones v. Taber, 648 F.2d 1201 (9th Cir. 1980).

6. *Id.* at 1201.

7. *Id.* at 1202. The "special segregation facility" referred to here is quite similar to solitary confinement. Jones was denied the opportunity to speak to other prisoners or his attorney.

8. *Id.* at 1201. Because the agreement in *Jones* was made after the conviction and did not involve the dismissal of the defendant's charges, it does not present a strict example of a release-dismissal agreement. It is included here as an example of agreements that are made to prevent police brutality claims from being brought by criminal defendants.

(3) Chicago resident Verita Boyd alleged that upon her refusal to acquiesce to a search of her person,[9] a Chicago police officer pushed her violently against the car she had been in, shoved her against his police car,[10] used abusive language and threatened her. Ms. Boyd was then arrested and incarcerated on charges of disorderly conduct and resisting a police officer. When she appeared for trial, the Assistant State's Attorney of Cook County, Illinois, agreed to dismiss the charges on the condition that Ms. Boyd execute a release from civil liability in favor of the arresting officers and the city. She signed the agreement.[11]

Examples of alleged police brutality claims abound. The large numbers of arrests the courts have seen which are associated with legitimate complaints of constitutional violations justifies attention to this subject.[12] Under 42 U.S.C. § 1983,[13] persons deprived of their rights by persons acting under the color of law are entitled to redress from the actors. If their stories are true, each of the criminal defendants described above has meritorious civil rights claims against the arresting

9. Boyd v. Adams, 513 F.2d 83 (7th Cir. 1975). Ms. Boyd was a passenger in a car that was stopped and searched when she and a group of people were driving to a high school to pick up the mother of one of the passengers. Before attempting to search Ms. Boyd, the police searched the car and the three other passengers and found nothing incriminating. *Id.* at 83.

10. Ms. Boyd claims that she was pregnant at the time of the incident and that this assault caused her subsequent miscarriage. *Id.* at 85.

11. *Id.*

12. *See* Seth F. Kreimer, *Releases, Redress, and Police Misconduct: Reflections on Agreements to Waive Civil Rights Actions in Exchange for Dismissal of Criminal Charges*, 136 U. PA. L. REV. 851 n.112 (1988); *see also* Patzner v. Burkett, 779 F.2d 1363 (8th Cir. 1985) (paraplegic unconstitutionally arrested in home without warrant on charge of drunk driving, handcuffed, and dragged across the ground to police car); Stone v. City of Chicago, 738 F.2d 896, 898 (7th Cir. 1984) (while riding his bicycle, plaintiff was struck by police car; police pushed him to the ground, subjected him and his wife to racial slurs and then kicked him and beat him upon arrival at the hospital); Garrick v. City & County of Denver, 652 F.2d 969, 970 (10th Cir. 1981) (plaintiff shot by police officer after being stopped for making an illegal U-turn and having car searched for drugs).

13. 42 U.S.C. § 1983 (1985) states in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

officers and, possibly, against the police departments or the municipalities.[14]

While many brutality claims are filed, there are also instances of agreements to release such claims, as illustrated in the previously cited examples. It is not unusual for a state or municipality to dismiss the charges against a criminal defendant in exchange for that individual's promise not to sue the police, the city, or the county for any civil rights violations the arresting individuals might have caused during the arrest.[15] While they may know that they have been wronged or brutalized, defendants, such as Jose Mendoza, often feel that their civil rights claims are futile in light of their current situation. While imprisoned, they feel they have little choice and, realistically, they do have minimal bargaining power. To many, the opportunity to sign a release and walk away from a criminal arrest seems an incredibly lucky break. And the benefits of such agreements are not one-sided; the police escape from their own misdeeds. While judicial economy is preserved by obviating two trials, the net result of such an agreement is a negative one: Suspects are dismissed without trials and officers are relieved from responsibility for constitutional violations. There is no retribution for the victim of the crime, no compensation for the victim of the constitutional deprivation, and, perhaps most importantly, no report to or trial by the public of either alleged wrongdoing.

III. THE LAW

A. *The Historical Controversy:* Dixon v. District of Columbia

Until 1987, when the United States Supreme Court addressed the issue of the enforceability of the release-dismissal agreement,[16] its validity was a matter of long-standing controversy. The question of whether to uphold an agreement to trade the release of civil rights claims for the dismissal of criminal charges had been decided a number of different ways. Some courts held that the agreements were enforceable contracts.[17] Others refused to uphold such agreements and cited a number of factual reasons, including lack of adequate consideration, coercion, and duress.[18] Finally, at least one court has

14. *See infra* part IV(D) for a discussion of the application of § 1983 and the significance of official immunity and municipal liability.

15. *See generally* Kreimer, *supra* note 12.

16. Town of Newton v. Rumery, 480 U.S. 386 (1987).

17. *See, e.g.*, Hoines v. Barney's Club, 620 P.2d 628 (Ca. Sup. Ct. 1980).

18. However, if the agreements were made voluntarily, they would have

held that the release-dismissal agreement is never valid; that it is per se void for public policy reasons.[19]

Although the Supreme Court has recently spoken on this subject, opinions about the validity of release-dismissal agreements continue to vary. In its only examination of the issue, the Supreme Court did not manage to attain a majority decision,[20] so it is not surprising that feelings about these agreements remain far from settled. Prior to the Court's treatment of the issue, though, strong support lay on the side of refusing to allow such agreements. A leading case, *Dixon v. District of Columbia*,[21] promotes the position that release-dismissal agreements should never be enforced. *Dixon* set forth the facts and reasoning that led a federal court to refuse to enforce a release-dismissal agreement.[22] The *Dixon* court declared the agreements to be void as a matter of public policy and examined what the consequences would be, in terms of the prosecution of the criminal charges, when the defendant breaks an agreement not to sue.[23]

In *Dixon v. District of Columbia*, Dixon was stopped by officers for traffic violations.[24] At that time he was neither charged nor ticketed. Two days later, when he went to the station to deliver a written complaint regarding the officers' behavior, Dixon entered into a "tacit agreement" with the Corporation Counsel's office.[25] The understanding was that Dixon would not proceed further with his complaint and, in exchange, the local government would not prosecute the traffic charges.[26]

After three months, Dixon decided to file a formal complaint with the District of Columbia Commission's Council on

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been enforceable. For the "voluntariness principle," see Bushnell v. Rossetti, 750 F.2d 298 (4th Cir. 1984); Jones v. Taber, 648 F.2d 1201 (9th Cir. 1980).

19. Rumery v. Town of Newton, 778 F.2d 66 (1st Cir. 1985).

20. Town of Newton v. Rumery, 480 U.S. 386. The decision to enforce the release-dismissal agreement in that case was made by a plurality, with the opinion written by Justice Powell, joined by concurring Justice O'Connor, with four dissenters, led by Justice Stevens.

21. 394 F.2d 966 (D.C. Cir. 1968).

22. *Id.*

23. *Id.*

24. *Id.* at 966. The two violations were failing to obey the instructions given by a police officer and stopping a vehicle in such a manner as to obstruct the orderly flow of traffic. *Id.* n.1.

25. *Id.* at 968. The opinion notes that the police may have been particularly concerned with Dixon's complaint. Because he was a retired detective, and he was black and the two officers were white, Dixon could not easily be accused of raising illegitimate claims of police brutality. *Id.* n.2.

26. *Id.* at 968.

Human Relations. As a result of Dixon's complaint, the case was reopened and he was charged with the two traffic offenses.[27] The prosecutor proceeded with the case and the trial court, after granting three continuances in favor of the prosecution, directed findings of not guilty. The government appealed and during a conference with the trial judge ordered by the Court of Appeals, the prosecutor "admitted that the prosecutions were brought because appellant went back on an agreement not to file complaints of misconduct against the police officers who stopped him."[28] In their eventual hearing of the case, the Court of Appeals ruled that the prosecution was impermissibly brought and remanded the case with instructions for it to be dismissed.[29]

The *Dixon* court held that there was a definite necessity to prevent the type of agreement which the government initiated in this case. The Court of Appeals for the District of Columbia Circuit stated that "the courts may not become the 'enforcers' of these odious agreements."[30] Further, judges must remove any incentive to enter into the agreements by barring prosecutions brought against defendants who refuse to promise, or later break a promise, not to file complaints against arresting officers.[31]

The court in *Dixon* was concerned with the proliferation of these agreements that would have resulted had it ruled for the government. The court found these agreements to be "odious" for several of the reasons that motivated four Supreme Court justices later to vote against enforcing a similar agreement.[32] The court was specifically concerned with the failure to prosecute valid criminal claims as well as the failure to openly and thoroughly air complaints against the police.[33] The

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27. *Id.* The Chief of the Law Enforcement division of the Corporation Counsel explained their decision to reopen the case by stating:

> We had discussed it back when it originally occurred and, at the time, everybody was happy to forget the whole thing . . . But three months later he comes in and makes a formal complaint. So we said 'If you are going to play ball like that why shouldn't we proceed with our case?'. . . I had no reason to file until he changed back on his understanding of what we had all agreed on . . . .

Id.

28. *Id.* at 967.

29. *Id.* at 970.

30. *Id.* at 969.

31. *Id.*

32. *See* Town of Newton v. Rumery, 480 U.S. at 403 (Stevens, J., dissenting).

33. *Dixon*, 394 F.2d at 969.

Dixon court was the first to pronounce the often-quoted fear regarding the "major evil" of these agreements: "[T]hey tempt the prosecutor to trump up charges for use in bargaining for suppression of the complaint."[34] According to the D.C. Circuit, "The danger of concocted charges is particularly great because complaints against the police usually arise in connection with arrests for extremely vague offenses such as disorderly conduct or resisting arrest."[35] Following this reasoning, the *Dixon* holding would invalidate all release-dismissal agreements.

Dixon v. District of Columbia set the groundwork for close to two decades of controversy over the enforceability of the release-dismissal agreement. Federal and state courts all over the country followed the decision,[36] many holding the agreements void as against public policy. While the Supreme Court eventually promulgated a different rule, a strong dissent clearly enumerated the problems inherent in the release-dismissal agreement.

B. Town of Newton v. Rumery: *Enforcing the Release-Dismissal Agreement*

The question of the enforceability of the release-dismissal agreement, addressed in *Dixon v. District of Columbia*, was argued and decided before the Supreme Court in *Town of Newton v. Rumery*.[37] A plurality headed by Justice Powell, and joined by concurring Justice O'Connor, held that a release-dismissal agreement between a criminal defendant and a prosecutor is not necessarily unenforceable. In its decision to uphold the particular agreement in this situation, the Court refused to find a per se rule of invalidity.

The case arose from the following facts. David Champy, a friend of Bernard Rumery's, was indicted for aggravated felonious sexual assault. After learning of the charges from a local

34. *Id.*

35. *Id.*

36. *See* Brian L. Fielkow, *42 U.S.C. § 1983—Buying Justice: The Role of Release-Dismissal Agreements in the Criminal Justice System*, 78 J. Crim. L. 1119 n.138 and accompanying text (1988); *see also* Boyd v. Adams, 513 F.2d 83, 88 (7th Cir. 1975); Shepard v. Byrd, 581 F. Supp. 1374, 1386 (N.D. Ga. 1984); Brothers v. Rosauer's Supermarkets, Inc., 545 F. Supp. 1041, 1042 (D. Mont. 1982); Horne v. Pane, 514 F. Supp. 551, 552 (S.D.N.Y. 1981); Williamsen v. Jernberg, 99 Ill. App. 2d 371, 375 (1968); Gray v. City of Galesburg, 247 N.W.2d 338 (Mich. App. 1976); Kurlander v. Davis, 427 N.Y.S.2d 376, 381 (N.Y. App. Div. 1980).

37. 480 U.S. 386 (1987).

newspaper, Rumery phoned Mary Deary, an acquaintance of both himself and Champy. Deary was the victim of the assault in question and was expected to testify as the principal witness in the case against Champy. Deary was apparently upset by the substance of the phone call from Rumery and she subsequently contacted the Town of Newton's Chief of Police. Deary told the police that Rumery had attempted to force her to drop the charges against Champy and that Rumery had threatened her if she continued to go ahead with the charges. Rumery was then arrested on charges of tampering with a witness, a class B felony in New Hampshire.

After the arrest, Rumery's attorney reached an agreement with the Deputy County Attorney under which the Prosecutor would dismiss all charges against Rumery if Rumery would agree not to sue the town, its officials, or Deary for any harm[38] caused by the arrest. The District Court found that Rumery's attorney presented the agreement to Rumery and explained to him that he would have to forego all civil actions if he accepted the agreement.[39] After three days, during which time Rumery was not in custody, he signed the agreement and the charges were dropped.

Ten months later Rumery filed suit,[40] alleging that the town and its officials had violated his constitutional rights by arresting him, defaming him, and falsely imprisoning him. The Town of Newton moved for dismissal of the civil case with the release-dismissal agreement serving as an affirmative defense. At the trial level, Rumery unsuccessfully argued that the agreement was unenforceable as a violation of public policy. The District Court rejected Rumery's argument and dismissed his civil case, holding that a release of a § 1983 claim may be valid if it results from a voluntary, deliberate and informed decision.[41] The court further found that Rumery's decision resulted from a careful analysis of the situation, and was therefore voluntary; accordingly, they dismissed his suit.[42]

The Court of Appeals for the First Circuit reversed, adopting a per se rule invalidating release-dismissal agreements.[43] The First Circuit was concerned with the coercive nature of the agreements as well as their infringement on important public

38. For example, defamation of character or false arrest, which were the bases of Rumery's later § 1983 suit.
39. 480 U.S. at 390.
40. Under 42 U.S.C. § 1983.
41. 480 U.S. at 391.
42. Rumery v. Town of Newton, 778 F.2d 66, 69 (1st Cir. 1985).
43. *Id.*

interests. In holding that such agreements are never enforceable, the court stated:

> It is difficult to envision how release agreements, negotiated in exchange for a decision not to prosecute, serve the public interest. Enforcement of such covenants would tempt prosecutors to trump up charges in reaction to a defendant's civil rights claim, suppress evidence of police misconduct, and leave unremedied deprivations of constitutional rights.[44]

The United States Supreme Court granted the town's petition for a writ of certiorari,[45] and in the plurality opinion, Justice Powell[46] stated the issue: "The question in this case is whether a court properly may enforce an agreement in which a criminal defendant releases his right to file an action under 42 U.S.C. § 1983 in return for a prosecutor's dismissal of pending criminal charges."[47]

Justice Powell began his opinion by stating that the source of the relevant legal authority is the common law principle that a promise is unenforceable if the interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement.[48] He placed the issue and the Court's position in perspective by stating:

> The Court of Appeals concluded that the public interests related to release-dismissal agreements justified a per se rule of invalidity. We think the court overstated the perceived problems and also failed to credit the significant public interests that such agreements can further. Most importantly, the Court of Appeals did not consider the wide variety of factual situations that can result in release-dismissal agreements. Thus, although we agree that in some cases these agreements may infringe important interest of the criminal defendant and of society as a whole, we do not believe that the mere possibility of harm to these interests calls for a per se rule.[49]

Justice Powell's plurality opinion systematically rejected the Court of Appeals' two arguments. He began by responding

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44. *Id.*

45. *Town of Newton v. Rumery*, 475 U.S. 1118 (1986).

46. Justice Powell was joined by Chief Justice Rehnquist, Justice White and Justice Scalia. Justice O'Connor concurred in the decision and parts of the opinion.

47. *Rumery*, 480 U.S. at 389.

48. *Id.* at 392 n.2 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 178(1) (1981)).

49. *Id.*

to the argument that these agreements are "inherently coercive."[50] While the Court agreed that some release-dismissal agreements "may not be the product of an informed and voluntary decision,"[51] it concluded that the possibility of an involuntary decision does not justify invalidating all release-dismissal agreements.[52]

The Court based its rejection of the theory of inherent coerciveness on two grounds. First, in other contexts criminal defendants are required "to make difficult choices that effectively waive constitutional rights."[53] Second, in many cases the defendant's decision to enter into the agreement reflects "a highly rational judgment that the certain benefits of escaping criminal prosecution exceed the speculative benefits of prevailing in a civil action."[54] Based on the fact that the defendant was a sophisticated businessman, that he was not in jail at the time of the agreement, and that he was represented by an experienced criminal lawyer, the plurality concluded that Rumery's decision was such a rational judgment.[55]

Because, as the Court found, Rumery's decision to enter into the agreement was voluntary, "the public interest opposing involuntary waiver of constitutional rights is no reason to hold this agreement invalid."[56] In accordance with these findings, the Court held that the mere possibility of coercion in the making of these agreements is insufficient to justify a per se invalidation of release-dismissal agreements.[57]

The second argument justifying the First Circuit's holding was the significant public interests that invalidating release-dismissal agreements would serve.[58] Specifically, the Appellate Court sought to protect the public interest in revealing police misconduct and in preventing prosecutors from the temptation to "trump up charges."[59] The Supreme Court challenged

50. *Id.* at 393 ("It is unfair to present a criminal defendant with a choice between facing criminal charges and waiving his right to sue under § 1983.").

51. *Id.* ("The risk, publicity, and expense of a criminal trial may intimidate a defendant, even if he believes his defense is meritorious.").

52. *Id.*

53. *Id.* ("[I]t is well settled that plea bargaining does not violate the Constitution even though a guilty plea waives important constitutional rights . . . . We see no reason to believe that release-dismissal agreements pose a more coercive choice than other situations we have accepted.").

54. *Id.* at 394.

55. *Id.*

56. *Id.*

57. *Id.*

58. 778 F.2d at 69.

59. *Id.*

these two bases of public interest and found the public interest in enforcing and allowing the agreements to be more significant. Noting that not all § 1983 suits are meritorious, the plurality found that "[t]o the extent release-dismissal agreements protect public officials from the burdens of defending such unjust claims," they further an important public interest.[60] Additionally, the Court attacked per se invalidation of the agreements because such action "assumes that prosecutors will seize the opportunity for wrongdoing."[61] Citing their own rule that courts normally must defer to prosecutorial decisions as to whom to prosecute,[62] and noting that judicial deference to prosecutorial discretion has long been recognized, the Court felt properly reluctant to assume prosecutorial misconduct will necessarily arise from the availability of release-dismissal agreements. Concluding that, "because release-dismissal agreements may further legitimate prosecutorial and public interests," the Court rejected the view promulgated by the lower court that all such agreements are per se invalid.[63]

After determining that release-dismissal agreements are not inherently coercive and that they can serve legitimate public interests, the Court further held that the specific agreement in Rumery's case should be enforced because it was entered into voluntarily.[64] Reversing the holding of the Court of Appeals, the Supreme Court held that "this agreement was voluntary, that there is no evidence of prosecutorial misconduct, and that enforcement of this agreement would not adversely affect the relevant public interests."[65] Implicit in the Supreme Court's decision was a new rule that if a release-dismissal agreement were made voluntarily and if the public interests would be benefitted by the agreement, it should be enforced.[66]

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60. Town of Newton v. Rumery, 480 U.S. at 396:
No one suggests that all such suits are meritorious. Many are marginal and some are frivolous. Yet even when the risk of ultimate liability is negligible, the burden of defending such lawsuits is substantial. Counsel may be retained by the official, as well as the governmental entity. Preparation for trial, and the trial itself, will require the time and attention of the defendant officials, to the detriment of their public duties. In some cases litigation will extend over a period of years. This diversion of officials from their normal duties and the inevitable expense of defending even unjust claims is distinctly not in the public interest.

61. *Id.*

62. *Id.*

63. *Id.* at 397.

64. *Id.* at 398.

65. *Id.*

66. *Id.* The public benefits that derived from this particular agreement

For practical purposes, the Court stated that a "voluntariness" standard would now govern issues of enforceability of release-dismissal agreements.

Justice O'Connor concurred in the Court's opinion to disapprove the Court of Appeals broad holding that release-dismissal agreements are void as against public policy under all circumstances.[67] In her concurrence, Justice O'Connor further agreed that the enforceability of these contracts should be decided on a case-by-case approach which "appropriately balances the important interests on both sides of the question of the enforceability of these agreements."[68] Justice O'Connor agreed with the plurality that Bernard Rumery's covenant not to sue was enforceable.[69]

The concurrence set out the specific factors that should be considered in the decision to enforce the agreement and emphasized that the party seeking to enforce the agreement bears the burden of proving that it was entered into voluntarily and that it was not an abuse of the criminal process. Justice O'Connor's analysis resembled the District Court's ruling and basically restated that court's voluntariness test. Relevant factors include: the experience of the criminal defendant, the circumstances of the release, the availability of counsel, and the nature of the criminal charge.[70] Also significant, but not necessary, is whether the agreement was executed under judicial supervision.

According to the concurrence, release-dismissal agreements are respectable because much § 1983 litigation is meritless and "the inconvenience and distraction of public officials caused by such suits is not inconsiderable."[71] Justice O'Connor also believed that the agreements may actually serve "bona fide criminal justice goals" and she cited protection of Mary Deary as such a legitimate goal.[72] The agreement served criminal justice, according to Justice O'Connor, by sparing

included the facts that the agreement served judicial economy in that it foreclosed both a criminal and a civil trial and that it spared Mary Deary from "the public scrutiny and embarrassment she would have endured if she had had to testify in either of those cases." *Id.*

67. *Id.* at 399.

68. *Id.* (O'Connor, J., concurring).

69. *Id.*

70. *Id.* at 401. Justice O'Connor stated that the greater the charge, the less likely that the agreement will be voluntary and the greater the coercive effect. *Id.*

71. *Id.*

72. *Id.* at 399, 403. This was an important point for Justice O'Connor; she felt strongly that protection of the complaining witness is a large

Deary the rigors of testifying in two cases in which she was the complaining, principal, and only witness. Justice O'Connor further grounded her praise of the release-dismissal agreement on its cost-efficiency to the local community who should be spared the expense of litigation associated with some minor crimes for which there is little or no public interest in prosecuting.[73]

Justice O'Connor departed from the plurality in that she extensively examined the dangers involved in the release-dismissal agreement. She concurred with the possibility of temptation for the prosecutor to file "trumped up charges" in an attempt to exonerate a tortious police officer.[74] Justice O'Connor also mentioned the converse, and equally significant, "temptation" accompanying these bargains — the problem of dropping meritorious criminal charges for the purpose of protecting the municipality from civil claims.[75] The concurrence was further concerned about introducing extraneous civil concerns into the criminal justice process and stated that the central problem with the agreement was "that public criminal justice interests are explicitly traded against the private financial interest of the individuals involved in the arrest and prosecution."[76] Even with these significant harms poised precariously over the integrity of the criminal justice system, Justice O'Connor stated that "[n]evertheless, the dangers of the release-dismissal agreement do not preclude its enforcement in all cases."[77]

C. *The Dissenting Opinion*

Between the extremes of the *Dixon* court and the *Rumery* plurality, the *Rumery* dissent took a moderate position on the issue of the validity of the release-dismissal agreement. Led by Justice Stevens, the dissenters sided neither with those who argue for the per se rule against enforceability nor with the plurality who found merit in those agreements that were not defectively negotiated. After considering the issue, the *Rumery*

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incentive to enter into a release-dismissal agreement and the existence of this incentive will enhance the agreement's enforceability.

73. *Id.* at 400. However, the Class B felony for which Rumery was charged with the possibility of up to seven years in prison (N.H. Rev. Stat. Ann. § 641:5(I)(b) (1986)) does not seem to fall into the category of a "minor crime" that supports Justice O'Connor's reasoning.

74. *Id.*

75. *Id.*

76. *Id.* at 401.

77. *Id.*

dissent concluded that while they were hesitant to adopt an absolute rule invalidating the agreements, the enactment of § 1983 mandates a strong presumption against the agreements.[78] Because the strong presumption against enforcing the agreements may be overcome only by facts and policies that were not present in the *Rumery* case, Justices Stevens, Brennan, Marshall and Blackmun voted not to uphold the specific agreement in that case.[79]

To support their differing conclusion, the dissent offered several lines of reasoning. First, Justice Stevens argued that even though Rumery's decision to enter into the agreement was deliberate, informed, and voluntary, that fact does not address two important objections to its enforcement: The agreement is inherently coercive and the bargain exacts a price unrelated to the defendant's own conduct.[80]

The *Rumery* dissent contended that defendants should not be faced with the dilemma of choosing between trial (and possible conviction) and surrendering their civil rights claims. The dissent condemned that situation by stating:

> Even an intelligent and informed, but completely innocent, person accused of crime should not be required to choose between a threatened indictment and trial, with their attendant publicity and the omnipresent possibility of wrongful conviction, and surrendering the right to a civil remedy against individuals who have violated his or her constitutional rights.[81]

Justice Stevens noted that Rumery's choice to sign the agreement was made with advice of counsel and after three days of reflection. Consequently, he agreed with the plurality in their determination that it was a voluntary and intelligent decision.[82] Yet, while the dissent conceded that this contract was voluntary, it found no reason to conclude the agreement was enforceable simply because it was voluntarily entered into. Comparing this bargain to a promise to pay a patrol officer twenty dollars for not issuing a speeding ticket, Justice Stevens submitted that "the deliberate and rational character of

78. *Id.* at 418 (Stevens, J., dissenting).
79. *Id.*
80. *Id.* at 411. The dissent's first argument is summarized by Justice Stevens' statement that "[t]he prosecutor's offer to drop charges if the defendant accedes to the agreement is inherently coercive; moreover, the agreement exacts a price unrelated to the character of the defendant's own conduct." *Id.*
81. *Id.* at 405.
82. *Id.* at 408.

[Rumery's] decision is not a sufficient reason for concluding that the agreement is enforceable."[83] There may be nothing irrational about agreeing to bribe a police officer, yet no court would enforce such a contract. The same should be the case, argued the dissent, with the bargain formed between the Town of Newton's prosecutor and Rumery.

After stating that the release-dismissal agreement is inherently coercive, even if rationally negotiated, the dissent emphasized the further unfairness of this bargain because of the lack of mutuality of advantage between the prosecutor and the defendant.[84] According to Justice Stevens, this case involves the functional equivalent of a citizen's paying money, represented by waiving the possibility of damages in a civil claim, for the dismissal of a charge that the prosecution has not proven.[85] The extension of this logic leads to the conclusion that the mutuality of advantage will only grow more disparate in proportion to the certainty of the innocence of the defendant and the wrongfulness of the police officer's actions. Justice Stevens based that conclusion on his theory that prosecutors' strongest interests in entering into these agreements exist when they realize that defendants are innocent and wrongly accused.[86] Ironically, that is precisely the situation in which the criminal charges should be dropped regardless of the extenuating circumstances.[87] Such an easy exoneration as the bargain presented here should not be an option for the municipality and the tortious actors.

The plurality and the concurrence both stated that some § 1983 claims are meritless or even frivolous.[88] However, even if that assumption is true, Justice Stevens argued, those claims, as well as the criminal charges suffering from the same criti-

83. *Id.*

84. *Id.* at 410.

85. Stevens examined the lack of evidence against Rumery and cited specifically the facts that the complaining witness was unwilling to testify at trial, that there was no written statement on which to base the arrest and that Rumery was never indicted. *Id.* at 405.

86. Stevens repeatedly reminds us that the defendant is innocent as a matter of law. *Id.* at 404, 409. "Not only is such a person presumptively innocent as a matter of law; as a factual matter the prosecutor's interest in obtaining a covenant not to sue will be strongest in those cases in which he realizes that the defendant was innocent and was wrongfully accused." *Id.* at 409. The reader is asked to construe the masculine gender used in this and all other extracts in the generic sense, to include women as well as men.

87. "The State is spared the necessity of going to trial, but its willingness to drop the charge completely indicates that it might not have proceeded with the prosecution in any event." *Id.* at 410.

88. *Id.* at 411.

cisms, must be tested by the adversary process.[89] Justice Stevens stressed that regardless of the value or merit of a particular § 1983 claim, the defendant who relinquishes that claim in exchange for criminal exoneration is paying a price unrelated to his possible criminal behavior.[90] For example, a defendant's giving up a claim against the police that is worth $1000 is functionally equivalent to his paying $1000 to the police department's retirement benefit fund.[91]

Supporters of the release-dismissal agreement cite the efficiency argument as a major basis for allowing these procedures.[92] Justice Stevens pointed out, though, that the Court's decision in this case defeats its own goal by creating the necessity of examining the merits of each agreement to determine its enforceability. At the same time, the efficiency argument is particularly weak in that, while proposing judicial economy, it encourages inattention to potential conflicts of interest.[93]

In addition to its argument that Rumery's agreement is defective due to its coercive nature and unfair price, the dissent argues that these agreements are presumptively invalid because they force the prosecutor in such cases improperly to represent three potentially conflicting interests: in this case, the interests of the state, the police, and the complaining witness. The primary duty of the prosecutor is to represent the sovereign's interest in the effective enforcement of the criminal law.[94] Viewing this issue from the standpoint of that duty, Justice Stevens declared that the release-dismissal agreement in this case was both unnecessary and unjustified, "for both the prosecutor and the State of New Hampshire enjoy absolute immunity from common-law and § 1983 liability arising out of a prosecutor's decision to initiate criminal proceedings."[95] Because Rumery's agreement gave the state and the prosecutor no additional pro-

89. *Id.* Supporters of the release-dismissal agreement analogize it to plea bargaining as an efficient and acceptable means of resolving cases without litigation. The plea bargain analogy is faulty, though, because in that situation the defendant admits guilt, while in the release-dismissal situation the defendant must be presumed to be innocent. *Id.* at 409.

90. "Whatever the true value of a § 1983 claim may be, a defendant who is required to give up such a claim in exchange for a dismissal of a criminal charge is being forced to pay a price that is unrelated to his possible wrongdoing as reflected in that charge." *Id.* at 411.

91. *Id.*

92. *Id.* at 395-96.

93. *Id.* at 414 (Stevens, J., dissenting).

94. *Id.* at 412; *see also* Berger v. United States, 295 U.S. 78, 88 (1935).

95. *Rumery*, 480 U.S. at 412 (Stevens, J., dissenting); *see also* Imbler v. Pachtman, 424 U.S. 409, 427 (1976).

tection, the contract was irrelevant in terms of the prosecutor's primary duty.

The main function and duty of prosecutors may likely be clouded by allowing other interests to influence their judgment. Justice Stevens cited the prosecutor's ethical obligation to exercise independent judgment and to avoid potentially conflicting interests.[96] Prosecutors who involve the state in release-dismissal agreements extend, and often neglect, their duty to represent the state. The public is entitled to a decision of whether to prosecute that is made independently of outside concerns. By seeking to protect law enforcement officials from civil liability, prosecutors impair their ability to serve that public interest.

The plurality mentioned and the concurrence emphasized the interest of protecting Mary Deary as an acceptable rationale for entering into and enforcing the Rumery agreement. They cited Deary's emotional distress, her unwillingness to testify against Rumery, and the necessity of her testimony in the sexual assault case as reasons supporting the release-dismissal agreement.[97] Justices Powell and O'Connor are only half right.

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96. *Rumery*, 480 U.S. at 413 (Stevens, J., dissenting) (citing MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 5 (1983) [hereinafter MODEL CODE]); *see also* MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.8(a) (1992)[hereinafter MODEL RULES]; MODEL CODE DR 7-103 ("A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause."); MODEL CODE EC 7-14 ("A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair.").

97. *Rumery*, 480 U.S. at 415. The Court stated "Mary Deary did not want to testify against Mr. Rumery." *Id.* at 390. The Court further noted:

> [I]n this case the prosecutor had an independent, legitimate reason to make this agreement directly related to his prosecutorial responsibilities. The agreement foreclosed both the civil and criminal trials concerning Rumery, in which Deary would have been a key witness. She therefore was spared the public scrutiny and embarrassment she would have endured if she had had to testify in either of those cases. Both the prosecutor and the defense attorney testified in the District Court that this was a significant consideration in the prosecutor's decision.

Id. at 398. Finally, the Court noted:

> Mary Deary's emotional distress, her unwillingness to testify against Rumery, presumably in later civil as well as criminal proceedings, and the necessity of her testimony in the pending sexual assault case against David Champy all support the prosecutor's judgment that the charges against Rumery should be dropped if further injury to Deary, and therefore to the Champy case, could thereby be avoided.

Id. at 403 (O'Connor, J., concurring). The dissent also discussed several

While the "dismissal" portion of the agreement was justified under these facts, the support for the "release" half of the bargain was shaky at best. Lack of evidence, represented in this case in the form of a reluctant witness, justified dropping the charges against the defendant. However, while a weak case justifies dropping charges, it does not justify exonerating the police who may have acted wrongfully.

As Justice Stevens wrote, "there is no reason to fashion a rule that either requires or permits a prosecutor always to defer to the interests of a witness."[98] Rather, it is often the case that prosecutors are not able to pursue the interest of protecting victims while still fulfilling their law enforcement duty to the sovereign.[99] Where the two interests conflict, the duty of the prosecutor toward just law enforcement must take precedence over both protecting a fragile witness and ensuring success in another case.[100] Neither the interest in sparing Deary the suffering of testifying at Rumery's trial nor the necessity of her testimony at Champy's trial justified foreclosing a victim of wrongful police behavior from pursuing his constitutional rights.

In its third argument, the dissent stated that the relevant public interests upon which the plurality based their votes did not outweigh the public interest embodied and reflected in the very existence of § 1983. The "relevant public interests" to which the plurality and Justice O'Connor refer are three.[101] First, because not all § 1983 suits are meritorious, enforcing release-dismissal agreements is correct because they protect officials from the burdens of defending unjust claims. Second, traditional judicial deference to the prosecutor's choice of whom to prosecute calls for allowing these agreements. Third, the interest in protecting Mary Deary and witnesses like her support allowing the agreements.[102]

The dissent believed that the merits of open civil litigation and remedy to the person harmed strongly outweighed the

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times Dreary's unwillingness to testify against Rumery and her emotional distress. *See id.* at 406 n.5, 410 n.11, 416 n.19 (Stevens, J., dissenting).

98. *Id.* at 415 (Stevens, J., dissenting).

99. "There will be cases in which the prosecutor has a plain duty to obtain critical testimony despite the desire of the witness to remain anonymous or to avoid a courtroom confrontation with an offender." *Id.*

100. "It would plainly be unwise for the Court to hold that a release-dismissal agreement is enforceable simply because it affords protection to a potential witness." *Id.*

101. *Id.* at 398.

102. *Id.*

interest in avoiding the expense and inconvenience of litigation.[103] As for the Court's protection of the second "relevant public interest," judicial deference to prosecutorial discretion is significant, but again, while that argument supports the dismissal of criminal charges, it does not support the release of civil claims. Finally, the impropriety of promoting the interest of a witness at the expense of the law enforcement duty cannot be supported.

In response to the Court's statement of the relevant public interests supporting their holding, the dissent examined the interests embodied in § 1983.[104] The policies supporting the statute are the federal interests in providing a remedy for civil violations caused by law officers as well as the desire to have these claims resolved publicly. If these interests could be so easily defeated by an agreement, the purpose and strength of § 1983 would be significantly weakened. The plurality's reasoning seemed to be based on the unspoken premise that the burden of litigation on society is so heavy as to outweigh the benefits provided by § 1983. If the facts are to be assessed that way, said Justice Stevens, the statute and its purposes should not be circumvented, but rather the statute should be repealed.[105] Until Congress takes that action, though, the courts must respect their decision to "attach greater importance to the benefits associated with access to a federal remedy than to the burdens of defending these cases."[106]

IV. Professional Responsibility

The *Rumery* dissenters attempted to prevent the enforcement of that particular release-dismissal agreement. While their opinion stressed that there should be a strong presumption against enforcing the agreements, even the dissenters on the Court were reluctant to create a per se rule which would eliminate the agreement altogether.[107] After *Rumery*, we must conclude that to rid our society of these instruments, the legal profession itself must adopt the attitude that lawyers should not enter into these "odious agreements," and that the courts should not enforce them.

While *Dixon's* holding and Stevens' dissent represent the more professional and rational approach to the issue, they do

103. *Id.* at 419 (Stevens, J., dissenting).
104. *Id.*
105. *Id.*
106. *Id.*
107. *Id.* at 418.

not carry the legal authority to require courts to follow their directive. Although the Supreme Court achieved only a plurality in favor of enforcement, it is doubtful that it will speak on this issue again soon. Some states may wait for that day, and the practice of trading civil rights for non-judicial acquittal will continue, but individual states may act now through a number of means. Alternatively, they may enact legislation which outlaws the agreements. An even more effective course, however, and the one in the spirit of *Dixon*, would be for states' professional ethics bodies to forbid prosecutors from ever utilizing the tool of the release-dismissal agreement.

In their discussion of the issue, the *Rumery* courts, both at the appellate and Supreme Court levels, concentrated primarily on the rights of the defendant and the interests of the public.[108] The Justices correctly examined the possibility of coercion inherent in the agreements and balanced the relevant public interests that would both be served and harmed by allowing them to exist. The dissent concentrated on the competing interests the prosecutor inconsistently served,[109] and Justice O'Connor mentioned in detail the "dangers" lurking behind the agreements.[110] None of the opinions stated, though, that these agreements were ethically wrong. No one questioned whether utilizing these agreements is unprofessional. No one explored the possibility that American Bar Association standards themselves might implicitly reject these agreements as "unethical" or, at the very least "unprofessional." The following section argues that, for several reasons, prosecutors should not enter into release-dismissal agreements because the practice that is legal in the eyes of the Supreme Court is unethical according to our own professional norms.

A. *"Systematic Inequality"*

As the plurality in *Rumery* admitted, even criminal defendants who believe their defenses are meritorious are often intimidated by "the risk, publicity, and expense of a criminal trial."[111] It is unlikely, though, that the arrestee's threat of a civil suit is as intimidating to the prosecutor as is the prosecutor's threat of indictment and trial. This fact supports Rumery's claim that release-dismissal agreements are "inherently coercive," and as such should not be allowed. The inher-

108. *See* discussion *supra* notes 58-63 and accompanying text.
109. *See supra* notes 93-100 and accompanying text.
110. *See supra* notes 74-77 and accompanying text.
111. *Rumery*, 480 U.S. at 393.

ent coerciveness stems from the unequal positions of the prosecutor and the defendant, and this systematic inequality of bargaining power renders the agreement suspect.[112]

The *Rumery* plurality stated that the defendant's intimidation and unequal position *vis-a-vis* the prosecutor do not justify invalidating release-dismissal agreements because the inequality of position between prosecutor and defendant is regularly tolerated in plea bargains.[113] The prosecutorial threat which produces a plea arrangement may seem similar to that which produces a release-dismissal agreement, but as Justice Stevens reminds us, there are important distinctions between the two situations.[114] Plea bargains are public, judicially supervised, and involve an admission of guilt. Release-dismissal agreements are private and made outside of judicial scrutiny, and, perhaps most importantly, defendants who give up their civil rights claims to avoid prosecution are presumed to be innocent. Further, as Justice Stevens stated, the "mutuality of advantage" that supports plea bargaining is not present in release-dismissal agreements.[115]

Where in a plea bargain the terms of the bargain are related to the strength of each side's case, a release-dismissal agreement "exacts a price unrelated to the character of the defendant's own conduct."[116] The nature and strength of the two claims are unrelated; a civil rights claim has no bearing on the defendant's guilt or innocence. Verita Boyd's dismissal of police brutality charges was in exchange for a dismissal of a disorderly conduct and resisting arrest charge.[117] Miller Dixon was stopped for obscure traffic violations — failing to obey the instructions given by a police officer and stopping a vehicle in such a manner as to obstruct the orderly flow of traffic — which were only prosecuted as a vindictive response to his own civil complaint.[118] These examples illustrate what Justice Stevens must have meant when he stated that the defendant who releases his civil claim in exchange for dismissal of a criminal

112. *See* PETER W. LOW & JOHN C. JEFFRIES, JR., CIVIL RIGHTS ACTIONS 429 (1988).

113. *Rumery*, 480 U.S. at 393.

114. *Id.* at 409 (Stevens, J., dissenting).

115. *Id.*

116. *Id.* at 411.

117. *See supra* notes 9-11 and accompanying text.

118. Dixon v. District of Columbia, 394 F.2d 966, 966 n.1 (D.C. Cir. 1968).

charge is "forced to pay a price that is unrelated to the possible wrongdoing as reflected in that charge."[119]

The systematic inequality of the agreement supports an argument that the government's objective in obtaining the agreement is not legitimate. As Justice Stevens pointed out, the prosecutors' strongest interest in entering into these agreements exist when the defendant is both innocent and deprived of constitutional rights.[120] Unlike settling a criminal case with a plea bargain, the prosecutor is admitting the defendant's innocence by dropping the charges. The cases which present the prosecutor with the strongest incentives to make this agreement are those in which the defendant is most deserving of relief.[121] Such a benefit, which the prosecutor receives from the defendant's willingness to forego a civil rights claim, is not one for which the prosecutor should legitimately be allowed to bargain. It is rather less than admirable to allow the superior position of the prosecutor to deprive an individual of vindication of constitutional claims. The release-dismissal agreement is invalid, then, both because of the inequality between the two parties and because the government is pursuing an interest that does not deserve merit.[122]

B. *Existing Codes of Legal Ethics*

Admittedly, the American Bar Association does not explicitly disallow the release-dismissal agreement. There is precious little, short of the obvious, which the current standards governing the practice of law explicitly forbids. It seems, though,

119. *Rumery*, 480 U.S. at 411 (Stevens, J., dissenting).

120. *See supra* notes 86-87 and accompanying text.

121. This is especially true if the *Dixon* court was correct in its assertion that the these agreements encourage prosecutors to "trump up charges" in order to protect police from their own misconduct. Imagine, for example, a case where a person is arrested without probable cause, is innocent and is physically brutalized during the course of the arrest. That person would have a strong civil rights case; simultaneously, the prosecutor who is seeking to protect the police would have the strongest incentive to enter into a release-dismissal agreement. While such a situation presents the obvious conclusion that the prosecutor should simply drop the charges regardless of the defendant's possible suit against the police, it is possible that the prosecutor could threaten to prosecute and then use the agreement as a mechanism to protect the police and the municipality. This was the position advanced by the *Dixon* court. *See also* Kreimer, *supra* note 12, at 865, whose empirical study showed that "rather than constituting a means by which impartial prosecutors screen out frivolous civil rights actions, these situations appear to represent a method for municipal attorneys to routinely eliminate section 1983 claims against their clients." *Id.*

122. Low & JEFFRIES, *supra* note 112, at 430.

that anyone arguing for a per se rule against enforcement of release-dismissal agreements could and should present the argument that it is wrong, by ethical and professional standards, to be a party to such an agreement.

The ABA Model Code of Professional Responsibility[123] reminds us that lawyers are "guardians of the law" and bear the consequent obligation "to maintain the highest standards of professional conduct."[124] This proposed law of ethics purports to guide lawyers toward what is right and wrong, or at least toward what is acceptable and unacceptable, professional and unprofessional. In terms of this "guide," to act unprofessionally is tantamount to acting unethically, and to be deserving of official sanctions.[125]

The Code, in its guidance function, sets forth "ethical considerations" for lawyers. It is there, if anywhere, where a lawyer will find standards of professionalism. These considerations are merely considerations; the Preamble to the Code refers to them as "aspirational in character" but certainly not mandatory.[126] The ABA did create Disciplinary Rules which are mandatory and which state the "minimum level of conduct below which no lawyer can fall without being subject to disciplinary action."[127] Those very rudimentary rules do not shed much light on the problem at hand.

Within the current Model Code of Professional Responsibility, there is neither an Ethical Consideration nor a Disciplinary Rule which forbids a public prosecutor from entering into an agreement with a criminal defendant to dismiss charges in exchange for a civil release. Prosecutors will not find such an obligation within the current Model Rules of Professional Responsibility, either. However, we may deduce unethical or at least unprofessional conduct that should be forbidden by the

123. This article concentrates more on the ABA standards as outlined in the Code of Professional Responsibility than on the Model Rules of Professional Responsibility because the Model Rules fail, in large part, to address the issues presented herein. While the Code is now considered obsolete in many jurisdictions, as it has been superseded by the Model Rules, it is cited for its value as a traditional guide for professional responsibility.

124. MODEL CODE, *supra* note 96, pmbl.

125. *Id.*

126. *Id.*

127. *Id.*; *see also* AMERICAN BAR ASS'N, STANDARDS RELATING TO CRIMINAL JUSTICE Standard 3-1.1(e) (1982) [hereinafter CRIMINAL JUSTICE STANDARDS]: "As used in this chapter, the term 'unprofessional conduct' denotes conduct which, in either identical or similar language, is or should be made subject to disciplinary sanctions pursuant to codes of professional responsibility in each jurisdiction."

Code and the Rules through analogies drawn and arguments based on the aspirations and minimum standards that we do have.

Because the Code itself is largely silent on the special duties of prosecutors, it may be assumed that they are to be held to the same ethical standards as other lawyers, with the state acting as the "client."[128] According to Canon 5, "a lawyer should exercise independent professional judgment on behalf of a client."[129] The Ethical Considerations within that Canon state that "the professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties."[130] Further, "the obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment."[131] The Model Rules of Professional Conduct reiterate the mandate that lawyers should not limit their representation of clients by responsibilities to third parties.[132]

As Justice Stevens stated in the *Rumery* dissent, a prosecutor is practically unable to serve the competing interests involved in the release-dismissal practice and still fulfill the duties required by these ethical mandates.[133] When the interest in protecting the police thwarts the interest of serving the people, as is often the case when a defendant accused of a violent crime is freed without investigation or trial, the prosecutor fails in her ethical obligation by facilitating, rather than disregarding, the desires of a third party. The Model Rules, which are the relevant authority in most jurisdictions, also forbid conflicts of interest which involve the prosecutor's serving the interests of a third party rather than the interests of the client.[134] Releasing a defendant in order to protect individual officers or a municipality, rather than pursuing a criminal case in service to the state, is the type of situation which both the Code and the Rules forbid.

The Code and the Model Rules state that "the responsibility of a public prosecutor differs from that of the usual advo-

128. *But see* MODEL CODE, *supra* note 96, Canon 7, and text accompanying note 98.

129. *Id.* Cannon 5.

130. *Id.* EC 5-1.

131. *Id.* EC 5-21.

132. MODEL RULES, *supra* note 96, Rule 1.7.

133. Town of Newton v. Rumery, 480 U.S. 386, 415 (Stevens, J., dissenting).

134. MODEL RULES, *supra* note 96, Rule 1.7(b).

cate; his duty is to seek justice, not merely to convict."[135] This "special duty" springs from the fact that the prosecutor represents the sovereign and it includes the employment of "restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute."[136] The prosecutor bears the duty to see justice done; that duty includes attempting to convict suspected criminals or, in the alternative, to dismiss unjust charges. It is not the proper duty of the prosecutor, however, to protect the police from their own misconduct,[137] nor is it the prosecutor's proper duty to spare witnesses like Mary Deary from the discomfort of testifying. It is quite likely that engaging in behavior which tends to those ends will only compromise the prosecutor's original duty of law enforcement.

The ABA has also promulgated Standards Relating to the Administration of Criminal Justice,[138] and it is there that we would expect to find an explicit rejection of the practice of release-dismissal agreements. While that is not the case, we again see that the proper function of the prosecutor is to seek justice, not merely to convict.[139] These standards further resemble the Code as tailored to public service, rather than private service, in their mandate of avoiding conflict of interest with respect to official duties.[140] These standards may not clearly and unequivocally answer our question, but they certainly support the conviction that, based at least on duty and conflict of interest principles, the prosecutor should not compromise her position by engaging in release-dismissal bargains.

Courts have begun to consider release-dismissal agreements in light of the ethical standards described above. For example, in 1989, the Court of Appeals of New York considered release-dismissal agreements in light of the Supreme

135. MODEL CODE, *supra* note 96, EC 7-13; MODEL RULES, *supra* note 96, Rule 3.8.

136. MODEL CODE, *supra* note 96, EC 7-13.

137. The Court stated in *Rumery*:

> It is no part of the proper duty of a prosecutor to use a criminal prosecution to forestall a civil proceeding by the defendant against policemen, even where the civil case arises from the events that are also the basis for the criminal charge. What he cannot do is condition a voluntary dismissal of a charge upon a stipulation by the defendant that is designed to forestall the latter's civil case.

Rumery, 480 U.S. at 414 n.17 (quoting MacDonald v. Musick, 425 F.2d 373, 375 (9th Cir. 1970)).

138. CRIMINAL JUSTICE STANDARDS, *supra* note 127.

139. *Id.* Standard 3-1.1(c).

140. *Id.* Standard 3-1.2.

Court's ruling in *Rumery*. In *Cowles v. Brownell*,[141] basing much of its reasoning on ethical considerations, the court held that "the integrity of the criminal justice system mandates that an agreement made in the circumstances presented not be enforced by the courts."[142] The case arose when Cowles sued an arresting officer for malicious prosecution, false arrest, assault and battery. The officer moved for summary judgment, based on the ground that the plaintiff had previously released all claims against the officer. The court refused to dismiss the suit, finding that the prosecutor's conditional dismissal of the criminal charges upon the relinquishment of Cowles' civil claims was unrelated to the merits of the People's case, and, consequently, there remained unresolved factual allegations regarding Cowles' conduct. There were equally unresolved allegations against the District Attorney's office, which stood "accused of routinely demanding such waivers in order to protect a police officer whose misdeeds it knows."[143]

As did the *Rumery* dissent, the majority in the New York case refused to enforce a specific release-dismissal agreement but did not promulgate a per se rule invalidating the agreements.[144] Although the result may not be exactly what critics of the agreements are seeking, the *Cowles* case is significant in that it examines the ethical considerations and professional responsibilities that the prosecutor compromised in that case.

The New York court, like Justice Stevens in *Rumery*, was extremely concerned with the conflicts of interest to which prosecutors expose themselves in release-dismissal situations.[145] According to the court, protecting the police from civil liability is not the duty of the prosecutor. Rather, prosecutors bear the obligation to represent the People, and to fulfill that obligation, they must exercise independent judgment in deciding whether or not to prosecute.[146] The court found that this obligation to the people "cannot be fulfilled when the prosecutor undertakes also to represent a police officer for reasons divorced from any criminal justice concern. To enforce a release-dismissal agreement under these circumstances is simply to encourage violation of the prosecutor's obligation."[147]

141. 538 N.E.2d 325 (N.Y. 1989).
142. *Id.* at 327.
143. *Id.* at 326.
144. *Id.* at 327.
145. *Id.*
146. *Id.*
147. *Id.*

The New York court also considered the prosecutor's ethical obligation to avoid even the appearance of professional impropriety.[148] That obligation includes the fact that "a lawyer should promote public confidence in our system and in the legal profession."[149] This duty springs from the fact that on occasion the conduct of a lawyer may appear to the lay person to be unethical. The New York court decided not to enforce the release-dismissal agreement in this case because it was concerned about both the conflict of interest inherent in the situation and the appearance of impropriety that would stem from publicly allowing such a bargain.[150]

The principal concern in these cases, and an argument relied upon by the *Rumery* plurality, is whether or not the agreements advance public interest. In no way is that interest furthered by the agreement exemplified in the *Cowles* case.[151] Instead of furthering any public benefit, these agreements eliminate both the public's ability to seek justice against a possible criminal wrongdoer and the public's right to assess the possible constitutional violation of one of its officials. In terms of ethical obligations, if the criminal behavior truly occurred, and could have been proven beyond a reasonable doubt, the prosecutor owed a duty to the state to pursue prosecution. Conversely, if the charges were false, or the case unprovable, the prosecutor was ethically obligated to dismiss the charges at no price to the defendant. In either situation requiring a release of civil rights for the dismissal is unethical.[152]

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148. *Id.* (citing MODEL CODE, *supra* note 96, Canon 9); *see also* MODEL RULES, *supra* note 96, Rule 3.1 (regarding Meritorious Claims and Contentions) & Rule 3.8 (regarding the Special Duties of Prosecutors).

149. MODEL CODE, *supra* note 96, Canon 9.

150. "The record in this case demonstrates that the practice of requiring the release of civil claims in exchange for dismissal of charges simply to insulate a municipality or its employees from liability can engender at least an appearance of impropriety or conflict of interest." *Cowles*, 538 N.E.2d at 326-27.

151. "Insofar as the integrity of the criminal justice system was concerned — the paramount interest here — on this record there was no benefit, only a loss." *Id.* at 327.

152. The *Cowles* court stated that:

> Assuming plaintiff to have been guilty of the criminal charges leveled against him (as the prosecutor maintains), the People's interest in seeing a wrongdoer punished has not been vindicated. Assuming him to have been innocent (as he maintains), or the case against him to have been unprovable, the prosecutor was under an ethical obligation to drop the charges without exacting any price for doing so.

Id.

As well as requiring unethical conduct on the part of the prosecutor, these agreements leave unanswered questions about officers' conduct. That fact further supports the conclusion that the minimal public interest served by these agreements do not overcome the dangers they pose. Rather, as the New York court held, "the agreement may be viewed as undermining the legitimate interests of the criminal justice system solely to protect against the possibility of civil liability."[153]

C. *The Purposes of § 1983*

The *Rumery* plurality cited three "relevant public interests" supporting their holding: avoidance of the expense and inconvenience of litigation, judicial deference to prosecutorial discretion, and protection of the victim of the crime.[154] The holding reached by the *Rumery* plurality suggests that these interests are so important to society that they outweigh the interests promoted by § 1983.[155] As Justice Stevens reminded us though, we should be disconcerted by the fact that the benefits, goals and purposes of § 1983 may so easily be circumvented by an agreement. One need only examine the goals of the statute to conclude that Congress must not have intended such a result.

An award of damages against a public official for the misuse of government power promotes two obvious objectives: compensation to victims and deterrence from further misconduct. The Supreme Court has identified compensation of the victims of official misconduct as "the basic purpose of a § 1983 damages award."[156] This "basic purpose" is obviously defeated by the release-dismissal agreement. While a dismissed arrestee may now avoid the threat of prosecution, that person still carries the injuries of the official misconduct and, if the injuries are physical, the medical costs related to the incident.

The second objective of a § 1983 damages award, deterrence of future misconduct, is achieved when "[a]n award of damages against one official conveys to others a threat of similar treatment if they too misbehave."[157] This purpose is similarly defeated by releasing the officer without a public recognition of the injury inflicted. The wholly private nature of

153. *Id.*
154. *See supra* notes 58-65, 101-02 and accompanying text.
155. *See supra* notes 104-106 and accompanying text.
156. Carey v. Piphus, 435 U.S. 247, 254 (1978).
157. Low & JEFFRIES, *supra* note 112, at 42.

these agreements — unlike plea bargains or civil settlements, they are not judicially supervised not publicly recorded — not only evades the deterrence purpose of § 1983 but actually undermines it by possibly encouraging officials to misbehave.[158] However, such a suspicion that police will actually take advantage of these agreements' existence in order to intentionally brutalize arrestees is not necessary to prove the point that the agreements undermine the deterrent aspect of § 1983. The statute was intended to discourage misconduct. By rendering it impotent by denying its use, the effect of these agreements is to encourage disregard or indifference to an arrestee's constitutional rights.

Additionally, perhaps the most important goal furthered by § 1983 litigation is that § 1983 damage awards "are one way of affirming legal rights and thus of educating the moral sentiments of the community."[159] The damage awards themselves are often nominal. Indeed, in many cases the bankruptcy of municipalities renders them judgment-proof, and individual police officers generally have no "deep pockets." As a result, money is not the motivation to pursue a § 1983 claim. Rather, the importance of litigating claims under the statute is to publicly air official misconduct, which publicity may help to further the goals of compensation and deterrence of future wrongs. The "cover-up" nature of the release-dismissal agreement is perhaps its most invidious characteristic. It is probable that most members of the public would prefer to have criminals prosecuted, if there is probable cause of their guilt enough to indict them, rather than be released for a reason unrelated to their arrest. Presumably, most people probably do not wish their public officials to engage in constitutional violations and then be protected from suit by local prosecutors.

158. *See supra* notes 44, 59, 120-121, and accompanying text. It has been theorized that prosecutors may consciously use the agreements to protect police from their misconduct, but it may be unnecessarily cynical to assume that police will purposely engage in unconstitutional practices if these agreements continue to exist. While some officers may rationally choose to violate individuals' rights, it seems that most cases of misbehavior arise out of anger or ignorance. Although the release-dismissal option may not send a specific signal to officers that their misconduct is acceptable, the elimination of § 1983 claims may eventually lead to the same result. So while the continued existence of these agreements may not affirmatively encourage misbehavior, the lack of punishment for these incidents implies that civil rights are not worth respect because no one is ever punished for violating them.

159. Low & JEFFRIES, *supra* note 112, at 42.

D. *The Application of § 1983*

The *Rumery* plurality and concurrence relied heavily on concerns for judicial economy to support their approval of the release-dismissal agreement in that case. Justices Powell and O'Connor each cited a concern to avoid "frivolous" and unfairly burdensome lawsuits against municipalities and officers as a compelling rationale to allow individuals to bargain away civil rights claims.[160] An examination of the technical aspects surrounding § 1983 litigation demonstrates, however, that that very concern has been provided for by judicial interpretation of the statute which has greatly narrowed its application. Specifically, the qualified immunities granted to individual officers make it difficult for a plaintiff to pursue an action, and the situations in which a municipality will ever be found liable are very limited. In short, it is extremely difficult for a plaintiff to get past a motion to dismiss, even if that plaintiff has a case which seems meritorious. A study of official immunity and municipal liability in relation to § 1983 cases will show that Justices Powell and O'Connor's concerns about frivolous lawsuits are unfounded, and that for a prosecutor to enter into a release-dismissal agreement to support that rationale is both unnecessary and immoral.

1. Official Immunity

The common law traditionally recognizes the necessity of permitting government officials to perform their official functions free from the threat of suits for personal liability.[161] This official executive immunity stems from two interdependent rationales: first, "the injustice . . . of subjecting to liability an officer who is required, by the legal obligations of his position, to exercise discretion," and, second, "the danger that the threat of such liability would deter [that officer's] willingness to execute his office with the decisiveness and the judgment required by the public good."[162] Police officers, accordingly, enjoy "qualified immunity" from liability from damages under § 1983.[163]

It is presumed that a police officer who commits a constitutional deprivation is immune from suit. The rule is that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their con-

160. *See supra* notes 60, 71 and accompanying text.
161. Scheuer v. Rhodes, 416 U.S. 232, 239 (1974).
162. *Id.* at 240.
163. *Id.*

duct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[164] This qualified immunity is defeated, then, when the officer who committed the deprivation knew or reasonably should have known that he was violating some clearly established constitutional standard.[165] The significance of the existence of this objective rule of qualified immunity is that the first step in any § 1983 case will be to determine this threshold question, and until that question is resolved discovery will not be allowed.[166]

The practical consequence of qualified immunity is that many § 1983 cases will not survive long enough to even reach the discovery stage of a lawsuit. The immunity defense is usually pleaded as the defendant-officer's first response to the complaint, in the form of a motion to dismiss. For example, the officer will plead that there was no clearly established constitutional or statutory rule which governed the particular situation, or that the state of the law on that particular situation was unclear. Further, if there was such a clearly established rule, officers may plead that they were reasonable in not knowing about it. Consequently, unless there was not such a rule of law about which an officer should have known, the court will dismiss the case at the initial stage.

The rule of qualified immunity has obvious implications in the release-dismissal debate. Thanks to the tough standard that § 1983 plaintiffs must surmount just to proceed beyond a motion to dismiss, Justices Powell and O'Connor need not be concerned about officers being overburdened with frivolous complaints. Unless the act the officer performed was clearly illegal, that officer is immune from suit.

2. Municipal Liability

Because individual officers may be immune from suit or be practically judgment proof, § 1983 plaintiffs may wish to sue the deeper pocket of the municipality, as was the case in *Rumery*. As a rule, a municipality may be held liable for the constitutional deprivations performed by its officers. The Supreme Court has held that "[l]ocal governing bodies . . . can be sued directly under § 1983 for monetary, declaratory, or injunctive relief."[167] That liability is limited, however, in that

164. Harlow v. Fitzgerald, 457 U.S. 800 (1982).
165. *Id.*
166. *Id.*
167. Monell v. Department of Social Services, 436 U.S. 658 (1978).

"the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation or decision officially adopted and promulgated by that body's officers."[168] The local government's liability may not be based only on injuries inflicted by its employees, though; municipalities may not be held liable merely under the doctrine of respondeat superior. Rather, "it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983."[169]

Unless a municipality employs a policy or custom of depriving individuals of their constitutional rights, it will not be liable for the wrongful acts of its officers. The implications of this rule of municipal liability appear in the example of the Rodney King beating incident of March, 1991, and the pending federal civil suit arising from that incident. Even though the physical evidence in that case lends strong sympathetic support for holding the Los Angeles Police Department liable for King's physical injuries, it seems that proving the municipality's liability will be the "major stumbling block" in the § 1983 damages action.[170] Because municipal liability cannot be established under a vicarious liability theory, King will be required to prove that the officers were acting according to an official policy or custom of the L.A. Police Department.[171] As noted earlier, the individual officers are not the "deep pockets" that civil plaintiffs are seeking. One law professor noted that without municipal liability "you've won the battle but lost the war."[172]

The law shows that a release-dismissal agreement will only be necessary, then, to protect a municipality who as a matter of policy employs unconstitutional practices. One is only left to wonder why, then, these prosecutors who are servants of the people, members of communities, and officers of the court want to support such practices by allowing them to continue.

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168. *Id.*

169. *Id.*

170. Stephanie B. Goldberg, *Federal Lawsuits for Rodney King Raise New Issues*, A.B.A. J., July 1992, at 76.

171. A showing that the department was deliberately indifferent to the training and conduct of its officers may establish the "policy or custom" necessary to prove liability. *See* Canton v. Harris, 489 U.S. 378 (1989).

172. Goldberg, *supra* note 170 (quoting Peter L. Davis, Touro College, Jacob D. Fuchsberg Law Center, New York, N.Y.).

V. PROPOSED SOLUTION

The U.S. Supreme Court has held that the release-dismissal agreement may be enforced, if it is negotiated under the proper circumstances. While the Court gives permission to enter into these agreements, that judicial statement is no mandate for prosecutors to continue this practice, or for ethics associations to permit it.

As a largely self-governing profession, lawyers take pride in their ability to regulate themselves through such bodies as the ABA and state bar associations. The preamble to the Model Rules states that "the legal profession's relative autonomy carries with it special responsibilities of self-government."[173] Further, "the profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar."[174] These statements would support any action states may take, through their own bar associations, to discourage the practice of entering into release-dismissal agreements.

In 1982, the Colorado Bar Association declared that "it is improper for a public prosecutor to require that a defendant, as a condition of charging or sentencing concessions, release governmental agencies or their agents from actual or potential civil claims which arise from the same transactions as the criminal episode."[175] The Colorado Bar based its opinion on the ABA's statement that "[t]he responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict."[176] If courts are currently unable to interpret the concepts that it is unprofessional to represent conflicting interests[177] and that the primary duty of a public prosecutor is not merely to convict, but to see that justice is done,[178] as expressions disallowing the practice of dismissing charges for the release of civil claims, then individual states should follow Colorado's example and expressly prohibit the use of these agreements.

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173. MODEL RULES, *supra* note 96, pmbl.

174. *Id.*

175. Colorado Bar Ass'n., Ethics Opinion No. 62 (Nov. 20, 1982) (regarding duties of a public prosecutor), *reprinted in* 12 COLO. LAW. 455 (1983).

176. CRIMINAL JUSTICE STANDARDS, *supra* note 127, Standard 3-1.1(c); MODEL CODE, *supra* note 96, EC 7-13.

177. MODEL CODE, *supra* note 96, Canon 5.

178. *Id.* EC 7-13.

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR HEARING RE: ALL PRO SE MOTIONS FILED SINCE INCEPTION

And

MOTION TO VACATE ORDERS STRIKING *pro se* DEFENSE MOTIONS

NOW COMES, Scott Huminski ("Huminski"), and, moves, re-asserts and incorporates all defense motions and papers filed since the inception of this case with the same force and effect as if more fully set forth herein and Huminski demands a hearing on these motions and written replies prior to hearing from the State as set forth in Huminski's motion for ADA accomodations. Huminski notes numerous motions collaterally attacking jurisdiction of this Court and motions to disqualify the State's Attorney are among the collection of motions not already heard by this Court.

As Huminski been forced to proceed pro se and not allowed equal time to prepare for trial that his counsel was allowed, the orders striking defense filings for the reason that Huminski was represented by counsel have now been rendered moot and inaccurate by the failure of the Court to appoint counsel.

Huminski notes that he has not received the case file from former counsel, yet, a trial has been scheduled without granting Huminski access to the case file in violation of procedural and substantive Due Process.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 19th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO RECUSE OR DISQUALIFY JUDGE ADAMS FOR ACTING AS AN ADVOCATE ABSENT PARTICIPATION OF STATE'S ATTORNEY IN THIS MATTER

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as the State's Attorney has not filed one affirmative paper in this matter and fails to oppose any defense motions and did not initiate this litigation and has not filed an appearance.

The Court has become the adversary party in this matter instead of an unbiased decision-maker because the State's Attorney has clearly abandoned participating in this matter in a meaningful manner and did not participate in bringing this prosecution. The silence of the State's Attorney at the arraignment on 6/29/2017 continues and the Court mistakenly has taken on the duties of the prosecution.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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(239) 300-6656
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-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – STATE'S ATTORNEY DID NOT BRING THIS LITIGATION AND IS NOT A PROPER PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as the State's Attorney has not filed one affirmative paper in this matter and fails to oppose any defense motions and did not initiate this litigation and has not filed a notice of appearance in this dubious case.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR STATE TO PRODUCE WITNESS LIST FOR TRIAL
AND
RE-NEWED MOTION FOR BILL OF PARTICULARS

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTION TO CERTIFY QUESTIONS

THIS CAUSE comes before the Court on Defendant's "Motion To Certify Questions Proffered In Motion For Interlocutory Appeal To District Court Of Appeals [sic]," filed August 21, 2017. Having reviewed the motion, the Court declines to exercise its discretion in that manner. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion to certify questions is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 18 day of January, 2018.

James Adams
James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399;; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 19th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER STRIKING PLEADINGS REGARDING BANKRUPTCY

THIS CAUSE comes before the Court on Defendant's "Notice Of Failure Of State's Attorney To Move To Remand In Bankruptcy Court" filed August 25, 2017, "Notice Of State's Attorney Failure To Assert Federal Abstention Doctrines In Defense To Removal" filed September 6, 2017, "Notice Of Violation Of Separation Of Powers" filed September 17, 2017, and "Notice Of State's Attorney Failure to Move To Retroactively Lift Automatic Stay – All Acts Taken In Violation Of Automatic Stay Irretrievably Void" filed September 21, 2017. The Court notes that the 11 U.S.C. §362(b) automatic stay provision does not bar commencement or continuation of a criminal action. A criminal contempt proceeding is a criminal action, and is an exception to the automatic stay. *See, e.g.* In re Burgess, 503 B.R. 154 (M.D. Fla. 2014).

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's pleadings are STRICKEN, as moot.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 18 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 9th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO FOR APPOINTMENT OF ADA ADVOCATE

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above for appointment of a mental health professional who can interface with Huminski and the other parties to bring the law of this case down to an understandable level for Huminski. Huminski is on full SSDI with PTSD, bi-polar depression, anxiety disorder, adjustment disorder and other maladies.

For instance, Huminski is mentally incapable of contemplating the theory that the First Amendment bars courthouse banishment in Vermont and it does not in Florida. See Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005).

Huminski has no ability to understand how a courthouse banishment order would be declared void ab initio in Vermont, but, serve as the cause for a criminal prosecution in Florida. Huminski needs the assistance of a mental health professional to help him understand how the U.S. Constitution does not apply to Florida and require narrow tailoring of court orders to a legitimate governmental purpose. Unlike Corsones, Huminski is a party in cases pending in the courthouse he is banished from enhancing his right of access.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

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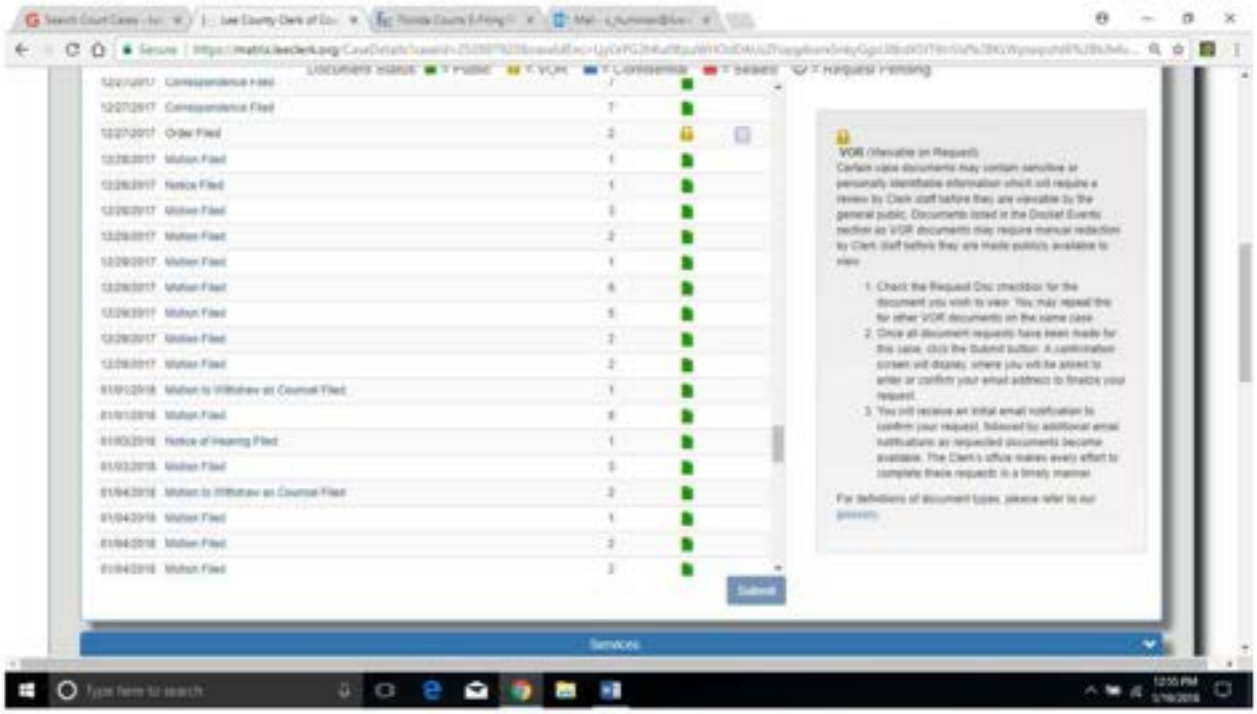
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF FAILURE TO SERVE ORDER OF 12/27/2017 and UNAVAILABILITY ONLINE

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above. Zero Due Process related to covertly filed orders. Not only was Huminski not served, the order is not available online. Screen shot today of online docket,



Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF ISSUES WITH ORDER OF 1/11/2017

NOW COMES, Scott Huminski ("Huminski"), and, notifies that he never received any service related to the order of 1/11 and further there are two dates on the top margin of the order indicating a fax on 1/8/2017 which is stamped over by the court's filing data of 1/11. Too many improprieties in this order and this case.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

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In and for Lee County, Florida
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SCOTT HUMINSKI, FOR HIMSELF	)	
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TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO FOR CASE FILES AND ALL WORK PRODUCT FROM PRIOR COUNSEL AND AGREEMENT TO PAY FEES

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above and will pay any fees associated with production of documents from Huminski's defense case files for papers and records not already available for access to the public online. Huminski is not interested in any of his filings or Court orders as he has that information or he can obtain it online.

The Court will see that the materials produced by the counsel contain nothing from conflict counsel and one or two pages of notes from the public defender. An amount of work done on the case in 6 months that evidences ineffective assistance of counsel, one of the defenses to the instant charges.

If the fees exceed Huminski's above expectations, in the alternative, Huminski moves for inspection of defense case files, which, Huminski will photograph anything he deems helpful to his defense of ineffective assistance of counsel or otherwise beneficial to his defense.

For the record, conflict counsel admitted to Huminski the Court will never grant a motion to dismiss no matter what the law states or requires and this Court will only accept a plea or trial regardless of how unconstitutional and corrupt the protective orders are.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS RE: COURT ERROR IN SHOW CAUSE ORDER

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss as the Court has admitted in writing that the show cause order was deficient due to an error and 117 pages were not filed. The remedy is to dismiss the case and allow the State's Attorney to remedy the error, not to have parties refer to filings in other Courts.

In the recent orders, the Court failed to address the issue that someone at the courthouse doctored the order by entering a docket number and filed it as an original and valid court order **when it was a modified copy**. This is illegal and potentially criminal. Legal matters require precision and strict adherence to the rules and law. Especially in criminal matters, there is no room for *sloppy justice* on the part of the courts or government.

It is not the duty of this Court to cover for sloppiness of court staff or the prosecutor. Again, the Court is acting as a proponent by doing so and not an un-biased decision-maker.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE ORDER OF 12/27/2017

NOW COMES, Scott Huminski ("Huminski"), and, moves to vacate the re-filing of the double file stamped "COPY" "COPY" old order of 8/1/2017 of the recusal of Judge Krier. Huminski, just now, was able to view the order that was filed without service.

Deception in filing court orders that have been lost and representing that the filing of 12/27 was an original, authentic and valid filing of a Court order constitutes more sloppy justice related to this case. The practice of law requires an exacting precision and compliance with the rules and statutes.

The only reason not to vacate the order would be to propagate a deception upon the public and the defendant to obtain a wrongful conviction. Traditionally, prosecutors, not judges engage in this conduct. Again, the Court is acted as a proponent instead of a non-biased decision-maker.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

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TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO ALLOW THE STATE TO OPINE AS TO THE ADEQUACY OF THE CHARGING DOCUMENTS

NOW COMES, Scott Huminski ("Huminski"), and, moves to allow the State's Attorney to opine on the adequacy of the charging documents. This Court, to date, has acted as prosecutor and judge without regard to the desires and opinions of the State. This is not how criminal justice cases are litigated in the United States.

The State should also be allowed to opine as to the 6th Amendment issues. This Court is not a party in this litigation and should not force its will upon the State. The State has represented zero opinion on any issues related to this litigation aside from the impropriety of courthouse banishment.

If the Court refuses to allow the State to participate in dispositive issues as has been the case, the Court should remove the State as a party and caption the case as Adams v. Huminski.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE/STRIKE ALL ORDERS ISSUED WITHOUT PARTICIPATION AND CONSENT OF THE PLAINTIFF

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as the States is a party and should be allowed to join, oppose or take another position as to the filings in this case. The State is a party to this case, not the Court. To date, this case has been dangerously informal.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

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MOTION TO EXPEDITE HEARING ON MOTIONS TO DISQUALIFY/RECUSE STATE'S ATTORNEY

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as the Court has been forced to stand in the shoes of the State's Attorney because the prosecutor has no desire to participate in these proceedings and has deferred to allow the Court to take on all prosecutorial functions.

This Court has illegally taken on the task of prosecutor because of the painfully obvious conflict that exists in Mr. Russell's office and his reluctance to participate in these proceedings because of Huminski's intervenor status in Russell v. Waterman.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO SET FORTH FINDINGS OF LAW CONCERNING "ADMINISTRATIVE TRANSFER" RE: WHAT LAW, RULE OR STATUTE SETS FORTH THE PROCEDURE

And

TO ALLOW THE STATE TO RESPOND AND PARTICIPATE

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above requesting what law, rule or statute the Court followed concerning the "administrative transfer" procedure mentioned in orders dated 1/18/2018. Huminski Exhaustively searched for authority with zero results, it is not supported by any authority.

As Huminski has learned the practice of law requires exacting precision and meticulous attention to detail, qualities that are absent these proceedings especially the "administrative transfer" which is a procedure that does not exist in Florida and if it did, it would not include the modification and doctoring of court orders that are presented as genuine legitimate originals. This is criminal fraud.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

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MOTION TO VACATE ANY ORDERS PUNISHING HUMINSKI FOR SYMPTOMS OF HIS DISABILITIES BI-POLAR DEPRESSION AND OTHER DISORDERS UNDER THE ADA
And
MOTION FOR COMPETENCY EXAM

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as the ambush trials scheduled by the Court after stripping Huminski of counsel has aggravated Huminski's bi-polar depression, has sent Huminski into a state of mania and has caused Huminsski to have suicidal thoughts as the Court has acted in a manner of extreme hostility towards the defendant and has undermined every legal precept governing this case in Huminski's view of the Constitution and Florida law, especially 3.140.

Huminski, at this point, does not have the mental ability to understand the Court's position that this case was brought consistently with 3.140 or that the show cause order is legitimate and not doctored by Court personnel when the Courts own documents reveal doctoring of a court order. Huminski is hopelessly confused, manic, suicidal and at the height of anxiety absent counsel to guide him through what he perceives as illegal and unconstitutional logic of the Court.

Furthermore, the Court refuses to serve Huminski with any orders leaving him in an extreme state of confusion and has impacted Huminski's anxiety disorder to a point where he finds himself unable to comprehend orders of the Court he sees as patently unconstitutional. The shock to Huminski's mind by the facts of this case

and his beliefs in what the Constitution demands compared to how this Court acts leave him utterly disabled and unfit.

This case began because of death threats received by Huminski from relatives who blame Huminski for the suicide of Justin M. Nelson, now, this Court sees it as its duty to force Huminski into suicide.

The threats from the Court to punish Huminski for his disabilities violate the ADA. The ADA mandates accommodations for the disabled, not the terrorizing of a disabled litigant. The Court's opinion that it does not have to serve Huminski with orders violates the ADA and further exasperates Huminski's medical disabilities.

Huminski does not understand the Court's position that the protective order of Sheriff Scott is valid and that Huminski must use violence or any method available to prevent any prohibited "contact or communication" with the LCSO. Violence against law enforcement should not be embraced by the Court and the protective order specifies no contact under any circumstances forcing Huminski to use any method including unlawful acts to avoid violating the protective order.

Huminski is unable to understand how courthouse banishment complies with the law set forth in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) and why this court is supporting such a order that is vague, not narrowly tailored to a governmental purpose and has no reasonable time, place and manner restrictions.

Huminski can not understand how the First Amendment is dead in the context of this case and understanding this is beyond Huminski's mental capacity at this time. Huminski needs appointment of counsel under the ADA.

Huminski is not currently suicidal, but, judicial terrorism could push him over the line. Terrorism disguised as the law is impossible for Huminski to understand. Huminski has never engaged in violence and his is very disturbed by the language of the protective order that he obey it without exception and at all costs, which seem to be ordering Huminski to engage in violence with the LCSO if they confront him to obey the prohibition of "contact and communication" without exception. This is why Huminski believes First Amendment law requires the narrowly tailoring of such orders and Huminski does not have the ability to understand how this Court is supporting such a protective order. Attached hereto are the crimes that Huminski has observed related to the corrupt prosecution of this matter.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

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SUPPLEMENTAL MOTION FOR RECUSAL OF STATE'S ATTORNEY OR DISQUALIFICATION OF STATE'S ATTONEY
And
MOTION TO REFER THIS CASE TO THE ATTORNEY GENERAL FOR PROSECUTION

NOW COMES, Scott Huminski ("Huminski"), and, moves that the State's Attorney recuse himself under the Rules of Professional Conduct or that he be disqualified as follows:

1. SHOW CAUSE ORDER
2. On 6/30/2017 a court employee or prosecutor printed out Judge Krier's order of 6/5 from the Circuit Court, 17-ca-421.
3. This person then handwrote the docket number 17-mm-815 on the order and filed it in this case to make it appear as a valid order issued in this matter on 6/30 even though the judge's signature is dated 6/5.
4. The order of 6/30 was not marked as "COPY" in a further attempt to add legitimacy to the fraudulent filing.
5. This case did not exist on 6/5 when Judge Krier signed the order in Circuit Court.
6. The person who made this fraudulent filing forgot to file the attachments to the show cause order, 117 pages of attachments.

7. The support of the above by the State's Attorney exhibits extreme animus or bias on his part, it is an abuse of government power that the founders tried so hard to prevent and represents a disdain for the Bill of Rights and prevents orderly and legitimate practice of prosecutorial functions and constitutes conduct prejudicial to the administration of justice.
8. JUDGE KRIER RECUSAL ORDER
9. Judge Krier's recusal order of 8/1/2017 was lost.
10. At hearing of 8/15 and 9/22, Huminski alerted the Court to this issue which impacts jurisdiction of the County Court.
11. On 9/22 the prosecutor or a court employee printed out a copy of the 8/1 recusal order.
12. The recusal order is marked twice as "COPY".
13. This person proceeded to file the copy of a copy on 9/22 and back-dated the filing to 8/14 and held out the fraudulent filing as legitimate.
14. 8/14 was chosen as a fraudulent filing date to make the hearing of 8/15 seem legitimate when it was not as Judge Krier still presided, absent a legitimate recusal order, not Judge Adams.
15. See para. 7 above regarding ethical and other factors related to State's Attorney Russell.
16. HUMINSKI INTERVENOR STATUS IN RUSSELL V. WATERMAN BROADCASTING, ET AL.
17. To advance his financial goals, Mr. Russell intends to silence Huminski via this criminal litigation.
18. Huminski's position in Russell v. Waterman is that it is impossible for Russell's reputation to be any lower in the eyes of the public in light of the fact set forth herein and that there is no legitimate possibility that there are any legitimate damages suffered by Mr. Russell and his lawsuit is frivolous.
19. Indeed, Mr. Russell offered Huminski a plea settlement specifying no jail and no costs to Huminski if Huminski agreed to stop whistleblowing and stop engaging in core political speech contained in his litigation.

20. This plea offer constitutes extortion to further the financial status of Mr. Russell in the Waterman case.
21. See attached Notre Dame Law Journal on the ethical problems with Mr. Russell's conduct.
22. CRIMES OF SHERIFF SCOTT
23. Mr. Russell is thoroughly familiar with crimes of Sheriff Scott, embodied in the Sheriff's protective order.
24. The protective order has obstructed justice (service) of Sheriff Scott in the United States Bankruptcy Court as mandated by **RULE** 9027. Obstruction of service mandated by Court Rules promulgated by the U.S. Congress is criminal. Obstructing service instead of hiring counsel saves the Sheriff costs and fees related to litigation.
25. The protective order has obstructed justice (service) of Sheriff Scott in the Florida Second District Court of Appeal, 2D17-4740. Obstruction of service mandated by Court Rules promulgated by the Florida legislature is criminal. Obstructing service instead of hiring counsel saves the Sheriff costs and fees related to litigation.
26. The protective order has obstructed justice, tampered with witness (Huminski) and intimidated witness (Huminski) by threatening him with arrest and prosecution for attending hearings and testifying at the Lee Courthouse complex as the Sheriff's order banishes Huminski from the complex **FOR LIFE** because it prohibits any "contact or communication" with Sheriff's staff who run the security screening and act as bailiffs at the courthouse. This conduct patently violates Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005). Mr. Russell's disdain for well established constitutional law is problematic.
27. Mr. Russell has chosen to support and/or acquiesce to the vast crimes of the Sheriff to obtain his goal of silencing Huminski for pecuniary benefit. See also para. 7 above.
28. As this court filing is public record, Mr. Russell's claims in the Waterman case fail and are frivolous. Nothing can damage the reputation of Mr. Russell more than material herein.

WHEREFORE, Huminski requests this relief and the referral of this matter to the Attorney General's Office as there is a strong suggestion of official crime by Sheriff Scott and State's Attorney Russell.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

_____

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Attachments:

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Article 10

February 2014

An Ethical Analysis of the Release-Dismissal Agreement

Erin P. Bartholomy

AN ETHICAL ANALYSIS OF THE RELEASE-DISMISSAL AGREEMENT

ERIN P. BARTHOLOMY*

I. INTRODUCTION

A phenomenon exists in the criminal justice world which allows a prosecutor to strike a bargain with a criminal defendant, permitting them both to cut their losses and walk away from a mutually bad situation. On occasions where arrested individuals may have been wronged by public officials in the course of their arrests, prosecutors may legally agree to dismiss defendants' criminal charges in exchange for releases by the defendants of any civil claims arising from the arrests.

The release-dismissal agreement, and variations upon its theme,[1] have been the subject of controversy for several years. Its supporters rely on the obvious efficiency embodied in the situation. Despite this efficiency, such agreements are dangerous, detrimental to the criminal justice system, and against the better interests of society.

This article will examine cases in which the agreements appear and the law which currently allows their existence. It will argue that although the agreements have been allowed by the United States Supreme Court, they are unethical and should be prohibited by the individual state ethics organizations governing the practice of law. Section II presents specific factual situations involving release-dismissal agreements. Section III outlines the historical legal treatment of these agreements as well as their current legal status since the Supreme Court's analysis of the issue. Section IV considers legal ethics and professional responsibility and argues that, according to established norms of our profession, these agreements should not be allowed. Finally, Section V proposes that individual state ethics bodies should, as the Colorado Bar Association has done, promulgate rules prohibiting public prosecutors from entering into release-dismissal agreements.

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* B.A. 1988, University of Notre Dame; J.D. 1993, Notre Dame Law School; Thos. J. White Scholar 1991-93. My gratitude to my family, for their love and support, and to the *Journal* staff and Professor Robinson for all their help and guidance.

1. *See* Jones v. Taber, 648 F.2d 1201 (9th Cir. 1980); *see also infra* notes 5-8 and accompanying text.

II. THE SITUATION: CASES IN WHICH THE RELEASE-DISMISSAL AGREEMENT APPEARS

Several instances where release-dismissal agreements have been used will help illustrate the troubling consequences of allowing prosecutors to release alleged criminals in exchange for promises not to file civil complaints. Note that in each instance cited, the beneficiaries of the agreement are the alleged criminal and the allegedly abusive state official.

(1) In 1990, Jose Mendoza, a Salem, Oregon, man who was shot in the face during a drug raid, says he was forced to give up any claim against the state in exchange for the dismissal of criminal charges.[2] On the advice of his own attorney,[3] the 39-year old man, who did not speak English, signed an agreement to release the state of any civil liability for medical bills incurred in treating the wounds to his face. In return for his release of civil liability, the charges against Jose Mendoza, including attempted murder, were dismissed.[4]

(2) Robert Jones filed civil rights claims against the county of Multnomah, Oregon, relating to actions that occurred while he was being held in that county's jail awaiting post-conviction sentencing.[5] Jones alleged that "[o]n the night of July 3, 1976, he was taken from his cell, stripped, gagged, bound, chained to a wall, hosed with cold water and beaten with a night stick. The incident lasted 3 to 5 hours."[6] Prison officials then placed Jones in a special segregation facility[7] and held him there for nineteen days. On July 22, without any prior notice, Jones met with a deputy county counsel and a claims adjuster. At that meeting, Jones accepted $500 in return for his release of all civil claims arising from the beating of July 3.[8]

---

2. *Man Says He Was Pressured to Drop Claim with State*, UPI, June 2, 1990.

3. "Portland lawyer Angel Lopez, who represented Mendoza on the civil issue, said he understood his client's feelings. 'What it comes down to is that we were prepared to do what needed to be done to get him out of this criminal problem he was in,' Lopez said. 'I advised him of the probabilities of winning in a civil suit. They don't look too hot.' " *Id.*

4. *Id.*

5. Jones v. Taber, 648 F.2d 1201 (9th Cir. 1980).

6. *Id.* at 1201.

7. *Id.* at 1202. The "special segregation facility" referred to here is quite similar to solitary confinement. Jones was denied the opportunity to speak to other prisoners or his attorney.

8. *Id.* at 1201. Because the agreement in *Jones* was made after the conviction and did not involve the dismissal of the defendant's charges, it does not present a strict example of a release-dismissal agreement. It is included here as an example of agreements that are made to prevent police brutality claims from being brought by criminal defendants.

(3) Chicago resident Verita Boyd alleged that upon her refusal to acquiesce to a search of her person,[9] a Chicago police officer pushed her violently against the car she had been in, shoved her against his police car,[10] used abusive language and threatened her. Ms. Boyd was then arrested and incarcerated on charges of disorderly conduct and resisting a police officer. When she appeared for trial, the Assistant State's Attorney of Cook County, Illinois, agreed to dismiss the charges on the condition that Ms. Boyd execute a release from civil liability in favor of the arresting officers and the city. She signed the agreement.[11]

Examples of alleged police brutality claims abound. The large numbers of arrests the courts have seen which are associated with legitimate complaints of constitutional violations justifies attention to this subject.[12] Under 42 U.S.C. § 1983,[13] persons deprived of their rights by persons acting under the color of law are entitled to redress from the actors. If their stories are true, each of the criminal defendants described above has meritorious civil rights claims against the arresting

9. Boyd v. Adams, 513 F.2d 83 (7th Cir. 1975). Ms. Boyd was a passenger in a car that was stopped and searched when she and a group of people were driving to a high school to pick up the mother of one of the passengers. Before attempting to search Ms. Boyd, the police searched the car and the three other passengers and found nothing incriminating. *Id.* at 83.

10. Ms. Boyd claims that she was pregnant at the time of the incident and that this assault caused her subsequent miscarriage. *Id.* at 85.

11. *Id.*

12. *See* Seth F. Kreimer, *Releases, Redress, and Police Misconduct: Reflections on Agreements to Waive Civil Rights Actions in Exchange for Dismissal of Criminal Charges*, 136 U. PA. L. REV. 851 n.112 (1988); *see also* Patzner v. Burkett, 779 F.2d 1363 (8th Cir. 1985) (paraplegic unconstitutionally arrested in home without warrant on charge of drunk driving, handcuffed, and dragged across the ground to police car); Stone v. City of Chicago, 738 F.2d 896, 898 (7th Cir. 1984) (while riding his bicycle, plaintiff was struck by police car; police pushed him to the ground, subjected him and his wife to racial slurs and then kicked him and beat him upon arrival at the hospital); Garrick v. City & County of Denver, 652 F.2d 969, 970 (10th Cir. 1981) (plaintiff shot by police officer after being stopped for making an illegal U-turn and having car searched for drugs).

13. 42 U.S.C. § 1983 (1985) states in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

officers and, possibly, against the police departments or the municipalities.[14]

While many brutality claims are filed, there are also instances of agreements to release such claims, as illustrated in the previously cited examples. It is not unusual for a state or municipality to dismiss the charges against a criminal defendant in exchange for that individual's promise not to sue the police, the city, or the county for any civil rights violations the arresting individuals might have caused during the arrest.[15] While they may know that they have been wronged or brutalized, defendants, such as Jose Mendoza, often feel that their civil rights claims are futile in light of their current situation. While imprisoned, they feel they have little choice and, realistically, they do have minimal bargaining power. To many, the opportunity to sign a release and walk away from a criminal arrest seems an incredibly lucky break. And the benefits of such agreements are not one-sided; the police escape from their own misdeeds. While judicial economy is preserved by obviating two trials, the net result of such an agreement is a negative one: Suspects are dismissed without trials and officers are relieved from responsibility for constitutional violations. There is no retribution for the victim of the crime, no compensation for the victim of the constitutional deprivation, and, perhaps most importantly, no report to or trial by the public of either alleged wrongdoing.

III. THE LAW

A. *The Historical Controversy:* Dixon v. District of Columbia

Until 1987, when the United States Supreme Court addressed the issue of the enforceability of the release-dismissal agreement,[16] its validity was a matter of long-standing controversy. The question of whether to uphold an agreement to trade the release of civil rights claims for the dismissal of criminal charges had been decided a number of different ways. Some courts held that the agreements were enforceable contracts.[17] Others refused to uphold such agreements and cited a number of factual reasons, including lack of adequate consideration, coercion, and duress.[18] Finally, at least one court has

14. *See infra* part IV(D) for a discussion of the application of § 1983 and the significance of official immunity and municipal liability.

15. *See generally* Kreimer, *supra* note 12.

16. Town of Newton v. Rumery, 480 U.S. 386 (1987).

17. *See, e.g.*, Hoines v. Barney's Club, 620 P.2d 628 (Ca. Sup. Ct. 1980).

18. However, if the agreements were made voluntarily, they would have

held that the release-dismissal agreement is never valid; that it is per se void for public policy reasons.[19]

Although the Supreme Court has recently spoken on this subject, opinions about the validity of release-dismissal agreements continue to vary. In its only examination of the issue, the Supreme Court did not manage to attain a majority decision,[20] so it is not surprising that feelings about these agreements remain far from settled. Prior to the Court's treatment of the issue, though, strong support lay on the side of refusing to allow such agreements. A leading case, *Dixon v. District of Columbia*,[21] promotes the position that release-dismissal agreements should never be enforced. *Dixon* set forth the facts and reasoning that led a federal court to refuse to enforce a release-dismissal agreement.[22] The *Dixon* court declared the agreements to be void as a matter of public policy and examined what the consequences would be, in terms of the prosecution of the criminal charges, when the defendant breaks an agreement not to sue.[23]

In *Dixon v. District of Columbia*, Dixon was stopped by officers for traffic violations.[24] At that time he was neither charged nor ticketed. Two days later, when he went to the station to deliver a written complaint regarding the officers' behavior, Dixon entered into a "tacit agreement" with the Corporation Counsel's office.[25] The understanding was that Dixon would not proceed further with his complaint and, in exchange, the local government would not prosecute the traffic charges.[26]

After three months, Dixon decided to file a formal complaint with the District of Columbia Commission's Council on

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been enforceable. For the "voluntariness principle," see Bushnell v. Rossetti, 750 F.2d 298 (4th Cir. 1984); Jones v. Taber, 648 F.2d 1201 (9th Cir. 1980).

19. Rumery v. Town of Newton, 778 F.2d 66 (1st Cir. 1985).

20. Town of Newton v. Rumery, 480 U.S. 386. The decision to enforce the release-dismissal agreement in that case was made by a plurality, with the opinion written by Justice Powell, joined by concurring Justice O'Connor, with four dissenters, led by Justice Stevens.

21. 394 F.2d 966 (D.C. Cir. 1968).

22. *Id.*

23. *Id.*

24. *Id.* at 966. The two violations were failing to obey the instructions given by a police officer and stopping a vehicle in such a manner as to obstruct the orderly flow of traffic. *Id.* n.1.

25. *Id.* at 968. The opinion notes that the police may have been particularly concerned with Dixon's complaint. Because he was a retired detective, and he was black and the two officers were white, Dixon could not easily be accused of raising illegitimate claims of police brutality. *Id.* n.2.

26. *Id.* at 968.

Human Relations. As a result of Dixon's complaint, the case was reopened and he was charged with the two traffic offenses.[27] The prosecutor proceeded with the case and the trial court, after granting three continuances in favor of the prosecution, directed findings of not guilty. The government appealed and during a conference with the trial judge ordered by the Court of Appeals, the prosecutor "admitted that the prosecutions were brought because appellant went back on an agreement not to file complaints of misconduct against the police officers who stopped him."[28] In their eventual hearing of the case, the Court of Appeals ruled that the prosecution was impermissibly brought and remanded the case with instructions for it to be dismissed.[29]

The *Dixon* court held that there was a definite necessity to prevent the type of agreement which the government initiated in this case. The Court of Appeals for the District of Columbia Circuit stated that "the courts may not become the 'enforcers' of these odious agreements."[30] Further, judges must remove any incentive to enter into the agreements by barring prosecutions brought against defendants who refuse to promise, or later break a promise, not to file complaints against arresting officers.[31]

The court in *Dixon* was concerned with the proliferation of these agreements that would have resulted had it ruled for the government. The court found these agreements to be "odious" for several of the reasons that motivated four Supreme Court justices later to vote against enforcing a similar agreement.[32] The court was specifically concerned with the failure to prosecute valid criminal claims as well as the failure to openly and thoroughly air complaints against the police.[33] The

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27. *Id.* The Chief of the Law Enforcement division of the Corporation Counsel explained their decision to reopen the case by stating:

> We had discussed it back when it originally occurred and, at the time, everybody was happy to forget the whole thing . . . But three months later he comes in and makes a formal complaint. So we said 'If you are going to play ball like that why shouldn't we proceed with our case?'. . . I had no reason to file until he changed back on his understanding of what we had all agreed on . . . .

Id.

28. *Id.* at 967.

29. *Id.* at 970.

30. *Id.* at 969.

31. *Id.*

32. *See* Town of Newton v. Rumery, 480 U.S. at 403 (Stevens, J., dissenting).

33. *Dixon*, 394 F.2d at 969.

Dixon court was the first to pronounce the often-quoted fear regarding the "major evil" of these agreements: "[T]hey tempt the prosecutor to trump up charges for use in bargaining for suppression of the complaint."[34] According to the D.C. Circuit, "The danger of concocted charges is particularly great because complaints against the police usually arise in connection with arrests for extremely vague offenses such as disorderly conduct or resisting arrest."[35] Following this reasoning, the *Dixon* holding would invalidate all release-dismissal agreements.

Dixon v. District of Columbia set the groundwork for close to two decades of controversy over the enforceability of the release-dismissal agreement. Federal and state courts all over the country followed the decision,[36] many holding the agreements void as against public policy. While the Supreme Court eventually promulgated a different rule, a strong dissent clearly enumerated the problems inherent in the release-dismissal agreement.

B. Town of Newton v. Rumery: *Enforcing the Release-Dismissal Agreement*

The question of the enforceability of the release-dismissal agreement, addressed in *Dixon v. District of Columbia*, was argued and decided before the Supreme Court in *Town of Newton v. Rumery*.[37] A plurality headed by Justice Powell, and joined by concurring Justice O'Connor, held that a release-dismissal agreement between a criminal defendant and a prosecutor is not necessarily unenforceable. In its decision to uphold the particular agreement in this situation, the Court refused to find a per se rule of invalidity.

The case arose from the following facts. David Champy, a friend of Bernard Rumery's, was indicted for aggravated felonious sexual assault. After learning of the charges from a local

34. *Id.*

35. *Id.*

36. *See* Brian L. Fielkow, *42 U.S.C. § 1983—Buying Justice: The Role of Release-Dismissal Agreements in the Criminal Justice System*, 78 J. Crim. L. 1119 n.138 and accompanying text (1988); *see also* Boyd v. Adams, 513 F.2d 83, 88 (7th Cir. 1975); Shepard v. Byrd, 581 F. Supp. 1374, 1386 (N.D. Ga. 1984); Brothers v. Rosauer's Supermarkets, Inc., 545 F. Supp. 1041, 1042 (D. Mont. 1982); Horne v. Pane, 514 F. Supp. 551, 552 (S.D.N.Y. 1981); Williamsen v. Jernberg, 99 Ill. App. 2d 371, 375 (1968); Gray v. City of Galesburg, 247 N.W.2d 338 (Mich. App. 1976); Kurlander v. Davis, 427 N.Y.S.2d 376, 381 (N.Y. App. Div. 1980).

37. 480 U.S. 386 (1987).

newspaper, Rumery phoned Mary Deary, an acquaintance of both himself and Champy. Deary was the victim of the assault in question and was expected to testify as the principal witness in the case against Champy. Deary was apparently upset by the substance of the phone call from Rumery and she subsequently contacted the Town of Newton's Chief of Police. Deary told the police that Rumery had attempted to force her to drop the charges against Champy and that Rumery had threatened her if she continued to go ahead with the charges. Rumery was then arrested on charges of tampering with a witness, a class B felony in New Hampshire.

After the arrest, Rumery's attorney reached an agreement with the Deputy County Attorney under which the Prosecutor would dismiss all charges against Rumery if Rumery would agree not to sue the town, its officials, or Deary for any harm[38] caused by the arrest. The District Court found that Rumery's attorney presented the agreement to Rumery and explained to him that he would have to forego all civil actions if he accepted the agreement.[39] After three days, during which time Rumery was not in custody, he signed the agreement and the charges were dropped.

Ten months later Rumery filed suit,[40] alleging that the town and its officials had violated his constitutional rights by arresting him, defaming him, and falsely imprisoning him. The Town of Newton moved for dismissal of the civil case with the release-dismissal agreement serving as an affirmative defense. At the trial level, Rumery unsuccessfully argued that the agreement was unenforceable as a violation of public policy. The District Court rejected Rumery's argument and dismissed his civil case, holding that a release of a § 1983 claim may be valid if it results from a voluntary, deliberate and informed decision.[41] The court further found that Rumery's decision resulted from a careful analysis of the situation, and was therefore voluntary; accordingly, they dismissed his suit.[42]

The Court of Appeals for the First Circuit reversed, adopting a per se rule invalidating release-dismissal agreements.[43] The First Circuit was concerned with the coercive nature of the agreements as well as their infringement on important public

38. For example, defamation of character or false arrest, which were the bases of Rumery's later § 1983 suit.
39. 480 U.S. at 390.
40. Under 42 U.S.C. § 1983.
41. 480 U.S. at 391.
42. Rumery v. Town of Newton, 778 F.2d 66, 69 (1st Cir. 1985).
43. *Id.*

interests. In holding that such agreements are never enforceable, the court stated:

> It is difficult to envision how release agreements, negotiated in exchange for a decision not to prosecute, serve the public interest. Enforcement of such covenants would tempt prosecutors to trump up charges in reaction to a defendant's civil rights claim, suppress evidence of police misconduct, and leave unremedied deprivations of constitutional rights.[44]

The United States Supreme Court granted the town's petition for a writ of certiorari,[45] and in the plurality opinion, Justice Powell[46] stated the issue: "The question in this case is whether a court properly may enforce an agreement in which a criminal defendant releases his right to file an action under 42 U.S.C. § 1983 in return for a prosecutor's dismissal of pending criminal charges."[47]

Justice Powell began his opinion by stating that the source of the relevant legal authority is the common law principle that a promise is unenforceable if the interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement.[48] He placed the issue and the Court's position in perspective by stating:

> The Court of Appeals concluded that the public interests related to release-dismissal agreements justified a per se rule of invalidity. We think the court overstated the perceived problems and also failed to credit the significant public interests that such agreements can further. Most importantly, the Court of Appeals did not consider the wide variety of factual situations that can result in release-dismissal agreements. Thus, although we agree that in some cases these agreements may infringe important interest of the criminal defendant and of society as a whole, we do not believe that the mere possibility of harm to these interests calls for a per se rule.[49]

Justice Powell's plurality opinion systematically rejected the Court of Appeals' two arguments. He began by responding

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44. *Id.*

45. *Town of Newton v. Rumery*, 475 U.S. 1118 (1986).

46. Justice Powell was joined by Chief Justice Rehnquist, Justice White and Justice Scalia. Justice O'Connor concurred in the decision and parts of the opinion.

47. *Rumery*, 480 U.S. at 389.

48. *Id.* at 392 n.2 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 178(1) (1981)).

49. *Id.*

to the argument that these agreements are "inherently coercive."[50] While the Court agreed that some release-dismissal agreements "may not be the product of an informed and voluntary decision,"[51] it concluded that the possibility of an involuntary decision does not justify invalidating all release-dismissal agreements.[52]

The Court based its rejection of the theory of inherent coerciveness on two grounds. First, in other contexts criminal defendants are required "to make difficult choices that effectively waive constitutional rights."[53] Second, in many cases the defendant's decision to enter into the agreement reflects "a highly rational judgment that the certain benefits of escaping criminal prosecution exceed the speculative benefits of prevailing in a civil action."[54] Based on the fact that the defendant was a sophisticated businessman, that he was not in jail at the time of the agreement, and that he was represented by an experienced criminal lawyer, the plurality concluded that Rumery's decision was such a rational judgment.[55]

Because, as the Court found, Rumery's decision to enter into the agreement was voluntary, "the public interest opposing involuntary waiver of constitutional rights is no reason to hold this agreement invalid."[56] In accordance with these findings, the Court held that the mere possibility of coercion in the making of these agreements is insufficient to justify a per se invalidation of release-dismissal agreements.[57]

The second argument justifying the First Circuit's holding was the significant public interests that invalidating release-dismissal agreements would serve.[58] Specifically, the Appellate Court sought to protect the public interest in revealing police misconduct and in preventing prosecutors from the temptation to "trump up charges."[59] The Supreme Court challenged

50. *Id.* at 393 ("It is unfair to present a criminal defendant with a choice between facing criminal charges and waiving his right to sue under § 1983.").

51. *Id.* ("The risk, publicity, and expense of a criminal trial may intimidate a defendant, even if he believes his defense is meritorious.").

52. *Id.*

53. *Id.* ("[I]t is well settled that plea bargaining does not violate the Constitution even though a guilty plea waives important constitutional rights . . . . We see no reason to believe that release-dismissal agreements pose a more coercive choice than other situations we have accepted.").

54. *Id.* at 394.

55. *Id.*

56. *Id.*

57. *Id.*

58. 778 F.2d at 69.

59. *Id.*

these two bases of public interest and found the public interest in enforcing and allowing the agreements to be more significant. Noting that not all § 1983 suits are meritorious, the plurality found that "[t]o the extent release-dismissal agreements protect public officials from the burdens of defending such unjust claims," they further an important public interest.[60] Additionally, the Court attacked per se invalidation of the agreements because such action "assumes that prosecutors will seize the opportunity for wrongdoing."[61] Citing their own rule that courts normally must defer to prosecutorial decisions as to whom to prosecute,[62] and noting that judicial deference to prosecutorial discretion has long been recognized, the Court felt properly reluctant to assume prosecutorial misconduct will necessarily arise from the availability of release-dismissal agreements. Concluding that, "because release-dismissal agreements may further legitimate prosecutorial and public interests," the Court rejected the view promulgated by the lower court that all such agreements are per se invalid.[63]

After determining that release-dismissal agreements are not inherently coercive and that they can serve legitimate public interests, the Court further held that the specific agreement in Rumery's case should be enforced because it was entered into voluntarily.[64] Reversing the holding of the Court of Appeals, the Supreme Court held that "this agreement was voluntary, that there is no evidence of prosecutorial misconduct, and that enforcement of this agreement would not adversely affect the relevant public interests."[65] Implicit in the Supreme Court's decision was a new rule that if a release-dismissal agreement were made voluntarily and if the public interests would be benefitted by the agreement, it should be enforced.[66]

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60. Town of Newton v. Rumery, 480 U.S. at 396:
No one suggests that all such suits are meritorious. Many are marginal and some are frivolous. Yet even when the risk of ultimate liability is negligible, the burden of defending such lawsuits is substantial. Counsel may be retained by the official, as well as the governmental entity. Preparation for trial, and the trial itself, will require the time and attention of the defendant officials, to the detriment of their public duties. In some cases litigation will extend over a period of years. This diversion of officials from their normal duties and the inevitable expense of defending even unjust claims is distinctly not in the public interest.

61. *Id.*

62. *Id.*

63. *Id.* at 397.

64. *Id.* at 398.

65. *Id.*

66. *Id.* The public benefits that derived from this particular agreement

For practical purposes, the Court stated that a "voluntariness" standard would now govern issues of enforceability of release-dismissal agreements.

Justice O'Connor concurred in the Court's opinion to disapprove the Court of Appeals broad holding that release-dismissal agreements are void as against public policy under all circumstances.[67] In her concurrence, Justice O'Connor further agreed that the enforceability of these contracts should be decided on a case-by-case approach which "appropriately balances the important interests on both sides of the question of the enforceability of these agreements."[68] Justice O'Connor agreed with the plurality that Bernard Rumery's covenant not to sue was enforceable.[69]

The concurrence set out the specific factors that should be considered in the decision to enforce the agreement and emphasized that the party seeking to enforce the agreement bears the burden of proving that it was entered into voluntarily and that it was not an abuse of the criminal process. Justice O'Connor's analysis resembled the District Court's ruling and basically restated that court's voluntariness test. Relevant factors include: the experience of the criminal defendant, the circumstances of the release, the availability of counsel, and the nature of the criminal charge.[70] Also significant, but not necessary, is whether the agreement was executed under judicial supervision.

According to the concurrence, release-dismissal agreements are respectable because much § 1983 litigation is meritless and "the inconvenience and distraction of public officials caused by such suits is not inconsiderable."[71] Justice O'Connor also believed that the agreements may actually serve "bona fide criminal justice goals" and she cited protection of Mary Deary as such a legitimate goal.[72] The agreement served criminal justice, according to Justice O'Connor, by sparing

included the facts that the agreement served judicial economy in that it foreclosed both a criminal and a civil trial and that it spared Mary Deary from "the public scrutiny and embarrassment she would have endured if she had had to testify in either of those cases." *Id.*

67. *Id.* at 399.

68. *Id.* (O'Connor, J., concurring).

69. *Id.*

70. *Id.* at 401. Justice O'Connor stated that the greater the charge, the less likely that the agreement will be voluntary and the greater the coercive effect. *Id.*

71. *Id.*

72. *Id.* at 399, 403. This was an important point for Justice O'Connor; she felt strongly that protection of the complaining witness is a large

Deary the rigors of testifying in two cases in which she was the complaining, principal, and only witness. Justice O'Connor further grounded her praise of the release-dismissal agreement on its cost-efficiency to the local community who should be spared the expense of litigation associated with some minor crimes for which there is little or no public interest in prosecuting.[73]

Justice O'Connor departed from the plurality in that she extensively examined the dangers involved in the release-dismissal agreement. She concurred with the possibility of temptation for the prosecutor to file "trumped up charges" in an attempt to exonerate a tortious police officer.[74] Justice O'Connor also mentioned the converse, and equally significant, "temptation" accompanying these bargains — the problem of dropping meritorious criminal charges for the purpose of protecting the municipality from civil claims.[75] The concurrence was further concerned about introducing extraneous civil concerns into the criminal justice process and stated that the central problem with the agreement was "that public criminal justice interests are explicitly traded against the private financial interest of the individuals involved in the arrest and prosecution."[76] Even with these significant harms poised precariously over the integrity of the criminal justice system, Justice O'Connor stated that "[n]evertheless, the dangers of the release-dismissal agreement do not preclude its enforcement in all cases."[77]

C. *The Dissenting Opinion*

Between the extremes of the *Dixon* court and the *Rumery* plurality, the *Rumery* dissent took a moderate position on the issue of the validity of the release-dismissal agreement. Led by Justice Stevens, the dissenters sided neither with those who argue for the per se rule against enforceability nor with the plurality who found merit in those agreements that were not defectively negotiated. After considering the issue, the *Rumery*

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incentive to enter into a release-dismissal agreement and the existence of this incentive will enhance the agreement's enforceability.

73. *Id.* at 400. However, the Class B felony for which Rumery was charged with the possibility of up to seven years in prison (N.H. Rev. Stat. Ann. § 641:5(I)(b) (1986)) does not seem to fall into the category of a "minor crime" that supports Justice O'Connor's reasoning.

74. *Id.*

75. *Id.*

76. *Id.* at 401.

77. *Id.*

dissent concluded that while they were hesitant to adopt an absolute rule invalidating the agreements, the enactment of § 1983 mandates a strong presumption against the agreements.[78] Because the strong presumption against enforcing the agreements may be overcome only by facts and policies that were not present in the *Rumery* case, Justices Stevens, Brennan, Marshall and Blackmun voted not to uphold the specific agreement in that case.[79]

To support their differing conclusion, the dissent offered several lines of reasoning. First, Justice Stevens argued that even though Rumery's decision to enter into the agreement was deliberate, informed, and voluntary, that fact does not address two important objections to its enforcement: The agreement is inherently coercive and the bargain exacts a price unrelated to the defendant's own conduct.[80]

The *Rumery* dissent contended that defendants should not be faced with the dilemma of choosing between trial (and possible conviction) and surrendering their civil rights claims. The dissent condemned that situation by stating:

> Even an intelligent and informed, but completely innocent, person accused of crime should not be required to choose between a threatened indictment and trial, with their attendant publicity and the omnipresent possibility of wrongful conviction, and surrendering the right to a civil remedy against individuals who have violated his or her constitutional rights.[81]

Justice Stevens noted that Rumery's choice to sign the agreement was made with advice of counsel and after three days of reflection. Consequently, he agreed with the plurality in their determination that it was a voluntary and intelligent decision.[82] Yet, while the dissent conceded that this contract was voluntary, it found no reason to conclude the agreement was enforceable simply because it was voluntarily entered into. Comparing this bargain to a promise to pay a patrol officer twenty dollars for not issuing a speeding ticket, Justice Stevens submitted that "the deliberate and rational character of

78. *Id.* at 418 (Stevens, J., dissenting).
79. *Id.*
80. *Id.* at 411. The dissent's first argument is summarized by Justice Stevens' statement that "[t]he prosecutor's offer to drop charges if the defendant accedes to the agreement is inherently coercive; moreover, the agreement exacts a price unrelated to the character of the defendant's own conduct." *Id.*
81. *Id.* at 405.
82. *Id.* at 408.

[Rumery's] decision is not a sufficient reason for concluding that the agreement is enforceable."[83] There may be nothing irrational about agreeing to bribe a police officer, yet no court would enforce such a contract. The same should be the case, argued the dissent, with the bargain formed between the Town of Newton's prosecutor and Rumery.

After stating that the release-dismissal agreement is inherently coercive, even if rationally negotiated, the dissent emphasized the further unfairness of this bargain because of the lack of mutuality of advantage between the prosecutor and the defendant.[84] According to Justice Stevens, this case involves the functional equivalent of a citizen's paying money, represented by waiving the possibility of damages in a civil claim, for the dismissal of a charge that the prosecution has not proven.[85] The extension of this logic leads to the conclusion that the mutuality of advantage will only grow more disparate in proportion to the certainty of the innocence of the defendant and the wrongfulness of the police officer's actions. Justice Stevens based that conclusion on his theory that prosecutors' strongest interests in entering into these agreements exist when they realize that defendants are innocent and wrongly accused.[86] Ironically, that is precisely the situation in which the criminal charges should be dropped regardless of the extenuating circumstances.[87] Such an easy exoneration as the bargain presented here should not be an option for the municipality and the tortious actors.

The plurality and the concurrence both stated that some § 1983 claims are meritless or even frivolous.[88] However, even if that assumption is true, Justice Stevens argued, those claims, as well as the criminal charges suffering from the same criti-

83. *Id.*

84. *Id.* at 410.

85. Stevens examined the lack of evidence against Rumery and cited specifically the facts that the complaining witness was unwilling to testify at trial, that there was no written statement on which to base the arrest and that Rumery was never indicted. *Id.* at 405.

86. Stevens repeatedly reminds us that the defendant is innocent as a matter of law. *Id.* at 404, 409. "Not only is such a person presumptively innocent as a matter of law; as a factual matter the prosecutor's interest in obtaining a covenant not to sue will be strongest in those cases in which he realizes that the defendant was innocent and was wrongfully accused." *Id.* at 409. The reader is asked to construe the masculine gender used in this and all other extracts in the generic sense, to include women as well as men.

87. "The State is spared the necessity of going to trial, but its willingness to drop the charge completely indicates that it might not have proceeded with the prosecution in any event." *Id.* at 410.

88. *Id.* at 411.

cisms, must be tested by the adversary process.[89] Justice Stevens stressed that regardless of the value or merit of a particular § 1983 claim, the defendant who relinquishes that claim in exchange for criminal exoneration is paying a price unrelated to his possible criminal behavior.[90] For example, a defendant's giving up a claim against the police that is worth $1000 is functionally equivalent to his paying $1000 to the police department's retirement benefit fund.[91]

Supporters of the release-dismissal agreement cite the efficiency argument as a major basis for allowing these procedures.[92] Justice Stevens pointed out, though, that the Court's decision in this case defeats its own goal by creating the necessity of examining the merits of each agreement to determine its enforceability. At the same time, the efficiency argument is particularly weak in that, while proposing judicial economy, it encourages inattention to potential conflicts of interest.[93]

In addition to its argument that Rumery's agreement is defective due to its coercive nature and unfair price, the dissent argues that these agreements are presumptively invalid because they force the prosecutor in such cases improperly to represent three potentially conflicting interests: in this case, the interests of the state, the police, and the complaining witness. The primary duty of the prosecutor is to represent the sovereign's interest in the effective enforcement of the criminal law.[94] Viewing this issue from the standpoint of that duty, Justice Stevens declared that the release-dismissal agreement in this case was both unnecessary and unjustified, "for both the prosecutor and the State of New Hampshire enjoy absolute immunity from common-law and § 1983 liability arising out of a prosecutor's decision to initiate criminal proceedings."[95] Because Rumery's agreement gave the state and the prosecutor no additional pro-

89. *Id.* Supporters of the release-dismissal agreement analogize it to plea bargaining as an efficient and acceptable means of resolving cases without litigation. The plea bargain analogy is faulty, though, because in that situation the defendant admits guilt, while in the release-dismissal situation the defendant must be presumed to be innocent. *Id.* at 409.

90. "Whatever the true value of a § 1983 claim may be, a defendant who is required to give up such a claim in exchange for a dismissal of a criminal charge is being forced to pay a price that is unrelated to his possible wrongdoing as reflected in that charge." *Id.* at 411.

91. *Id.*

92. *Id.* at 395-96.

93. *Id.* at 414 (Stevens, J., dissenting).

94. *Id.* at 412; *see also* Berger v. United States, 295 U.S. 78, 88 (1935).

95. *Rumery*, 480 U.S. at 412 (Stevens, J., dissenting); *see also* Imbler v. Pachtman, 424 U.S. 409, 427 (1976).

tection, the contract was irrelevant in terms of the prosecutor's primary duty.

The main function and duty of prosecutors may likely be clouded by allowing other interests to influence their judgment. Justice Stevens cited the prosecutor's ethical obligation to exercise independent judgment and to avoid potentially conflicting interests.[96] Prosecutors who involve the state in release-dismissal agreements extend, and often neglect, their duty to represent the state. The public is entitled to a decision of whether to prosecute that is made independently of outside concerns. By seeking to protect law enforcement officials from civil liability, prosecutors impair their ability to serve that public interest.

The plurality mentioned and the concurrence emphasized the interest of protecting Mary Deary as an acceptable rationale for entering into and enforcing the Rumery agreement. They cited Deary's emotional distress, her unwillingness to testify against Rumery, and the necessity of her testimony in the sexual assault case as reasons supporting the release-dismissal agreement.[97] Justices Powell and O'Connor are only half right.

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96. *Rumery*, 480 U.S. at 413 (Stevens, J., dissenting) (citing MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 5 (1983) [hereinafter MODEL CODE]); *see also* MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.8(a) (1992)[hereinafter MODEL RULES]; MODEL CODE DR 7-103 ("A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause."); MODEL CODE EC 7-14 ("A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair.").

97. *Rumery*, 480 U.S. at 415. The Court stated "Mary Deary did not want to testify against Mr. Rumery." *Id.* at 390. The Court further noted:

> [I]n this case the prosecutor had an independent, legitimate reason to make this agreement directly related to his prosecutorial responsibilities. The agreement foreclosed both the civil and criminal trials concerning Rumery, in which Deary would have been a key witness. She therefore was spared the public scrutiny and embarrassment she would have endured if she had had to testify in either of those cases. Both the prosecutor and the defense attorney testified in the District Court that this was a significant consideration in the prosecutor's decision.

Id. at 398. Finally, the Court noted:

> Mary Deary's emotional distress, her unwillingness to testify against Rumery, presumably in later civil as well as criminal proceedings, and the necessity of her testimony in the pending sexual assault case against David Champy all support the prosecutor's judgment that the charges against Rumery should be dropped if further injury to Deary, and therefore to the Champy case, could thereby be avoided.

Id. at 403 (O'Connor, J., concurring). The dissent also discussed several

While the "dismissal" portion of the agreement was justified under these facts, the support for the "release" half of the bargain was shaky at best. Lack of evidence, represented in this case in the form of a reluctant witness, justified dropping the charges against the defendant. However, while a weak case justifies dropping charges, it does not justify exonerating the police who may have acted wrongfully.

As Justice Stevens wrote, "there is no reason to fashion a rule that either requires or permits a prosecutor always to defer to the interests of a witness."[98] Rather, it is often the case that prosecutors are not able to pursue the interest of protecting victims while still fulfilling their law enforcement duty to the sovereign.[99] Where the two interests conflict, the duty of the prosecutor toward just law enforcement must take precedence over both protecting a fragile witness and ensuring success in another case.[100] Neither the interest in sparing Deary the suffering of testifying at Rumery's trial nor the necessity of her testimony at Champy's trial justified foreclosing a victim of wrongful police behavior from pursuing his constitutional rights.

In its third argument, the dissent stated that the relevant public interests upon which the plurality based their votes did not outweigh the public interest embodied and reflected in the very existence of § 1983. The "relevant public interests" to which the plurality and Justice O'Connor refer are three.[101] First, because not all § 1983 suits are meritorious, enforcing release-dismissal agreements is correct because they protect officials from the burdens of defending unjust claims. Second, traditional judicial deference to the prosecutor's choice of whom to prosecute calls for allowing these agreements. Third, the interest in protecting Mary Deary and witnesses like her support allowing the agreements.[102]

The dissent believed that the merits of open civil litigation and remedy to the person harmed strongly outweighed the

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times Dreary's unwillingness to testify against Rumery and her emotional distress. *See id.* at 406 n.5, 410 n.11, 416 n.19 (Stevens, J., dissenting).

98. *Id.* at 415 (Stevens, J., dissenting).

99. "There will be cases in which the prosecutor has a plain duty to obtain critical testimony despite the desire of the witness to remain anonymous or to avoid a courtroom confrontation with an offender." *Id.*

100. "It would plainly be unwise for the Court to hold that a release-dismissal agreement is enforceable simply because it affords protection to a potential witness." *Id.*

101. *Id.* at 398.

102. *Id.*

interest in avoiding the expense and inconvenience of litigation.[103] As for the Court's protection of the second "relevant public interest," judicial deference to prosecutorial discretion is significant, but again, while that argument supports the dismissal of criminal charges, it does not support the release of civil claims. Finally, the impropriety of promoting the interest of a witness at the expense of the law enforcement duty cannot be supported.

In response to the Court's statement of the relevant public interests supporting their holding, the dissent examined the interests embodied in § 1983.[104] The policies supporting the statute are the federal interests in providing a remedy for civil violations caused by law officers as well as the desire to have these claims resolved publicly. If these interests could be so easily defeated by an agreement, the purpose and strength of § 1983 would be significantly weakened. The plurality's reasoning seemed to be based on the unspoken premise that the burden of litigation on society is so heavy as to outweigh the benefits provided by § 1983. If the facts are to be assessed that way, said Justice Stevens, the statute and its purposes should not be circumvented, but rather the statute should be repealed.[105] Until Congress takes that action, though, the courts must respect their decision to "attach greater importance to the benefits associated with access to a federal remedy than to the burdens of defending these cases."[106]

IV. Professional Responsibility

The *Rumery* dissenters attempted to prevent the enforcement of that particular release-dismissal agreement. While their opinion stressed that there should be a strong presumption against enforcing the agreements, even the dissenters on the Court were reluctant to create a per se rule which would eliminate the agreement altogether.[107] After *Rumery*, we must conclude that to rid our society of these instruments, the legal profession itself must adopt the attitude that lawyers should not enter into these "odious agreements," and that the courts should not enforce them.

While *Dixon's* holding and Stevens' dissent represent the more professional and rational approach to the issue, they do

103. *Id.* at 419 (Stevens, J., dissenting).
104. *Id.*
105. *Id.*
106. *Id.*
107. *Id.* at 418.

not carry the legal authority to require courts to follow their directive. Although the Supreme Court achieved only a plurality in favor of enforcement, it is doubtful that it will speak on this issue again soon. Some states may wait for that day, and the practice of trading civil rights for non-judicial acquittal will continue, but individual states may act now through a number of means. Alternatively, they may enact legislation which outlaws the agreements. An even more effective course, however, and the one in the spirit of *Dixon*, would be for states' professional ethics bodies to forbid prosecutors from ever utilizing the tool of the release-dismissal agreement.

In their discussion of the issue, the *Rumery* courts, both at the appellate and Supreme Court levels, concentrated primarily on the rights of the defendant and the interests of the public.[108] The Justices correctly examined the possibility of coercion inherent in the agreements and balanced the relevant public interests that would both be served and harmed by allowing them to exist. The dissent concentrated on the competing interests the prosecutor inconsistently served,[109] and Justice O'Connor mentioned in detail the "dangers" lurking behind the agreements.[110] None of the opinions stated, though, that these agreements were ethically wrong. No one questioned whether utilizing these agreements is unprofessional. No one explored the possibility that American Bar Association standards themselves might implicitly reject these agreements as "unethical" or, at the very least "unprofessional." The following section argues that, for several reasons, prosecutors should not enter into release-dismissal agreements because the practice that is legal in the eyes of the Supreme Court is unethical according to our own professional norms.

A. *"Systematic Inequality"*

As the plurality in *Rumery* admitted, even criminal defendants who believe their defenses are meritorious are often intimidated by "the risk, publicity, and expense of a criminal trial."[111] It is unlikely, though, that the arrestee's threat of a civil suit is as intimidating to the prosecutor as is the prosecutor's threat of indictment and trial. This fact supports Rumery's claim that release-dismissal agreements are "inherently coercive," and as such should not be allowed. The inher-

108. *See* discussion *supra* notes 58-63 and accompanying text.
109. *See supra* notes 93-100 and accompanying text.
110. *See supra* notes 74-77 and accompanying text.
111. *Rumery*, 480 U.S. at 393.

ent coerciveness stems from the unequal positions of the prosecutor and the defendant, and this systematic inequality of bargaining power renders the agreement suspect.[112]

The *Rumery* plurality stated that the defendant's intimidation and unequal position *vis-a-vis* the prosecutor do not justify invalidating release-dismissal agreements because the inequality of position between prosecutor and defendant is regularly tolerated in plea bargains.[113] The prosecutorial threat which produces a plea arrangement may seem similar to that which produces a release-dismissal agreement, but as Justice Stevens reminds us, there are important distinctions between the two situations.[114] Plea bargains are public, judicially supervised, and involve an admission of guilt. Release-dismissal agreements are private and made outside of judicial scrutiny, and, perhaps most importantly, defendants who give up their civil rights claims to avoid prosecution are presumed to be innocent. Further, as Justice Stevens stated, the "mutuality of advantage" that supports plea bargaining is not present in release-dismissal agreements.[115]

Where in a plea bargain the terms of the bargain are related to the strength of each side's case, a release-dismissal agreement "exacts a price unrelated to the character of the defendant's own conduct."[116] The nature and strength of the two claims are unrelated; a civil rights claim has no bearing on the defendant's guilt or innocence. Verita Boyd's dismissal of police brutality charges was in exchange for a dismissal of a disorderly conduct and resisting arrest charge.[117] Miller Dixon was stopped for obscure traffic violations — failing to obey the instructions given by a police officer and stopping a vehicle in such a manner as to obstruct the orderly flow of traffic — which were only prosecuted as a vindictive response to his own civil complaint.[118] These examples illustrate what Justice Stevens must have meant when he stated that the defendant who releases his civil claim in exchange for dismissal of a criminal

112. *See* PETER W. LOW & JOHN C. JEFFRIES, JR., CIVIL RIGHTS ACTIONS 429 (1988).

113. *Rumery*, 480 U.S. at 393.

114. *Id.* at 409 (Stevens, J., dissenting).

115. *Id.*

116. *Id.* at 411.

117. *See supra* notes 9-11 and accompanying text.

118. Dixon v. District of Columbia, 394 F.2d 966, 966 n.1 (D.C. Cir. 1968).

charge is "forced to pay a price that is unrelated to the possible wrongdoing as reflected in that charge."[119]

The systematic inequality of the agreement supports an argument that the government's objective in obtaining the agreement is not legitimate. As Justice Stevens pointed out, the prosecutors' strongest interest in entering into these agreements exist when the defendant is both innocent and deprived of constitutional rights.[120] Unlike settling a criminal case with a plea bargain, the prosecutor is admitting the defendant's innocence by dropping the charges. The cases which present the prosecutor with the strongest incentives to make this agreement are those in which the defendant is most deserving of relief.[121] Such a benefit, which the prosecutor receives from the defendant's willingness to forego a civil rights claim, is not one for which the prosecutor should legitimately be allowed to bargain. It is rather less than admirable to allow the superior position of the prosecutor to deprive an individual of vindication of constitutional claims. The release-dismissal agreement is invalid, then, both because of the inequality between the two parties and because the government is pursuing an interest that does not deserve merit.[122]

B. *Existing Codes of Legal Ethics*

Admittedly, the American Bar Association does not explicitly disallow the release-dismissal agreement. There is precious little, short of the obvious, which the current standards governing the practice of law explicitly forbids. It seems, though,

119. *Rumery*, 480 U.S. at 411 (Stevens, J., dissenting).

120. *See supra* notes 86-87 and accompanying text.

121. This is especially true if the *Dixon* court was correct in its assertion that the these agreements encourage prosecutors to "trump up charges" in order to protect police from their own misconduct. Imagine, for example, a case where a person is arrested without probable cause, is innocent and is physically brutalized during the course of the arrest. That person would have a strong civil rights case; simultaneously, the prosecutor who is seeking to protect the police would have the strongest incentive to enter into a release-dismissal agreement. While such a situation presents the obvious conclusion that the prosecutor should simply drop the charges regardless of the defendant's possible suit against the police, it is possible that the prosecutor could threaten to prosecute and then use the agreement as a mechanism to protect the police and the municipality. This was the position advanced by the *Dixon* court. *See also* Kreimer, *supra* note 12, at 865, whose empirical study showed that "rather than constituting a means by which impartial prosecutors screen out frivolous civil rights actions, these situations appear to represent a method for municipal attorneys to routinely eliminate section 1983 claims against their clients." *Id.*

122. Low & JEFFRIES, *supra* note 112, at 430.

that anyone arguing for a per se rule against enforcement of release-dismissal agreements could and should present the argument that it is wrong, by ethical and professional standards, to be a party to such an agreement.

The ABA Model Code of Professional Responsibility[123] reminds us that lawyers are "guardians of the law" and bear the consequent obligation "to maintain the highest standards of professional conduct."[124] This proposed law of ethics purports to guide lawyers toward what is right and wrong, or at least toward what is acceptable and unacceptable, professional and unprofessional. In terms of this "guide," to act unprofessionally is tantamount to acting unethically, and to be deserving of official sanctions.[125]

The Code, in its guidance function, sets forth "ethical considerations" for lawyers. It is there, if anywhere, where a lawyer will find standards of professionalism. These considerations are merely considerations; the Preamble to the Code refers to them as "aspirational in character" but certainly not mandatory.[126] The ABA did create Disciplinary Rules which are mandatory and which state the "minimum level of conduct below which no lawyer can fall without being subject to disciplinary action."[127] Those very rudimentary rules do not shed much light on the problem at hand.

Within the current Model Code of Professional Responsibility, there is neither an Ethical Consideration nor a Disciplinary Rule which forbids a public prosecutor from entering into an agreement with a criminal defendant to dismiss charges in exchange for a civil release. Prosecutors will not find such an obligation within the current Model Rules of Professional Responsibility, either. However, we may deduce unethical or at least unprofessional conduct that should be forbidden by the

123. This article concentrates more on the ABA standards as outlined in the Code of Professional Responsibility than on the Model Rules of Professional Responsibility because the Model Rules fail, in large part, to address the issues presented herein. While the Code is now considered obsolete in many jurisdictions, as it has been superseded by the Model Rules, it is cited for its value as a traditional guide for professional responsibility.

124. MODEL CODE, *supra* note 96, pmbl.

125. *Id.*

126. *Id.*

127. *Id.*; *see also* AMERICAN BAR ASS'N, STANDARDS RELATING TO CRIMINAL JUSTICE Standard 3-1.1(e) (1982) [hereinafter CRIMINAL JUSTICE STANDARDS]: "As used in this chapter, the term 'unprofessional conduct' denotes conduct which, in either identical or similar language, is or should be made subject to disciplinary sanctions pursuant to codes of professional responsibility in each jurisdiction."

Code and the Rules through analogies drawn and arguments based on the aspirations and minimum standards that we do have.

Because the Code itself is largely silent on the special duties of prosecutors, it may be assumed that they are to be held to the same ethical standards as other lawyers, with the state acting as the "client."[128] According to Canon 5, "a lawyer should exercise independent professional judgment on behalf of a client."[129] The Ethical Considerations within that Canon state that "the professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties."[130] Further, "the obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment."[131] The Model Rules of Professional Conduct reiterate the mandate that lawyers should not limit their representation of clients by responsibilities to third parties.[132]

As Justice Stevens stated in the *Rumery* dissent, a prosecutor is practically unable to serve the competing interests involved in the release-dismissal practice and still fulfill the duties required by these ethical mandates.[133] When the interest in protecting the police thwarts the interest of serving the people, as is often the case when a defendant accused of a violent crime is freed without investigation or trial, the prosecutor fails in her ethical obligation by facilitating, rather than disregarding, the desires of a third party. The Model Rules, which are the relevant authority in most jurisdictions, also forbid conflicts of interest which involve the prosecutor's serving the interests of a third party rather than the interests of the client.[134] Releasing a defendant in order to protect individual officers or a municipality, rather than pursuing a criminal case in service to the state, is the type of situation which both the Code and the Rules forbid.

The Code and the Model Rules state that "the responsibility of a public prosecutor differs from that of the usual advo-

128. *But see* MODEL CODE, *supra* note 96, Canon 7, and text accompanying note 98.

129. *Id.* Cannon 5.

130. *Id.* EC 5-1.

131. *Id.* EC 5-21.

132. MODEL RULES, *supra* note 96, Rule 1.7.

133. Town of Newton v. Rumery, 480 U.S. 386, 415 (Stevens, J., dissenting).

134. MODEL RULES, *supra* note 96, Rule 1.7(b).

cate; his duty is to seek justice, not merely to convict."[135] This "special duty" springs from the fact that the prosecutor represents the sovereign and it includes the employment of "restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute."[136] The prosecutor bears the duty to see justice done; that duty includes attempting to convict suspected criminals or, in the alternative, to dismiss unjust charges. It is not the proper duty of the prosecutor, however, to protect the police from their own misconduct,[137] nor is it the prosecutor's proper duty to spare witnesses like Mary Deary from the discomfort of testifying. It is quite likely that engaging in behavior which tends to those ends will only compromise the prosecutor's original duty of law enforcement.

The ABA has also promulgated Standards Relating to the Administration of Criminal Justice,[138] and it is there that we would expect to find an explicit rejection of the practice of release-dismissal agreements. While that is not the case, we again see that the proper function of the prosecutor is to seek justice, not merely to convict.[139] These standards further resemble the Code as tailored to public service, rather than private service, in their mandate of avoiding conflict of interest with respect to official duties.[140] These standards may not clearly and unequivocally answer our question, but they certainly support the conviction that, based at least on duty and conflict of interest principles, the prosecutor should not compromise her position by engaging in release-dismissal bargains.

Courts have begun to consider release-dismissal agreements in light of the ethical standards described above. For example, in 1989, the Court of Appeals of New York considered release-dismissal agreements in light of the Supreme

135. MODEL CODE, *supra* note 96, EC 7-13; MODEL RULES, *supra* note 96, Rule 3.8.

136. MODEL CODE, *supra* note 96, EC 7-13.

137. The Court stated in *Rumery*:

> It is no part of the proper duty of a prosecutor to use a criminal prosecution to forestall a civil proceeding by the defendant against policemen, even where the civil case arises from the events that are also the basis for the criminal charge. What he cannot do is condition a voluntary dismissal of a charge upon a stipulation by the defendant that is designed to forestall the latter's civil case.

Rumery, 480 U.S. at 414 n.17 (quoting MacDonald v. Musick, 425 F.2d 373, 375 (9th Cir. 1970)).

138. CRIMINAL JUSTICE STANDARDS, *supra* note 127.

139. *Id.* Standard 3-1.1(c).

140. *Id.* Standard 3-1.2.

Court's ruling in *Rumery*. In *Cowles v. Brownell*,[141] basing much of its reasoning on ethical considerations, the court held that "the integrity of the criminal justice system mandates that an agreement made in the circumstances presented not be enforced by the courts."[142] The case arose when Cowles sued an arresting officer for malicious prosecution, false arrest, assault and battery. The officer moved for summary judgment, based on the ground that the plaintiff had previously released all claims against the officer. The court refused to dismiss the suit, finding that the prosecutor's conditional dismissal of the criminal charges upon the relinquishment of Cowles' civil claims was unrelated to the merits of the People's case, and, consequently, there remained unresolved factual allegations regarding Cowles' conduct. There were equally unresolved allegations against the District Attorney's office, which stood "accused of routinely demanding such waivers in order to protect a police officer whose misdeeds it knows."[143]

As did the *Rumery* dissent, the majority in the New York case refused to enforce a specific release-dismissal agreement but did not promulgate a per se rule invalidating the agreements.[144] Although the result may not be exactly what critics of the agreements are seeking, the *Cowles* case is significant in that it examines the ethical considerations and professional responsibilities that the prosecutor compromised in that case.

The New York court, like Justice Stevens in *Rumery*, was extremely concerned with the conflicts of interest to which prosecutors expose themselves in release-dismissal situations.[145] According to the court, protecting the police from civil liability is not the duty of the prosecutor. Rather, prosecutors bear the obligation to represent the People, and to fulfill that obligation, they must exercise independent judgment in deciding whether or not to prosecute.[146] The court found that this obligation to the people "cannot be fulfilled when the prosecutor undertakes also to represent a police officer for reasons divorced from any criminal justice concern. To enforce a release-dismissal agreement under these circumstances is simply to encourage violation of the prosecutor's obligation."[147]

141. 538 N.E.2d 325 (N.Y. 1989).
142. *Id.* at 327.
143. *Id.* at 326.
144. *Id.* at 327.
145. *Id.*
146. *Id.*
147. *Id.*

The New York court also considered the prosecutor's ethical obligation to avoid even the appearance of professional impropriety.[148] That obligation includes the fact that "a lawyer should promote public confidence in our system and in the legal profession."[149] This duty springs from the fact that on occasion the conduct of a lawyer may appear to the lay person to be unethical. The New York court decided not to enforce the release-dismissal agreement in this case because it was concerned about both the conflict of interest inherent in the situation and the appearance of impropriety that would stem from publicly allowing such a bargain.[150]

The principal concern in these cases, and an argument relied upon by the *Rumery* plurality, is whether or not the agreements advance public interest. In no way is that interest furthered by the agreement exemplified in the *Cowles* case.[151] Instead of furthering any public benefit, these agreements eliminate both the public's ability to seek justice against a possible criminal wrongdoer and the public's right to assess the possible constitutional violation of one of its officials. In terms of ethical obligations, if the criminal behavior truly occurred, and could have been proven beyond a reasonable doubt, the prosecutor owed a duty to the state to pursue prosecution. Conversely, if the charges were false, or the case unprovable, the prosecutor was ethically obligated to dismiss the charges at no price to the defendant. In either situation requiring a release of civil rights for the dismissal is unethical.[152]

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148. *Id.* (citing MODEL CODE, *supra* note 96, Canon 9); *see also* MODEL RULES, *supra* note 96, Rule 3.1 (regarding Meritorious Claims and Contentions) & Rule 3.8 (regarding the Special Duties of Prosecutors).

149. MODEL CODE, *supra* note 96, Canon 9.

150. "The record in this case demonstrates that the practice of requiring the release of civil claims in exchange for dismissal of charges simply to insulate a municipality or its employees from liability can engender at least an appearance of impropriety or conflict of interest." *Cowles*, 538 N.E.2d at 326-27.

151. "Insofar as the integrity of the criminal justice system was concerned — the paramount interest here — on this record there was no benefit, only a loss." *Id.* at 327.

152. The *Cowles* court stated that:

> Assuming plaintiff to have been guilty of the criminal charges leveled against him (as the prosecutor maintains), the People's interest in seeing a wrongdoer punished has not been vindicated. Assuming him to have been innocent (as he maintains), or the case against him to have been unprovable, the prosecutor was under an ethical obligation to drop the charges without exacting any price for doing so.

Id.

As well as requiring unethical conduct on the part of the prosecutor, these agreements leave unanswered questions about officers' conduct. That fact further supports the conclusion that the minimal public interest served by these agreements do not overcome the dangers they pose. Rather, as the New York court held, "the agreement may be viewed as undermining the legitimate interests of the criminal justice system solely to protect against the possibility of civil liability."[153]

C. *The Purposes of § 1983*

The *Rumery* plurality cited three "relevant public interests" supporting their holding: avoidance of the expense and inconvenience of litigation, judicial deference to prosecutorial discretion, and protection of the victim of the crime.[154] The holding reached by the *Rumery* plurality suggests that these interests are so important to society that they outweigh the interests promoted by § 1983.[155] As Justice Stevens reminded us though, we should be disconcerted by the fact that the benefits, goals and purposes of § 1983 may so easily be circumvented by an agreement. One need only examine the goals of the statute to conclude that Congress must not have intended such a result.

An award of damages against a public official for the misuse of government power promotes two obvious objectives: compensation to victims and deterrence from further misconduct. The Supreme Court has identified compensation of the victims of official misconduct as "the basic purpose of a § 1983 damages award."[156] This "basic purpose" is obviously defeated by the release-dismissal agreement. While a dismissed arrestee may now avoid the threat of prosecution, that person still carries the injuries of the official misconduct and, if the injuries are physical, the medical costs related to the incident.

The second objective of a § 1983 damages award, deterrence of future misconduct, is achieved when "[a]n award of damages against one official conveys to others a threat of similar treatment if they too misbehave."[157] This purpose is similarly defeated by releasing the officer without a public recognition of the injury inflicted. The wholly private nature of

153. *Id.*
154. *See supra* notes 58-65, 101-02 and accompanying text.
155. *See supra* notes 104-106 and accompanying text.
156. Carey v. Piphus, 435 U.S. 247, 254 (1978).
157. LOW & JEFFRIES, *supra* note 112, at 42.

these agreements — unlike plea bargains or civil settlements, they are not judicially supervised not publicly recorded — not only evades the deterrence purpose of § 1983 but actually undermines it by possibly encouraging officials to misbehave.[158] However, such a suspicion that police will actually take advantage of these agreements' existence in order to intentionally brutalize arrestees is not necessary to prove the point that the agreements undermine the deterrent aspect of § 1983. The statute was intended to discourage misconduct. By rendering it impotent by denying its use, the effect of these agreements is to encourage disregard or indifference to an arrestee's constitutional rights.

Additionally, perhaps the most important goal furthered by § 1983 litigation is that § 1983 damage awards "are one way of affirming legal rights and thus of educating the moral sentiments of the community."[159] The damage awards themselves are often nominal. Indeed, in many cases the bankruptcy of municipalities renders them judgment-proof, and individual police officers generally have no "deep pockets." As a result, money is not the motivation to pursue a § 1983 claim. Rather, the importance of litigating claims under the statute is to publicly air official misconduct, which publicity may help to further the goals of compensation and deterrence of future wrongs. The "cover-up" nature of the release-dismissal agreement is perhaps its most invidious characteristic. It is probable that most members of the public would prefer to have criminals prosecuted, if there is probable cause of their guilt enough to indict them, rather than be released for a reason unrelated to their arrest. Presumably, most people probably do not wish their public officials to engage in constitutional violations and then be protected from suit by local prosecutors.

158. *See supra* notes 44, 59, 120-121, and accompanying text. It has been theorized that prosecutors may consciously use the agreements to protect police from their misconduct, but it may be unnecessarily cynical to assume that police will purposely engage in unconstitutional practices if these agreements continue to exist. While some officers may rationally choose to violate individuals' rights, it seems that most cases of misbehavior arise out of anger or ignorance. Although the release-dismissal option may not send a specific signal to officers that their misconduct is acceptable, the elimination of § 1983 claims may eventually lead to the same result. So while the continued existence of these agreements may not affirmatively encourage misbehavior, the lack of punishment for these incidents implies that civil rights are not worth respect because no one is ever punished for violating them.

159. Low & JEFFRIES, *supra* note 112, at 42.

D. *The Application of § 1983*

The *Rumery* plurality and concurrence relied heavily on concerns for judicial economy to support their approval of the release-dismissal agreement in that case. Justices Powell and O'Connor each cited a concern to avoid "frivolous" and unfairly burdensome lawsuits against municipalities and officers as a compelling rationale to allow individuals to bargain away civil rights claims.[160] An examination of the technical aspects surrounding § 1983 litigation demonstrates, however, that that very concern has been provided for by judicial interpretation of the statute which has greatly narrowed its application. Specifically, the qualified immunities granted to individual officers make it difficult for a plaintiff to pursue an action, and the situations in which a municipality will ever be found liable are very limited. In short, it is extremely difficult for a plaintiff to get past a motion to dismiss, even if that plaintiff has a case which seems meritorious. A study of official immunity and municipal liability in relation to § 1983 cases will show that Justices Powell and O'Connor's concerns about frivolous lawsuits are unfounded, and that for a prosecutor to enter into a release-dismissal agreement to support that rationale is both unnecessary and immoral.

1. Official Immunity

The common law traditionally recognizes the necessity of permitting government officials to perform their official functions free from the threat of suits for personal liability.[161] This official executive immunity stems from two interdependent rationales: first, "the injustice . . . of subjecting to liability an officer who is required, by the legal obligations of his position, to exercise discretion," and, second, "the danger that the threat of such liability would deter [that officer's] willingness to execute his office with the decisiveness and the judgment required by the public good."[162] Police officers, accordingly, enjoy "qualified immunity" from liability from damages under § 1983.[163]

It is presumed that a police officer who commits a constitutional deprivation is immune from suit. The rule is that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their con-

160. *See supra* notes 60, 71 and accompanying text.
161. Scheuer v. Rhodes, 416 U.S. 232, 239 (1974).
162. *Id.* at 240.
163. *Id.*

duct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[164] This qualified immunity is defeated, then, when the officer who committed the deprivation knew or reasonably should have known that he was violating some clearly established constitutional standard.[165] The significance of the existence of this objective rule of qualified immunity is that the first step in any § 1983 case will be to determine this threshold question, and until that question is resolved discovery will not be allowed.[166]

The practical consequence of qualified immunity is that many § 1983 cases will not survive long enough to even reach the discovery stage of a lawsuit. The immunity defense is usually pleaded as the defendant-officer's first response to the complaint, in the form of a motion to dismiss. For example, the officer will plead that there was no clearly established constitutional or statutory rule which governed the particular situation, or that the state of the law on that particular situation was unclear. Further, if there was such a clearly established rule, officers may plead that they were reasonable in not knowing about it. Consequently, unless there was not such a rule of law about which an officer should have known, the court will dismiss the case at the initial stage.

The rule of qualified immunity has obvious implications in the release-dismissal debate. Thanks to the tough standard that § 1983 plaintiffs must surmount just to proceed beyond a motion to dismiss, Justices Powell and O'Connor need not be concerned about officers being overburdened with frivolous complaints. Unless the act the officer performed was clearly illegal, that officer is immune from suit.

2. Municipal Liability

Because individual officers may be immune from suit or be practically judgment proof, § 1983 plaintiffs may wish to sue the deeper pocket of the municipality, as was the case in *Rumery*. As a rule, a municipality may be held liable for the constitutional deprivations performed by its officers. The Supreme Court has held that "[l]ocal governing bodies . . . can be sued directly under § 1983 for monetary, declaratory, or injunctive relief."[167] That liability is limited, however, in that

164. Harlow v. Fitzgerald, 457 U.S. 800 (1982).
165. *Id.*
166. *Id.*
167. Monell v. Department of Social Services, 436 U.S. 658 (1978).

"the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation or decision officially adopted and promulgated by that body's officers."[168] The local government's liability may not be based only on injuries inflicted by its employees, though; municipalities may not be held liable merely under the doctrine of respondeat superior. Rather, "it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983."[169]

Unless a municipality employs a policy or custom of depriving individuals of their constitutional rights, it will not be liable for the wrongful acts of its officers. The implications of this rule of municipal liability appear in the example of the Rodney King beating incident of March, 1991, and the pending federal civil suit arising from that incident. Even though the physical evidence in that case lends strong sympathetic support for holding the Los Angeles Police Department liable for King's physical injuries, it seems that proving the municipality's liability will be the "major stumbling block" in the § 1983 damages action.[170] Because municipal liability cannot be established under a vicarious liability theory, King will be required to prove that the officers were acting according to an official policy or custom of the L.A. Police Department.[171] As noted earlier, the individual officers are not the "deep pockets" that civil plaintiffs are seeking. One law professor noted that without municipal liability "you've won the battle but lost the war."[172]

The law shows that a release-dismissal agreement will only be necessary, then, to protect a municipality who as a matter of policy employs unconstitutional practices. One is only left to wonder why, then, these prosecutors who are servants of the people, members of communities, and officers of the court want to support such practices by allowing them to continue.

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168. *Id.*

169. *Id.*

170. Stephanie B. Goldberg, *Federal Lawsuits for Rodney King Raise New Issues*, A.B.A. J., July 1992, at 76.

171. A showing that the department was deliberately indifferent to the training and conduct of its officers may establish the "policy or custom" necessary to prove liability. *See* Canton v. Harris, 489 U.S. 378 (1989).

172. Goldberg, *supra* note 170 (quoting Peter L. Davis, Touro College, Jacob D. Fuchsberg Law Center, New York, N.Y.).

V. PROPOSED SOLUTION

The U.S. Supreme Court has held that the release-dismissal agreement may be enforced, if it is negotiated under the proper circumstances. While the Court gives permission to enter into these agreements, that judicial statement is no mandate for prosecutors to continue this practice, or for ethics associations to permit it.

As a largely self-governing profession, lawyers take pride in their ability to regulate themselves through such bodies as the ABA and state bar associations. The preamble to the Model Rules states that "the legal profession's relative autonomy carries with it special responsibilities of self-government."[173] Further, "the profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar."[174] These statements would support any action states may take, through their own bar associations, to discourage the practice of entering into release-dismissal agreements.

In 1982, the Colorado Bar Association declared that "it is improper for a public prosecutor to require that a defendant, as a condition of charging or sentencing concessions, release governmental agencies or their agents from actual or potential civil claims which arise from the same transactions as the criminal episode."[175] The Colorado Bar based its opinion on the ABA's statement that "[t]he responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict."[176] If courts are currently unable to interpret the concepts that it is unprofessional to represent conflicting interests[177] and that the primary duty of a public prosecutor is not merely to convict, but to see that justice is done,[178] as expressions disallowing the practice of dismissing charges for the release of civil claims, then individual states should follow Colorado's example and expressly prohibit the use of these agreements.

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173. MODEL RULES, *supra* note 96, pmbl.

174. *Id.*

175. Colorado Bar Ass'n., Ethics Opinion No. 62 (Nov. 20, 1982) (regarding duties of a public prosecutor), *reprinted in* 12 COLO. LAW. 455 (1983).

176. CRIMINAL JUSTICE STANDARDS, *supra* note 127, Standard 3-1.1(c); MODEL CODE, *supra* note 96, EC 7-13.

177. MODEL CODE, *supra* note 96, Canon 5.

178. *Id.* EC 7-13.

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO SET FORTH FINDINGS AS TO WHAT COURT THIS CASE IS BEFORE and
MOTION TO ALLOW THE PLAINTIFF TO PARTICIPATE

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as is reflected by the captioning of the defendant who found this case and the transfer to County Court dangerously informal and potentially void.

In the orders of 1/18, the Court refers the parties to papers and pleadings in both the Circuit and County Courts concerning the formal issuance of criminal charges. This language informs the parties that this case resides in some unknown murky area of jurisdictional law between both Circuit and County Courts. More unconstitutional sloppy justice and a violation of all notions of propriety that one would expect in a criminal prosecution.

Dated at Bonita Springs, Florida this 19th day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 19th day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO RESTORE STATE'S RIGHT TO PROSECUTORIAL - DISCRERION
And
TO MEANINGFULLY PARTICIATE IN THIS CASE

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as the Court has been forced to stand in the shoes of the State's Attorney because the prosecutor has no desire to participate in these proceedings and has deferred to allow the Court to take on all prosecutorial functions.

This Court has illegally taken on the task of prosecutor because of the painfully obvious conflict that exists in Mr. Russell's office and his reluctance to participate in these proceedings because of Huminski's intervenor status in Russell v. Waterman.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR SUBPOEENA OF ATTY NEYMOTION AND ATTY SMITH (PD)

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above and requires that the two attorneys be subpoenaed for trial and to bring Huminski's defense case file if they have not produced the documents already.

THIS PRODUCTION WILL VERIFY ZERO LEGAL WORK WAS DONE IN THIS MATTER AND HUMINSKI'S 6TH AMENDMENT RIGHTS WERE IMPROVIDENTLY STRIPPED WITHOUT CAUSE.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR SANCTIONS AGAINST JUDGE ADAMS FOR LYING TO THE DISABLED DEFENDANT IN AN ATTEMPT TO FORCE HUMINKSI INTO SUICIDE

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above.

AT HEARING JUDGE ADAMS LIED TO HUMINSKI AT HEARING STATING JURISDICTION WAS THE REASON THE CASE WAS IN COUNTY COURT.

A BOLD FACED LIE.

ORDERS OF 1/18 HAVE THE JUDGE ADMITTING BOTH CIRCUIT AND COUNTY COURT CAN HOLD CONTEMPT PROCEEDINGS

.

THE COURT LIES ARE INTENDED TO CONFUSE THE DEFENSE AND PUSH HIM TO SUICIDE.

THE ABUSE OF JUDICIAL POWER USED TO FORCE A DISABLED DEFENDANT INTO SUICIDE IS UNDEFENDABLE AND PATENTLY EVIL.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE "ADMINISTRATIVE TRANSFER" NO SUCH THING EXISTS UNDER STATUTE, RULE OR ANY OTHER LAW

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above.

THIS IS WHY A DOCTORED COPY OF THE SHOW CAUSE ORDER EXISTS IN THIS CASE, CONTEMPT WAS MEANT TO BE HEARD IN THE COURT ISSUING THE SHOW CAUSE ORDER.

THIS IS WHY AN INVALID RECUSAL ORDER, A COPY OF A COPY THAT WAS BACK-DATED. FAILURE TO ACT LAWFULLY CREATES MORE LAWLESSNESS.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 21ST day of January, 2018 to all parties.

-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STAY PENDING CIRCUIT COURT'S RULING ON MOTION TO VACATE SHERIFF SCOTT'S PROTECTIVE ORDER

And

TO ALLOW PLAINTIFF AN OPPORTUNITY TO OPINE

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above. Attached hereto is the motion filed in the Circuit Court which squarely attacks the wildly unconstitutional protective orders that this case is grounded upon.

As it stands now, each time Huminski enters the lee courthouse complex he is in contempt of the protective orders, an unacceptable and patently corrupt situation perhaps lawful in North Korea, a gulag or the old south, however it has no place in modern American courts.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 21ST day of January, 2018 to all parties except Sheriff Scott who has declined to receive service in this matter.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE SHERIFF SCOTT'S PROTECTIVE ORDER AS VASTLY OVER-BROAD, VAGUE AND NOT NARROWLY-TAILORED TO A LEGITIMATE GOVERNEMTAL PURPOSE AS REQUIRED BY THE FIRST AMENDMENT

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above. Attached hereto is the authority upon which Huminski relies upon in support of this motion.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 21ST day of January, 2018 to all parties except Sheriff Scott who has declined to receive service in this matter.

-/s/- Scott Huminski

Scott Huminski

No. 2D17-

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, ARIZONA, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

PETITION FOR A WRIT OF PROHIBITION AND A WRIT OF MANDAMUS AND A WRIT OF CORAM NOBIS AND QUO WARRANTO– ALL WRITS JURISDICTION

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656
E-mail s_huminski@live.com

Zachary Miller,esq
Regional Conflict
Counsel
zmiller@flrc2.org

BASIS FOR INVOKING JURISDICTION

This Court has original jurisdiction to issue writs of prohibition and mandamus under Article V, section 4(b)(3) of the Florida Constitution, and under Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure.

Huminski also asserts jurisdiction for writ of quo warranto and coram nobis and under "all-writs" jurisdiction. Fla. Const. art. V, §§ 3(b), 4(b).

PREFACE

This petition is related to conduct of recused judge Hon. Elizabeth Krier and is not related to the acts/orders of the currently presiding judge, Hon. Michael McHugh. Petitioner's Appendix filed herewith consists of filed documents in the Circuit Court except for the Complaint to the Florida Commission on Ethics with attachments which is the first document set forth in the appendix. The Appendix mirrors the chronology of the Circuit Court docket except with respect to the ethics complaint. Appendix page numbers are encircled and handwritten.

ISSUES PRESENTED

1. Whether a no "contact and communication" protective order concerning the Lee Sheriff's Office with no exceptions and zero narrow tailoring to a legitimate governmental interest is void ab initio for violation of First

Amendment precepts and Equal Protection and Enforcement of the Laws and constitutes a forbidden prior restraint.

2. Whether acts, orders and rulings of the Court Below are *Void Ab Initio* for lack of all jurisdiction after the case was removed to United States Bankruptcy Court divesting it of all jurisdiction until the matter was remanded back to State court.
3. Whether the criminal prosecution initiated in this matter and litigated in the Circuit Court until 8/14/2017 is *void ab initio* as it is predicated upon alleged violation of the Sheriff's protective order which was a legal nullity from its inception. All acts and orders of Judge Krier were filed in the Circuit Court in her capacity as a Circuit Court judge.
4. Whether the criminal prosecution is barred by two exceptions to the Collateral Bar Rule/Doctrine as the protective order is transparently unconstitutional / illegal and the order requires the surrender of constitutional rights.
5. Whether the Circuit Court criminal matter has not been concluded in a lawful manner, conversely, it has been abandoned by the State's Attorney and should be dismissed with prejudice for want of prosecution as it is the duty of the State's Attorney to see to it that the cases criminally prosecuted by the State's Attorney should be disposed of in a legal and regular manner

without lingering in uncertainty and burdening the litigants and the Courts as finality is the goal of all court matters.

6. Whether the State's Attorney having two identical prosecutions pending in the Circuit Court and County Court with the same allegations (contempt) and grounded upon the same fact violates double jeopardy.

FACT FROM PROCEEDINGS BELOW

This matter was initiated in the Circuit Court grounded upon Scott Huminski's ("Huminski") investigation and State FOIA requests concerning death threats Huminski had received via the U.S. Mails. Lee Sheriff Mike Scott requested and was granted a protective order barring all communication and contact from Huminski. A criminal contempt prosecution was initiated in the Circuit Court for Huminski's alleged contact with the Sheriff via email and via the internet. After several months of litigation of the criminal matter in Circuit Court, some Circuit Court files were placed by the Clerk under a County Court docket without input from the State's Attorney. The Circuit Court criminal matter was never concluded and no statute or court rule empowers the clerk's office to "transfer" a case and initiate a new criminal prosecution. The power to bring a criminal case is reserved for the State's Attorney. The criminal case remains in the Circuit Court and has never been concluded, just apparently abandoned by the State's Attorney. The

filing of a second identical criminal matter in County Court by the clerk violates double jeopardy. The State's Attorney's duty is to bring actions in the correct court, not every Court in the 20th Circuit.

The Sheriff's Protective Order

The Court below granted a motion for protective order by Lee Sheriff Mike Scott. See Petitioner's Appendix ("PETAPP") at page(s) 8-10.

The protective order forbids all contact with the Sheriff and his staff effectively:

1. Excluding Huminski from all public safety service and law enforcement in his town of residence, Bonita Springs, FL without exception. See County Court Order narrowly tailoring a similar pre-trial order with vastly vague and overbroad terms. (See PETAPP at line(s) 6-7)
2. Forbidding Huminski's First Amendment reporting of crime. See PETAPP at line(s) 113.
3. Forbidding Huminski's First Amendment core political criticism of the Sheriff to likely political opponents (members of the Sheriff's Department).

4. Forbidding Service of the Sheriff in a matter pending before the United States Bankruptcy Court whereby the Sheriff and Huminski were both *pro se*. Service was mandated by bankruptcy rule 9027.
5. Forbidding/threatening Huminski concerning his attendance at the Lee Courthouse complex whereby prohibited contact has to be made with the Sheriff's staff who perform security screening and act as bailiffs. Huminski's individual right to courthouse access has been determined in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) and denied once again in the Sheriff's protective order.
6. Huminski is barred from asking the Circuit Court to hear his motions to vacate by the terms of the protective order.
7. Huminski's banishment from the lee courthouse and the protective order's prohibition against filing present an exhaustion of all redress to the indigent Huminski in the Circuit Court who was appointed a public defender by the Circuit Court and is now represented by regional conflict counsel.
8. Huminski is forbidden from serving this petition upon the Sheriff under the terms of the protective order, effectively obstructing justice. See motion to enjoin protective order to allow service filed herewith.

The case below has had all judges assigned disqualify and the last act of the Circuit Court except for multiple recusals and re-assignment orders was on 8/8/2017. Currently, the Chief Judge is assigned to the case, however, Huminski is forbidden a hearing on his pending motions to vacate under the terms of the sheriff's protective order.

ALL ACTS TAKEN WHILE CASE WAS REMOVED TO U.S. BANKRUPTCY COURT ARE VOID AB INITIO

The case below was removed to the United States Bankruptcy Court at 5:02 p.m. on 6/26/2017 and was remanded back to State Court via a federal order docketed in the Circuit Court on 8/8/2017. See PETAPP at line(s) 28-30, 91-94. All acts and orders taken by the Circuit Court in defiance of the federal court's jurisdiction are VOID AB INITIO, ironically, even the recusal of Judge Krier and arraignment of 6/29/2017. (See PETAPP at pages 60-74, 76-82)

MEMORANDUM OF LAW

Removal to Bankruptcy Court

The removal to Bankrutcy Court is a self-executing function of federal law and plainly obvious in the Dockets from the Court Below and the United States Bankruptcy Court. Absent from either the State or Federal record is any motion to remand the case under federal abstention doctrines by the defendants or objection to

the removal. Any objection to federal jurisdiction or removal not pled in the bankruptcy court is waived. 28 U.S.C. §1447(c) All acts and orders of the Circuit Court were entered in a complete absence of jurisdiction as removal divested jurisdiction from the State Court.

At hearing on 6/29/2017, Hon. Judge Krier could not have been more emphatic by stating that "Nothing gets removed from my court -- ever". As all litigants are aware, any claim mentioning the violation of a federal right/privilege can and usually is removed to federal court by insurance defense attorneys under federal question jurisdiction and bankruptcy removal under Rule 9027 is quite common. The Circuit Court's, Judge Krier presiding, position on federal removal is bewildering.

Court Orders – Collateral Bar Rule

A transparently invalid order cannot form the basis for a contempt citation. See 3 Wright, Federal Practice & Procedure Sec. 702 at 815 n. 17 (1982) (collateral bar rule does not apply if the order violated was transparently unconstitutional); State ex rel. Superior Ct. of Snohomish County v. Sperry, 79 Wash.2d 69, 483 P.2d 608 (1971), cert. denied, 404 U.S. 939, 92 S.Ct. 272, 30 L.Ed.2d 252 (contempt citation improper because order violated was transparently void); see also United States v. Dickinson, 465 F.2d 496, 509-10 (5th Cir.1972) (recognizing exception to

collateral bar rule for transparently invalid orders); Ex parte Purvis, 382 So.2d 512, 514 (Ala.1980) (same).

Court orders are not sacrosanct. See Cobbledick v. United States, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940); accord United States v. Ryan, 402 U.S. 530, 91 S.Ct. 1580, 29 L.Ed.2d 85 (1971). In Cobbledick, the Supreme Court ruled that when a motion to quash a subpoena is denied, the movant may either obey its commands or violate them, and, if cited for contempt, properly contest its validity in the contempt proceeding. Cf. Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972); Maness v. Meyers, 419 U.S. 449, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975) These cases involve orders that require the surrender of irretrievable rights and establish that blind obedience to all court orders is not required. See also Nebraska Press Assoc., 427 U.S. at 559, 96 S.Ct. at 2802 ("A prior restraint ... has an immediate and irreversible sanction.") An appeal can not undo the immediate constitutional injury of a prior restraint such as we have in the instant matter. The instant matter does constitute a prior restraint against core political criticism of a politician (Sheriff) and a prior restraint concerning reporting crime to local law enforcement. An order entered by a court clearly without jurisdiction over the contemnors or the subject matter is not protected by the collateral bar rule. United Mine Workers, 330 U.S. at 293, 67 S.Ct. at 695 Were this not the case, a court could wield power over parties or matters obviously not within its authority--a concept

inconsistent with the notion that the judiciary may exercise only those powers entrusted to it by law. The Circuit Court did issue orders and held hearings in a removed case and in violation of the automatic stay of bankruptcy.

Huminski's email publications to large audiences on the topics of report of terrorist death threats originating in Arizona and transmitted into Lee County, report of crime to law enforcement and criticism of politician/sheriff are pure speech and core political protected expression. The principal purpose of the First Amendment's guaranty is to prevent prior restraints. Near, 283 U.S. at 713, 51 S.Ct. at 630 The Supreme Court has declared: "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1577, 29 L.Ed.2d 1 (1971); see also Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963) When, as here, the prior restraint impinges upon the right of the press (Huminski was acknowledge as a Citizen-Reporter, Huminski v. Corsones) to communicate news and involves expression in the form of pure speech--speech not connected with any conduct--the presumption of unconstitutionality is virtually insurmountable. Nebraska Press Assoc., 427 U.S. at 558, 570, 96 S.Ct. at 2802, 2808 (White, J., concurring) Huminski notes his status as a citizen-reporter. See Generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)

The Supreme Court strongly protects "core political speech" as a "value that occupies the highest, most protected position" in the hierarchy of constitutionally-protected speech. R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 422 (1992) (Stevens, J., concurring). See also Burson v. Freeman, 504 U.S. 191, 217 (1992). In defining the core political speech worthy of this elevated level of protection, the Court has broadly included "interactive communication concerning political change.", the essence of Huminski's communications with the sheriff. Meyer v. Grant, 486 U.S. 414, 422 (1988). Huminski's electronic communications objected to the Sheriff's position on interstate terrorist death threats. Huminski has also published his opposition to the sheriff's policies as signage at his home and on the internet. For example, see https://www.youtube.com/watch?v=-dJYlLMBLVk and see generally https://www.youtube.com/channel/UC-y4hdd9G-cN3GxkJIMpF9w and see a google search on the petitioner.

Political speech gets higher protection because it is an essential part of the democratic process. Indeed, evaluating a statute that would have restricted all anonymous leafleting in opposition to a proposed tax, the Supreme Court reflected on the importance of specifically protecting such political speech which applies equally here to Huminski's speech regarding corruption, misconduct and oppression by police and government actors who support the death threats received by Huminski. The First Amendment affords the broadest protection to such political

expression in order "to assure [the]unfettered interchange of ideas for the bringing about of political and social changes desired by the people." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 346-47 (1995), quoting Roth v. United States, 354 U.S. 476, 484 (1957)

Recently, the Supreme Court made it abundantly clear that laws or in this case a court order that burden political speech are subject to strict scrutiny review. Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010), invalidated a federal statute that barred certain independent corporate expenditures for electioneering communications. Highlighting the primacy of political speech, the Court noted that "political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction' furthers a compelling interest and is narrowly tailored to achieve that interest.'" Citizens United, 558 U.S. at 340 (quoting Federal Election Comm'n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 464 (2007)). There exists no compelling reason to silence Huminski's reporting of crime or criticism of the sheriff.

The order and the threats from the Sheriff/Court under State law/Common Law cut off the "unfettered interchange of ideas" in an important place for individual political expression--the Courts and internet. McIntyre, 514 U.S. at 346-

47. Treading upon core First Amendment expression must be accomplished in as minimally a restrictive manner as possible, and should never be done so in the form of an absolute bar on all political expression as is the case at Bar whereby criticism, reporting of crime and civil/bankruptcy litigation has been viewed as a per se criminal activity by the State Court. See Bd. of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 574 (1987) (invalidating a statute because it "reache[d] the universe of expressive activity, and, by prohibiting all protected expression, purport[ed] to create a virtual 'First Amendment Free Zone.' ") (emphasis in original).

Validating a sweeping ban on core political speech would seriously undermine the Supreme Court's stated goal of safeguarding the democratic process. The alleged contact with the Sheriff made by Huminski were related to reporting crime and criticism of a political figure. A constitutional solution should have been to direct the sheriff to delete any emails he considered junk mail. Shutting down Huminski's reporting crime to law enforcement is an extreme remedy that does not survive constitutional scrutiny under vagueness and over-breadth precepts.

Grayned v. The City of Rockford, 408 U.S. 104 (1972) summarized the time, place, manner concept: "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular

time." Time, place, and manner restrictions must withstand intermediate scrutiny. Note that any regulations that would force speakers to change how or what they say do not fall into this category (so the government cannot restrict one medium even if it leaves open another) Ward v. Rock Against Racism, 491 US 781 (1989) held that time, place, or manner restrictions must:

* Be content neutral
* Be narrowly tailored
* Serve a significant governmental interest
* Leave open ample alternative channels for communication

If the government tries to restrain speech before it is spoken, as opposed to punishing it afterward, it must be able to show that punishment afte r the fact is not a sufficient remedy, and show that allowing the speech would "surely result in direct, immediate, and irreparable damage to our Nation and its people" (New York Times Co. v. United States, 403 U.S. 730 (1971)).

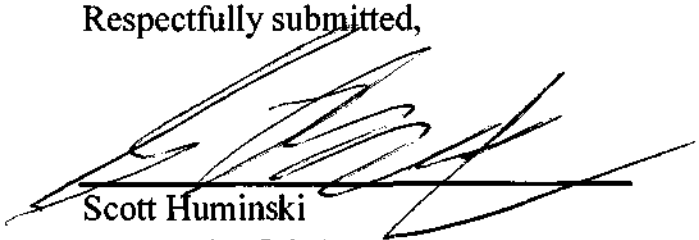
In Bridges v California, 314 U.S. 252 (1941), Mr. Justice Black, for the five-to-four majority, presented clear and present danger as "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterance can be punished"; adding that even this did not "mark the

furthermost constitutional boundaries of protected expression." Bridges v. California, 314 U. S. 252, 263 (1941).

CONCLUSION

For all of the forgoing reasons, the Court should grant the Petitions and issue a Writ of Prohibition, Writ of Mandamus, Writ of Coram Nobis and Writ of Quo Warranto requiring the Circuit Court vacate all acts, orders and rulings entered while the case was removed to U.S. Bankruptcy Court, vacate the protective order as void ab initio for First Amendment violations, order the initiation of the criminal matter *Void Ab Initio* and dismiss it with prejudice and find that the orders involved in this case are exceptions to the Collateral Bar Rule which allows violation of a transparently unconstitutional order and allows violation of an order that requires the surrender of Constitutional rights.

Respectfully submitted,



Scott Huminski
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

CERTIFICATE OF SERVICE – FOR PETITION, APPENDIX AND MOTIONS

I HEREBY CERTIFY that on or before December 07, 2017, a true copy of the foregoing and Petitioner's Appendix and Motion to Stay Matters Below and MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER and MOTION TO REPLEAD WITH ASSISTANCE OF COUNSEL have been served pursuant to the Rules upon,

20th Circuit Public Defender's Office (Kevin Sarlo, esq.),

Regional Conflict Counsel (Zachary Miller, esq.),

State's Attorney (ASA Anthony Kunasek, esq.),

Hon. Michael McHugh,

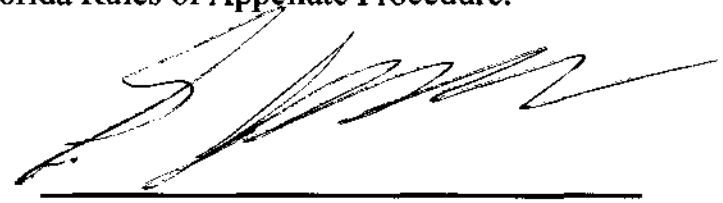
Hon. James Adams,

All parties in 17-CA-421 (except the Sheriff Defendants and Scribd, Inc., defendants whereby service is prohibited by order, see MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER filed herewith which, if granted, would allow service to complete).

Scott Huminski

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.21 (a)(2), I certify that this computer-generated brief/petition is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.



Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-315
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF FL ATTORNEY GENERAL CONCERNING THE CORRUPTION IN THIS CASE
And
TO ALLOW PLAINTIFF AN OPPORTUNITY TO OPINE

NOW COMES, Scott Huminski ("Huminski"), and, notifies as set forth above.

From: scott huminski <s_huminski@live.com>
Sent: Friday, January 19, 2018 3:33 PM
To: MasterNotes
Subject: Re: From Florida Attorney General Pam Bondi

I am only concerned with reporting crime of Sheriff Scott and State's Attorney Russell. Please advise as to the correct agency. I thought the AG handled official corruption. Please advise as to the correct state law enforcement agency. -- scott huminski

---

From: MasterNotes <Master.Notes@myfloridalegal.com>
Sent: Friday, January 19, 2018 3:21 PM
To: S_HUMINSKI@LIVE.COM
Subject: From Florida Attorney General Pam Bondi

Hello Mr. Huminski,

This is to acknowledge the Florida Attorney General's receipt of your correspondence regarding your concerns with the Lee County Sheriff's Office, Twentieth Judicial Circuit State Attorney Stephen Russell, court officials and others. I have reviewed your past and current correspondence to this office and hope the following referrrals and information about the Attorney General's role assist you.

By law, this office represents the state and its officials in civil actions which affect the state's interests, and our "clients" are "all the state departments and agencies from all three branches of state government, including their individual officials and employees." See

myfloridalegal.com/pages.nsf/Main/610a9a5cb51e569885256cc6005c4e3e. This office is not at liberty to provide legal advice or opinions to private individuals.

If you are seeking a criminal investigation, by contacting the Lee County Sheriff's Office and Twentieth Judicial Circuit State Attorney's Office, you contacted the appropriate authorities. In Florida, the police or sheriff and elected state attorney in each circuit investigate and prosecute alleged criminal violations of the law. Those officials operate independently and are not part of the Attorney General's Office. This office is not generally involved in criminal investigations at the circuit level. However, by law the Attorney General's Office represents and defends the prosecution in all criminal appeals within state and federal courts. Therefore, comment on any particular case would not be appropriate. Please direct information or concerns about a criminal case to the state attorney's office, private attorney or public defender, and the courts.

If you are concerned about conflicts of interest or ethics involving public officials, you may contact the Governor's Office and the Commission on Ethics. Florida law also gives the Governor authority to assign state attorneys from one jurisdiction to prosecute crimes in another jurisdiction under certain circumstances. The contact information for the Governor's Office and the Commission on Ethics is:

The Honorable Rick Scott
Executive Office of the Governor
Citizen Services Hotline: (850) 717-9337
Website: http://www.flgov.com/

Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709
Telephone: (850) 488-7864
Website: http://www.ethics.state.fl.us/

Additionally, the Federal Bureau of Investigation's (FBI) Public Corruption webpage provides information on that agency's public corruption investigations and cases:

https://www.fbi.gov/investigate/public-corruption

Finally, if you need legal guidance, please consult a private attorney. An attorney can give you the legal advice which our office is not at liberty to give to private individuals. The Florida Bar offers a Lawyer Referral Service toll-free at (800) 342-8011 or online at https://www.floridabar.org/public/lrs/.

Thank you for contacting Attorney General's Office. Please understand the Attorney General's duties are prescribed by law.

Sincerely,

Office of Citizen Services
Florida Attorney General's Office
PL-01, The Capitol
Tallahassee, Florida 32399-1050
Phone: (850) 414-3990
Toll-free within Florida: (866) 966-7226
Website: www.myfloridalegal.com

PLEASE DO NOT REPLY TO THIS E-MAIL. THIS ADDRESS IS FOR PROCESSING ONLY.

To contact this office please visit the Attorney General's website at http://www.myfloridalegal.com and complete the on-line contact form. Again, thank you for contacting the Office of the Florida Attorney General.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 21ST day of January, 2018 to all parties except Sheriff Scott who has declined to receive service in this matter.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STRIKE/VACATE SHOW CAUSE ORDER OF 6/30/2017 AS A PRIME EXAMPLE OF COURTHOUSE CORRUPTION INVOLVING THE DOCTORING OF A COURT ORDER, in the alternative, THE COURT SHOULD IDENTIFY THE CRIMINAL FOR PROSECUTION AND TO ALLOW THE STATE TO RESPOND, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above. Doctoring of the show cause court order by hand and representing it as a legitimate original order is the epitome of court corruption and is a crime that far exceeds any allegations against Huminski.

The Court evaded this topic in the 1/18 orders as there is no excuse for this corruption. This conduct places the County Court in the disgraceful position of a criminal enterprise and disrepute as the crime is not even a clever criminal act. As many have said, cover-up is worse than the crime. The Court should come clean.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR COURT TO PRODUCE THE NAME OF THE PERSION WHO MODIFIED JUDGE KRIER'S 6/5 ORDER
AND
TO ALLOW THE STATE TO RESPOND, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above. *

* WHO ON 6/30 PRINTED OUT JUDGE KRIER'S SHOW CAUSE ORDER.

* WHO HAND-MODIFIED THIS ORDER.

* WHO FILED THIS FRAUDULENT DOCUMENT IN COURT TRYING TO PASS IT OFF AS A VALID ORIGINAL.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS AS THIS CRIMINAL MATTER EXISTS BEFORE THECIRCUIT COURT VIOLATING DOUBLE JEOPARDY
AND
TO ALLOW THE STATE TO RESPOND, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above.

THIS CASE WAS NEVER DISMISSED IN THE CIRCUIT COURT AND BRINGING THIS SECOND CASE VIOLATES DOUBLE JEOPARDY EXPOSING HUMINSKI TO CRIMINAL LIABILITY IN TWO COURTS.

THERE IS NO SUCH THING AS AN ADMINISTRATIVE TRANSFER FOR GOOD REASON SUCH AS THE FABRICATED FRAUDULENT CHARGING DOCUMENT MANUFACTURED FOR FILING IN THIS CASE WHEN THE TRUE AND CORRECT COPY OF THE SHOW CAUSE ORDER EXISTS IN THE CIRCUIT COURT. THE PROPER VENUE FOR THIS PROSECUTION IS THE CIRCUIT COURT

WHERE THE ORDERS ARE VALID AND NOT DOCTORED COPIES.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO REMAND BACK TO CIRCUIT COURT WHERE THE ONLY LEGITIMATE SHOW CAUSE ORDER EXISTS
AND
MOTION TO ALLOW STATE'S ATTORNEY TO REPLY TO THIS MOTION

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above.

THE SHOW CAUSE ORDER IN THIS CASE IS A DOCTORED COPY and A FRAUD.

THE SHOW CAUSE ORDER IN THE CIRCUIT COURT IS VALID AND LEGITIMATE.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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(239) 300-6656
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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF CORRECTION
And
MOTION TO ALLOW PLAINTIFF AN OPPORTUNITY TO OPINE

NOW COMES, Scott Huminski ("Huminski"), and, notifies as set forth above.

The attached should have had the docket number of 17-mm-815

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STAY PENDING CIRCUIT COURT'S RULING ON MOTION TO VACATE SHERIFF SCOTT'S PROTECTIVE ORDER

And

TO ALLOW PLAINTIFF AN OPPORTUNITY TO OPINE

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above. Attached hereto is the motion filed in the Circuit Court which squarely attacks the wildly unconstitutional protective orders that this case is grounded upon.

As it stands now, each time Huminski enters the lee courthouse complex he is in contempt of the protective orders, an unacceptable and patently corrupt situation perhaps lawful in North Korea, a gulag or the old south, however it has no place in modern American courts.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE SHERIFF SCOTT'S PROTECTIVE ORDER AS VASTLY OVER-BROAD, VAGUE AND NOT NARROWLY-TAILORED TO A LEGITIMATE GOVERNEMTAL PURPOSE AS REQUIRED BY THE FIRST AMENDMENT

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above. Attached hereto is the authority upon which Huminski relies upon in support of this motion.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

No. 2D17-

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, ARIZONA, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

PETITION FOR A WRIT OF PROHIBITION AND A WRIT OF MANDAMUS AND A WRIT OF CORAM NOBIS AND QUO WARRANTO– ALL WRITS JURISDICTION

SCOTT HUMINSKI, PRO SE
24544 Kingfish Street, Bonita Springs, FL 34134
(239) 300-6656
E-mail s_huminski@live.com

Zachary Miller,esq
Regional Conflict
Counsel
zmiller@flrc2.org

BASIS FOR INVOKING JURISDICTION

This Court has original jurisdiction to issue writs of prohibition and mandamus under Article V, section 4(b)(3) of the Florida Constitution, and under Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure.

Huminski also asserts jurisdiction for writ of quo warranto and coram nobis and under "all-writs" jurisdiction. Fla. Const. art. V, §§ 3(b), 4(b).

PREFACE

This petition is related to conduct of recused judge Hon. Elizabeth Krier and is not related to the acts/orders of the currently presiding judge, Hon. Michael McHugh. Petitioner's Appendix filed herewith consists of filed documents in the Circuit Court except for the Complaint to the Florida Commission on Ethics with attachments which is the first document set forth in the appendix. The Appendix mirrors the chronology of the Circuit Court docket except with respect to the ethics complaint. Appendix page numbers are encircled and handwritten.

ISSUES PRESENTED

1. Whether a no "contact and communication" protective order concerning the Lee Sheriff's Office with no exceptions and zero narrow tailoring to a legitimate governmental interest is void ab initio for violation of First

Amendment precepts and Equal Protection and Enforcement of the Laws and constitutes a forbidden prior restraint.

2. Whether acts, orders and rulings of the Court Below are *Void Ab Initio* for lack of all jurisdiction after the case was removed to United States Bankruptcy Court divesting it of all jurisdiction until the matter was remanded back to State court.
3. Whether the criminal prosecution initiated in this matter and litigated in the Circuit Court until 8/14/2017 is *void ab initio* as it is predicated upon alleged violation of the Sheriff's protective order which was a legal nullity from its inception. All acts and orders of Judge Krier were filed in the Circuit Court in her capacity as a Circuit Court judge.
4. Whether the criminal prosecution is barred by two exceptions to the Collateral Bar Rule/Doctrine as the protective order is transparently unconstitutional / illegal and the order requires the surrender of constitutional rights.
5. Whether the Circuit Court criminal matter has not been concluded in a lawful manner, conversely, it has been abandoned by the State's Attorney and should be dismissed with prejudice for want of prosecution as it is the duty of the State's Attorney to see to it that the cases criminally prosecuted by the State's Attorney should be disposed of in a legal and regular manner

without lingering in uncertainty and burdening the litigants and the Courts as finality is the goal of all court matters.

6. Whether the State's Attorney having two identical prosecutions pending in the Circuit Court and County Court with the same allegations (contempt) and grounded upon the same fact violates double jeopardy.

FACT FROM PROCEEDINGS BELOW

This matter was initiated in the Circuit Court grounded upon Scott Huminski's ("Huminski") investigation and State FOIA requests concerning death threats Huminski had received via the U.S. Mails. Lee Sheriff Mike Scott requested and was granted a protective order barring all communication and contact from Huminski. A criminal contempt prosecution was initiated in the Circuit Court for Huminski's alleged contact with the Sheriff via email and via the internet. After several months of litigation of the criminal matter in Circuit Court, some Circuit Court files were placed by the Clerk under a County Court docket without input from the State's Attorney. The Circuit Court criminal matter was never concluded and no statute or court rule empowers the clerk's office to "transfer" a case and initiate a new criminal prosecution. The power to bring a criminal case is reserved for the State's Attorney. The criminal case remains in the Circuit Court and has never been concluded, just apparently abandoned by the State's Attorney. The

filing of a second identical criminal matter in County Court by the clerk violates double jeopardy. The State's Attorney's duty is to bring actions in the correct court, not every Court in the 20th Circuit.

The Sheriff's Protective Order

The Court below granted a motion for protective order by Lee Sheriff Mike Scott. See Petitioner's Appendix ("PETAPP") at page(s) 8-10.

The protective order forbids all contact with the Sheriff and his staff effectively:

1. Excluding Huminski from all public safety service and law enforcement in his town of residence, Bonita Springs, FL without exception. See County Court Order narrowly tailoring a similar pre-trial order with vastly vague and overbroad terms. (See PETAPP at line(s) 6-7)
2. Forbidding Huminski's First Amendment reporting of crime. See PETAPP at line(s) 113.
3. Forbidding Huminski's First Amendment core political criticism of the Sheriff to likely political opponents (members of the Sheriff's Department).

4. Forbidding Service of the Sheriff in a matter pending before the United States Bankruptcy Court whereby the Sheriff and Huminski were both *pro se*. Service was mandated by bankruptcy rule 9027.
5. Forbidding/threatening Huminski concerning his attendance at the Lee Courthouse complex whereby prohibited contact has to be made with the Sheriff's staff who perform security screening and act as bailiffs. Huminski's individual right to courthouse access has been determined in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) and denied once again in the Sheriff's protective order.
6. Huminski is barred from asking the Circuit Court to hear his motions to vacate by the terms of the protective order.
7. Huminski's banishment from the lee courthouse and the protective order's prohibition against filing present an exhaustion of all redress to the indigent Huminski in the Circuit Court who was appointed a public defender by the Circuit Court and is now represented by regional conflict counsel.
8. Huminski is forbidden from serving this petition upon the Sheriff under the terms of the protective order, effectively obstructing justice. See motion to enjoin protective order to allow service filed herewith.

The case below has had all judges assigned disqualify and the last act of the Circuit Court except for multiple recusals and re-assignment orders was on 8/8/2017. Currently, the Chief Judge is assigned to the case, however, Huminski is forbidden a hearing on his pending motions to vacate under the terms of the sheriff's protective order.

ALL ACTS TAKEN WHILE CASE WAS REMOVED TO U.S. BANKRUPTCY COURT ARE VOID AB INITIO

The case below was removed to the United States Bankruptcy Court at 5:02 p.m. on 6/26/2017 and was remanded back to State Court via a federal order docketed in the Circuit Court on 8/8/2017. See PETAPP at line(s) 28-30, 91-94. All acts and orders taken by the Circuit Court in defiance of the federal court's jurisdiction are VOID AB INITIO, ironically, even the recusal of Judge Krier and arraignment of 6/29/2017. (See PETAPP at pages 60-74, 76-82)

MEMORANDUM OF LAW

Removal to Bankruptcy Court

The removal to Bankrutcy Court is a self-executing function of federal law and plainly obvious in the Dockets from the Court Below and the United States Bankruptcy Court. Absent from either the State or Federal record is any motion to remand the case under federal abstention doctrines by the defendants or objection to

the removal. Any objection to federal jurisdiction or removal not pled in the bankruptcy court is waived. 28 U.S.C. §1447(c) All acts and orders of the Circuit Court were entered in a complete absence of jurisdiction as removal divested jurisdiction from the State Court.

At hearing on 6/29/2017, Hon. Judge Krier could not have been more emphatic by stating that "Nothing gets removed from my court -- ever". As all litigants are aware, any claim mentioning the violation of a federal right/privilege can and usually is removed to federal court by insurance defense attorneys under federal question jurisdiction and bankruptcy removal under Rule 9027 is quite common. The Circuit Court's, Judge Krier presiding, position on federal removal is bewildering.

Court Orders – Collateral Bar Rule

A transparently invalid order cannot form the basis for a contempt citation. See 3 Wright, Federal Practice & Procedure Sec. 702 at 815 n. 17 (1982) (collateral bar rule does not apply if the order violated was transparently unconstitutional); State ex rel. Superior Ct. of Snohomish County v. Sperry, 79 Wash.2d 69, 483 P.2d 608 (1971), cert. denied, 404 U.S. 939, 92 S.Ct. 272, 30 L.Ed.2d 252 (contempt citation improper because order violated was transparently void); see also United States v. Dickinson, 465 F.2d 496, 509-10 (5th Cir.1972) (recognizing exception to

collateral bar rule for transparently invalid orders); Ex parte Purvis, 382 So.2d 512, 514 (Ala.1980) (same).

Court orders are not sacrosanct. See Cobbledick v. United States, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940); accord United States v. Ryan, 402 U.S. 530, 91 S.Ct. 1580, 29 L.Ed.2d 85 (1971). In Cobbledick, the Supreme Court ruled that when a motion to quash a subpoena is denied, the movant may either obey its commands or violate them, and, if cited for contempt, properly contest its validity in the contempt proceeding. Cf. Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972); Maness v. Meyers, 419 U.S. 449, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975) These cases involve orders that require the surrender of irretrievable rights and establish that blind obedience to all court orders is not required. See also Nebraska Press Assoc., 427 U.S. at 559, 96 S.Ct. at 2802 ("A prior restraint ... has an immediate and irreversible sanction.") An appeal can not undo the immediate constitutional injury of a prior restraint such as we have in the instant matter. The instant matter does constitute a prior restraint against core political criticism of a politician (Sheriff) and a prior restraint concerning reporting crime to local law enforcement. An order entered by a court clearly without jurisdiction over the contemnors or the subject matter is not protected by the collateral bar rule. United Mine Workers, 330 U.S. at 293, 67 S.Ct. at 695 Were this not the case, a court could wield power over parties or matters obviously not within its authority--a concept

inconsistent with the notion that the judiciary may exercise only those powers entrusted to it by law. The Circuit Court did issue orders and held hearings in a removed case and in violation of the automatic stay of bankruptcy.

Huminski's email publications to large audiences on the topics of report of terrorist death threats originating in Arizona and transmitted into Lee County, report of crime to law enforcement and criticism of politician/sheriff are pure speech and core political protected expression. The principal purpose of the First Amendment's guaranty is to prevent prior restraints. Near, 283 U.S. at 713, 51 S.Ct. at 630 The Supreme Court has declared: "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1577, 29 L.Ed.2d 1 (1971); see also Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963) When, as here, the prior restraint impinges upon the right of the press (Huminski was acknowledge as a Citizen-Reporter, Huminski v. Corsones) to communicate news and involves expression in the form of pure speech--speech not connected with any conduct--the presumption of unconstitutionality is virtually insurmountable. Nebraska Press Assoc., 427 U.S. at 558, 570, 96 S.Ct. at 2802, 2808 (White, J., concurring) Huminski notes his status as a citizen-reporter. See Generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)

The Supreme Court strongly protects "core political speech" as a "value that occupies the highest, most protected position" in the hierarchy of constitutionally-protected speech. R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 422 (1992) (Stevens, J., concurring). See also Burson v. Freeman, 504 U.S. 191, 217 (1992). In defining the core political speech worthy of this elevated level of protection, the Court has broadly included "interactive communication concerning political change.", the essence of Huminski's communications with the sheriff. Meyer v. Grant, 486 U.S. 414, 422 (1988). Huminski's electronic communications objected to the Sheriff's position on interstate terrorist death threats. Huminski has also published his opposition to the sheriff's policies as signage at his home and on the internet. For example, see https://www.youtube.com/watch?v=-dJYlLMBLVk and see generally https://www.youtube.com/channel/UC-y4hdd9G-cN3GxkJIMpF9w and see a google search on the petitioner.

Political speech gets higher protection because it is an essential part of the democratic process. Indeed, evaluating a statute that would have restricted all anonymous leafleting in opposition to a proposed tax, the Supreme Court reflected on the importance of specifically protecting such political speech which applies equally here to Huminski's speech regarding corruption, misconduct and oppression by police and government actors who support the death threats received by Huminski. The First Amendment affords the broadest protection to such political

expression in order "to assure [the]unfettered interchange of ideas for the bringing about of political and social changes desired by the people." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 346-47 (1995), quoting Roth v. United States, 354 U.S. 476, 484 (1957)

Recently, the Supreme Court made it abundantly clear that laws or in this case a court order that burden political speech are subject to strict scrutiny review. Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010), invalidated a federal statute that barred certain independent corporate expenditures for electioneering communications. Highlighting the primacy of political speech, the Court noted that "political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction' furthers a compelling interest and is narrowly tailored to achieve that interest.'" Citizens United, 558 U.S. at 340 (quoting Federal Election Comm'n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 464 (2007)). There exists no compelling reason to silence Huminski's reporting of crime or criticism of the sheriff.

The order and the threats from the Sheriff/Court under State law/Common Law cut off the "unfettered interchange of ideas" in an important place for individual political expression--the Courts and internet. McIntyre, 514 U.S. at 346-

47. Treading upon core First Amendment expression must be accomplished in as minimally a restrictive manner as possible, and should never be done so in the form of an absolute bar on all political expression as is the case at Bar whereby criticism, reporting of crime and civil/bankruptcy litigation has been viewed as a per se criminal activity by the State Court. See Bd. of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 574 (1987) (invalidating a statute because it "reache[d] the universe of expressive activity, and, by prohibiting all protected expression, purport[ed] to create a virtual 'First Amendment Free Zone.' ") (emphasis in original).

Validating a sweeping ban on core political speech would seriously undermine the Supreme Court's stated goal of safeguarding the democratic process. The alleged contact with the Sheriff made by Huminski were related to reporting crime and criticism of a political figure. A constitutional solution should have been to direct the sheriff to delete any emails he considered junk mail. Shutting down Huminski's reporting crime to law enforcement is an extreme remedy that does not survive constitutional scrutiny under vagueness and over-breadth precepts.

Grayned v. The City of Rockford, 408 U.S. 104 (1972) summarized the time, place, manner concept: "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular

time." Time, place, and manner restrictions must withstand intermediate scrutiny. Note that any regulations that would force speakers to change how or what they say do not fall into this category (so the government cannot restrict one medium even if it leaves open another) Ward v. Rock Against Racism, 491 US 781 (1989) held that time, place, or manner restrictions must:

* Be content neutral
* Be narrowly tailored
* Serve a significant governmental interest
* Leave open ample alternative channels for communication

If the government tries to restrain speech before it is spoken, as opposed to punishing it afterward, it must be able to show that punishment afte r the fact is not a sufficient remedy, and show that allowing the speech would "surely result in direct, immediate, and irreparable damage to our Nation and its people" (New York Times Co. v. United States, 403 U.S. 730 (1971)).

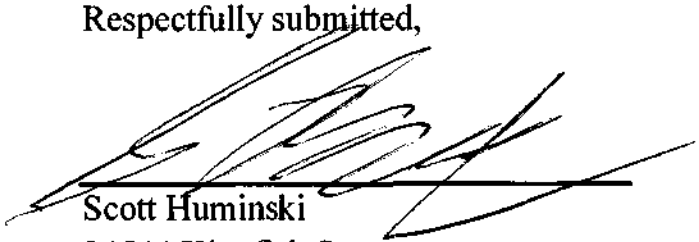
In Bridges v California, 314 U.S. 252 (1941), Mr. Justice Black, for the five-to-four majority, presented clear and present danger as "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterance can be punished"; adding that even this did not "mark the

furthermost constitutional boundaries of protected expression." Bridges v. California, 314 U. S. 252, 263 (1941).

CONCLUSION

For all of the forgoing reasons, the Court should grant the Petitions and issue a Writ of Prohibition, Writ of Mandamus, Writ of Coram Nobis and Writ of Quo Warranto requiring the Circuit Court vacate all acts, orders and rulings entered while the case was removed to U.S. Bankruptcy Court, vacate the protective order as void ab initio for First Amendment violations, order the initiation of the criminal matter *Void Ab Initio* and dismiss it with prejudice and find that the orders involved in this case are exceptions to the Collateral Bar Rule which allows violation of a transparently unconstitutional order and allows violation of an order that requires the surrender of Constitutional rights.

Respectfully submitted,



Scott Huminski
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
s_huminski@live.com

CERTIFICATE OF SERVICE – FOR PETITION, APPENDIX AND MOTIONS

I HEREBY CERTIFY that on or before December 07, 2017, a true copy of the foregoing and Petitioner's Appendix and Motion to Stay Matters Below and MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER and MOTION TO REPLEAD WITH ASSISTANCE OF COUNSEL have been served pursuant to the Rules upon,

20th Circuit Public Defender's Office (Kevin Sarlo, esq.),

Regional Conflict Counsel (Zachary Miller, esq.),

State's Attorney (ASA Anthony Kunasek, esq.),

Hon. Michael McHugh,

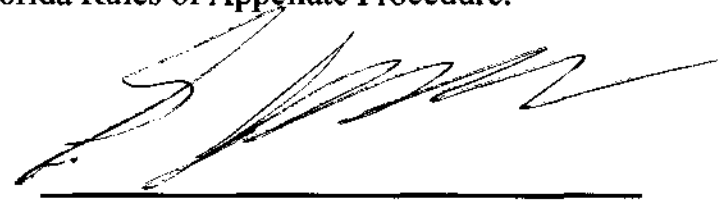
Hon. James Adams,

All parties in 17-CA-421 (except the Sheriff Defendants and Scribd, Inc., defendants whereby service is prohibited by order, see MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER filed herewith which, if granted, would allow service to complete).

Scott Huminski

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.21 (a)(2), I certify that this computer-generated brief/petition is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.



Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO COMPEL CLERK TO FILE MOTIONS/PAPERS UNDER THE ADA
AND
TO ALLOW THE STATE TO RESPOND, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above concerning the below papers as they are falsely identified as multiple documents filed as one, when the papers are one motion with attachments and in one case the attachment is case law authority. The attachments happen to be court pleadings.

Dated at Bonita Springs, Florida this 21ST day of January, 2018.

-/S/- Scott Huminski

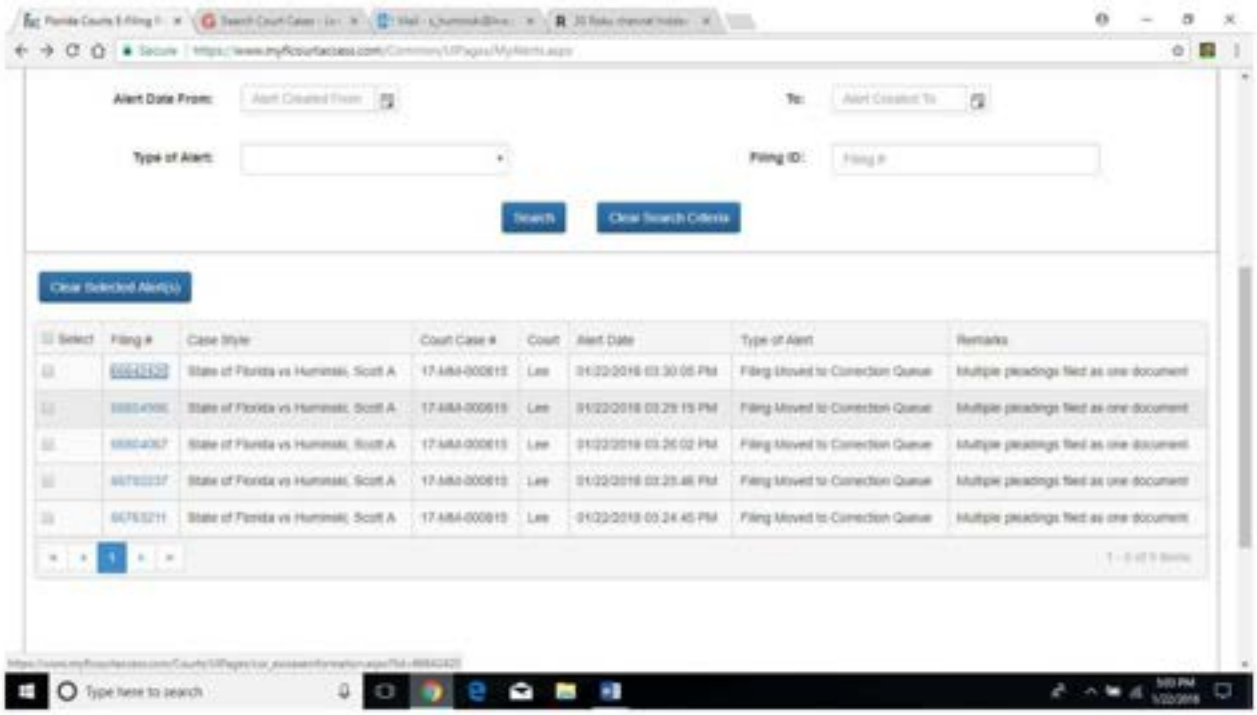
Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 21ST day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski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17-MM-000615
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In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS AS TO SCRIBD, INC.
And
MOTION TO ALLOW PLAINTIFF AN OPPORTUNITY TO OPINE

NOW COMES, Scott Huminski ("Huminski"), and, moves to dismiss any charges related to Scribd. Inc. or their employees as they are unable to attend trial and allow confrontation by Huminski under the Sixth Amendment, in the alternative, Huminski requests a subpoena for Scribd, Inc. and all persons related to this case including Trip Alder and Jason Bentley.

These parties reside and work in the San Francisco area.

Dated at Bonita Springs, Florida this 22nd day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 22nd day of January, 2018 to all parties except Sheriff Scott who has declined to receive service in this matter.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO COMPEL CLERK TO FILE MOTIONS/PAPERS UNDER THE ADA
AND
TO ALLOW THE STATE TO RESPOND, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as every motion will contain a provision to allow the State's Attorney to respond because this case has morphed into Judge Adams v. Huminski and the prosecutor is not allowed to participate by the Judge..

Dated at Bonita Springs, Florida this 23rd day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE ALL ACTS IN VIOLATION OF RULE 9027 REMOVAL TO THE U.S. BANKRUPTCY COURT AND TO ALLOW THE STATE TO RESPOND, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as set forth above as the Court's reply fraudulently misstates the core theory proffered by Huminski. THE CASE WAS REMOVED TO U.S. BANKRUPTCY COURT, NOT STAYED.

This misrepresentation of the Court is deception reserved for the prosecution, the Court should refrain for acting as counsel for the State and lying as was done here.

Dated at Bonita Springs, Florida this 23rd day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR COMTEMPT OF RULE 9027 REMOVAL TO THE U.S. BANKRUPTCY COURT
AND
TO ALLOW THE STATE TO RESPOND, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves that the Court and State's Attorney be held in contempt of the powers, rules, authority and jurisdiction of the federal courts. THE CASE WAS REMOVED TO U.S. BANKRUPTCY COURT, NOT STAYED. The State's Attorney failed to move for remand under federal abstention – he is now time barred from attempting to breath legitimacy into void ab initio acts taken in violation of Rule 9027 removal. At hearing Huminski had the federal judge specifically admit she had sole and exclusive jurisdiction.

This misrepresentation of the Court is deception reserved for the prosecution, the Court should refrain for acting as counsel for the State and lying as was done here.

Dated at Bonita Springs, Florida this 23rd day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – ARRAIGNMENT TOOK PLACE WHEN ENTIRE MATTER WAS REMOVED TO BANKRUPTCY COURT UNDER BANKRUPTCY RULE 9027
AND
TO ALLOW THE STATE TO RESPOND, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski requests that the Court and State not lie and claim this is an automatic stay issue. At hearing before the bankruptcy judge she affirmed that she had jurisdiction and then proceeded to remand the case in early August.

The State ignored the removal as it has done with every defense motion filed in this case expecting the judge to prosecute and the State failed to file a timely motion to remand under federal abstention doctrines. Just has the State seems to have some deal with the Court whereby the Court will handle all State responses to defense motions. This is corruption.

Dated at Bonita Springs, Florida this 23rd day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR TRANSCRIPT U.S. BANKRUPTCY HEARING ON REMOVAL AND REMAND ON OR ABOUT JULY 27, 2017
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. This Court has engaged in deception by stating Huminski did not advance Bankruptcy removal under Rule 9027 voided the arraignment in this case. Huminski needs to show the numerous lies of the Court in his defense to the jury. At every turn, this case is flush with official corruption and crime.

Dated at Bonita Springs, Florida this 23rd day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO ENJOIN JUDGE ADAMS FROM FURTHER ACTING AS AN ADVOCATE FOR THE STATE
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Like Huminski's former counsel, the State's Attorney has not endeavored to address one motion in this matter. The Court is the true adversary of Huminski.

Dated at Bonita Springs, Florida this 23rd day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

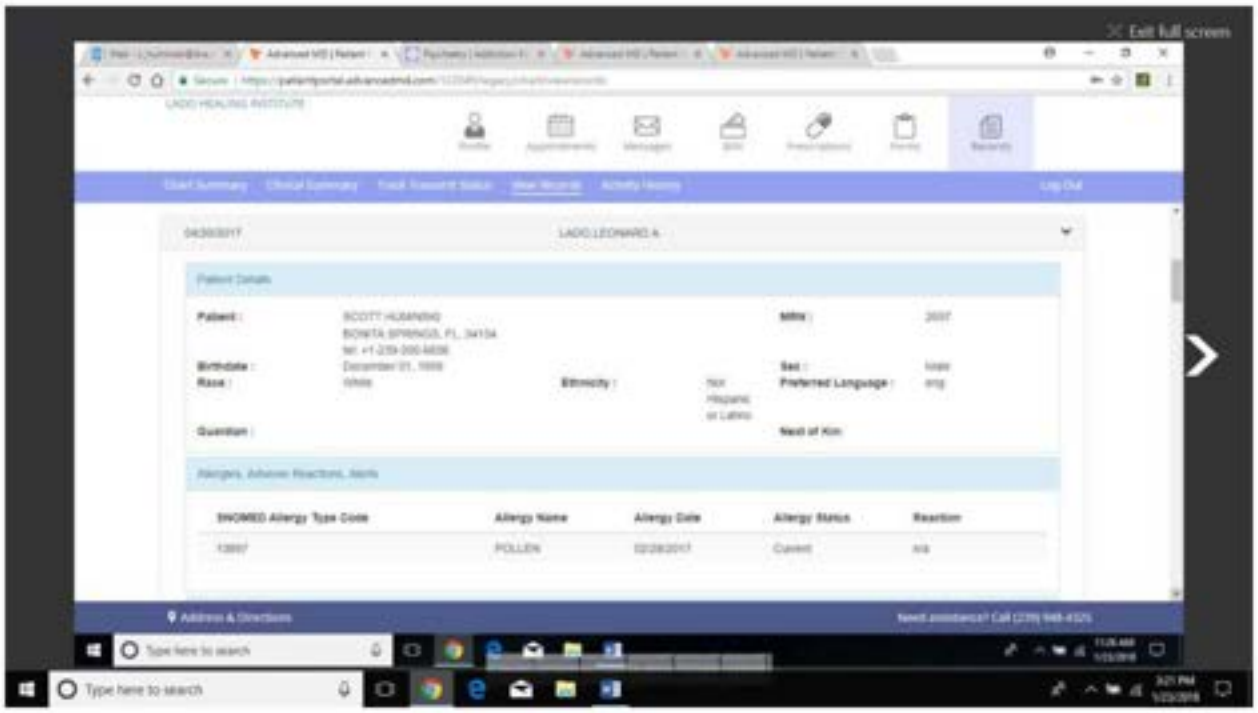
SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

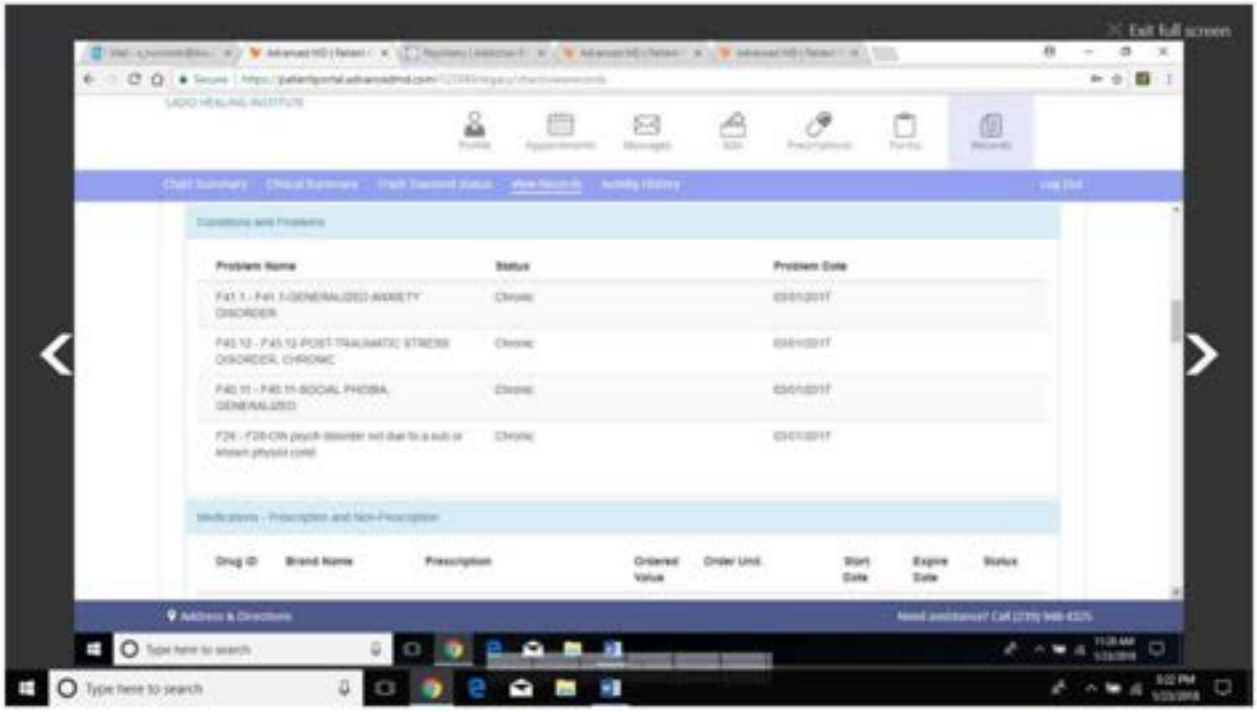
MOTION FOR CONTINUANCE TO ALLOW COURT ADMINISTRATION TO ADDRESS HUMINSKI'S REQUEST FOR ADA ACCOMODATIONS
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. No litigant can be expected to participate in proceedings with arrest threats looming high in their consciousness are pending concerning their mere attendance at court proceedings. And Huminski's PTSD mandates an accommodation under the ADA. ADA accommodation is an administrative function of the Court system and not an issue for this Court to decide.

Huminski has spoken with the court's ADA interface and was advised that an accommodation will be afforded to Huminski and they are handling the issue.

See Huminski's diagnosis below from Doctor Lado, M.D..





Dated at Bonita Springs, Florida this 23rd day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134

(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR EVIDENTIARY HEARING CONCERNING THE FEDERAL REMOVAL OF THIS MATTER FROM 6/26/2017 TO 8/8/2017 DEPRIVING THIS COURT OF JURISDICTION AT ARRAIGNMENT AND CONCERNING ALL MATTERS OCCURING WHILE THIS COURT WAS DIVESTED OF JURISDICTION
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. This Court has engaged in deception by stating Huminski did not advance Bankruptcy removal under Rule 9027 voided the arraignment in this case. At every turn, this case is flush with official corruption and crime.

Dated at Bonita Springs, Florida this 24TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – FAILURE OF STATE'S ATTORNEY TO PROSECUTE, RE: RECUSAL/DISQUALIFICATION
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The prosecution has failed to respond in a timely manner to motions for recusal/disqualification and has not filed one independent paper in this Court. The Court has taken on all prosecutorial duties to this date. The prosecutor has not opposed one motion of the defense to dismiss this case or otherwise attack the prosecution. Huminski's intervenor status in Russell v. Waterman Broadcasting, 17-ca-943 speaks to the reason the prosecutor has abandoned his duties related to this case.

Dated at Bonita Springs, Florida this 24TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER STRIKING MOTIONS FOR SUBPOENAS

THIS CAUSE comes before the Court on Defendant's "Motion For Permission To Depose Sheriff Scott & Hon. E. Krier Under Confrontation Clause, 6th Amendment" filed December 28, 2017, "Motion For Issuance Of Subpoena For Stephen Russel To Mandate Appearance At Trial" filed January 9, 2018, "Motion For The Issuance Of Subpoenas To Mandate Attendance At Trial" filed January 9, 2018, and "Motion For Subpoena Of Judge James Adams And Notice Of Judge Adams As Witness" filed January 10, 2018. The Court notes that Defendant's pleadings do not follow the proper procedure for issuance of subpoenas.

A trial judge may be deposed after the trial proceedings have been concluded, only when the testimony is "absolutely necessary to establish factual circumstances not in the record." State v. Lewis, 656 So. 2d 1248 (Fla. 1994), *citing* United States v. Morgan, 313 U.S. 409, 422 (1941). These proceedings have not been concluded. Defendant failed to produce any legal authority supporting calling the trial judge as a witness at deposition or at trial.

The sole issue in this indirect criminal contempt case is whether Defendant failed to comply with specific orders in the Circuit Court case. No other issues are relevant. Defendant failed to demonstrate that the testimony of the undersigned, Judge Krier, Sheriff Scott, or the other listed individuals would be relevant to the sole issue of whether Defendant failed to comply

with the Circuit Court orders.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions for subpoenas are STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 23 day of January, 2018.

James Adams
James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 29th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: C Traynor
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CRIMINAL ACTION**

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS FOR CHANGE OF VENUE

THIS CAUSE comes before the Court on Defendant's "Motion For Change Of Venue" filed August 21, 2017, "Motion For Change Of Venue - Entrapment" filed September 16, 2017, "Motion Requesting Hearing Re: Change Of Venue" filed September 22, 2017, and "Motion For Change Of Venue" filed December 22, 2017. The motions to change venue are legally and facially insufficient pursuant to Fla. R. Crim. P. 3.240. The basis of Defendant's motions is that he is precluded from having contact with officers of the Lee County Sheriff's Office. However, the Court notes that an order was entered on September 22, 2017 granting the stipulated motion modifying Defendant's pretrial release conditions to alleviate Defendant's complaints that he is unable to attend court proceedings or report crimes.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions to change venue are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 18 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 25th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER STRIKING PLEADINGS TO WITHDRAW PLEA AND ARRAIGNMENT

THIS CAUSE comes before the Court on Defendant's "Withdrawal Of Plea And Waiver Of Arraignment" filed September 25, 2017, "Motion To Strike Waiver Of Arraignment And Plea" filed September 25, 2017, "Withdrawal Of Waiver Of Arraignment And Plea" filed October 3, 2017, "Withdrawal Of Waivers Of Arraignment" filed December 22, 2017, and "Notice Of Withdrawal Of Waiver Of Arraignment" filed January 9, 2018. Defendant failed to produce any legal authority establishing any defect in the arraignment and plea of not guilty. Defendant failed to produce any legal authority for the withdrawal of his arraignment and not guilty plea.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions to withdraw plea and arraignment are STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 23 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 25th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION FOR ADA ACCOMMODATIONS, WITHOUT PREJUDICE

THIS CAUSE comes before the Court on Scott Huminski's "Motion for ADA Accommodations," filed January 12, 2018. The motion essentially requests that:

- All proceedings be transcribed at public expense.
- Mr. Huminski be allowed to respond to issues brought up at hearing in writing within one week of the hearing.
- All motions that Mr. Huminski files be responded to in writing by the State Attorney and that Mr. Huminski be allowed to file a written reply within ten days to the State Attorney's opposition prior to hearing.

The record reflects that Mr. Huminski was found indigent and was initially represented by the Public Defender. The Public Defender was allowed to withdraw based upon a "Certification of Conflict" and the Office of Regional Conflict Counsel was appointed to represent Mr. Huminski on September 29, 2017. On October 18, 2017, Mr. Huminski filed a motion seeking to discharge Regional Conflict Counsel. Subsequently, the Office of Regional Conflict Counsel moved to withdraw, citing that "Defendant has given ORC cause to anticipate adverse future litigation against ORC." On November 15, 2017, after the motions were denied, Mr. Huminski filed another "Motion to Disqualify Conflict Counsel Zachary Miller, Esq., and Motion to Dismiss." On December 20, 2017, the Office of Regional Conflict Counsel again moved to withdraw, citing that "Defendant has directly accused regional counsel of ineffective assistance of counsel, thereby creating an adverse relationship between Regional Counsel and Defendant, and has petitioned the 2nd DCA to order Regional Counsel to appear in the appeal of civil case 17-CA-4740." On December 22, 2017, Mr. Huminski filed a "Notice of Appearance," stating that he was appearing "as pro

se defense counsel." On January 1, 2018, Regional Counsel filed "Regional Counsel's Amended Motion to Withdraw and Request for the Appointment of Private Attorney." Regional Counsel was subsequently allowed to withdraw on January 11, 2018, and, by order rendered January 18, 2018, the Court found that Defendant's behavior constituted a forfeiture of Defendant's right to appointed counsel.

Since January 11, 2018, Defendant has filed nearly 40 pro se motions or notices, one of which is the "Motion for ADA Accommodations." The requested accommodations, at least in part, impact court procedures or may otherwise be inappropriate under the ADA.

To the extent that Mr. Huminski is asking that all proceedings be transcribed at public expense, it should be noted that misdemeanor proceedings are already electronically recorded by the Court at public expense. Transcription is performed by private transcriptionists and the cost of transcription (as well as other due process costs) for pro se indigent defendants are to be borne by the Justice Administrative Commission (JAC). As an indigent defendant, Mr. Huminski is already entitled to transcripts that would be *relevant and necessary* to his defense at public expense. To obtain a transcript of a specific proceeding at public expense, Mr. Huminski must contact the JAC for instructions and must comply with all JAC requirements. Contact information for the JAC is P.O. Box 1654, Tallahassee, FL 32302, 850-488-2415 (Main Reception), www.justiceadmin.org. After obtaining instructions from the JAC, transcripts can be requested by following the Twentieth Judicial Circuit's Media Request Procedures and Form available at www.ca.cjis20.org/home/main/ecr.asp.

To the extent that Mr. Huminski is requesting that normal court procedures be altered by allowing him respond to issues brought up at hearing in writing within one week of the hearing and that all of his motions be responded to in writing by the State Attorney and that Mr. Huminski be allowed to file a written reply within ten days to the State Attorney's opposition prior to hearing, the Court finds that Mr. Huminski has failed to demonstrate how the requested accommodations are related to the Respondent's alleged impairment. Accordingly, it is

ORDERED AND ADJUDGED that the motion is **DENIED**, *without prejudice* for Mr. Huminski to re-file a motion providing documentation from a qualified health care provider so as to permit the Court to fully and fairly evaluate the accommodations requested. The information to be provided shall be limited to documentation that (a) establishes the existence of a disability, (b) identifies the individual's functional limitations, and (c) describes how the requested accommodation addresses those limitations. Any cost to obtain such documentation is the obligation of the Respondent requesting the accommodation.

It should be noted that, regardless of this denial (without prejudice), the Court will make every effort to facilitate conducting all court proceedings in an organized manner and will provide as much time as may *reasonably* be available so as to accommodate Mr. Huminski's ability to respond. All court proceedings, however, must be conducted within the confines of the rules of procedure, within the confines of court schedules and reasonable time limitations, and with the appropriate level of control by the Court and decorum on the part of all parties so as to ensure due process and fairness to all parties.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 24 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399;; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 25th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO ISSUE SUBPOENAS TO ZACHARY MILLER AND KEVIN SARLO FOR TRIAL AND BRING DEFINSE CASE FILES
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski needs to questions the two defense attorneys as to how their legal work was not ineffective assistance of counsel and the hours spent on the case in the 6 months and what was achieved by counsel and needs the subpoena to specify that they bring the defense case file and why they did not file motions Huminski requested.

Dated at Bonita Springs, Florida this 25TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 25TH day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION VACATE ORDERS ISSUED ON OR ABOUT 1/18/2017 – FAILURE TO SERVE AND SERVICE FRAUD
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski only received service of one of these orders. The remainder are void for want of service.

The one motion Huminski did receive in the mail certified service on 1/19/2017. That is a **lie and a fraud** as the envelope reveals the motion was still at the Court on 1/22/2017 as it was processed by the Court's Hasler postage meter on 1/22/2017.

Attached hereto is an order of Judge Krier further detailing how negligent Court Judges and personnel are concerning service. The custom and practice of failure to serve or service fraud is obvious. Notably the attached order was authored when the case resided in the U.S. Bankruptcy Court and the State Court was divested of any and all jurisdiction.

Dated at Bonita Springs, Florida this 26TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

Huminski, Scott et al
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421

Judge: Elizabeth V Krier

DENYING

ORDER ~~GRANTING~~ PLAINTIFF'S MOTION TO DISMISS

THIS MATTER comes before the Court upon the Plaintiff's Motion to Dismiss and the Court having reviewed the motion, and court file, it is hereby:

ORDERED AND ADJUDGED as follows:

The Motion is ~~**GRANTED and this action is Dismissed.**~~ Denied. Plaintiff has filed a bankruptcy Case. There is an automatic Stay in the Civil Case (NOT in the related criminal case) once the (*) Bankruptcy case has been dealt with, this Court may dismiss this Case.

DONE AND ORDERED this 18th day of July, 2017, in Lee County Florida.

Elizabeth V. Krier, Circuit Judge

Copies: Plaintiff and Defendant shall pull their respective copies from the Lee Clerk's Court Records Online Access

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY JUDGE, REFUSAL TO SERVE ORDERS, SERVICE FRAUD AND OBFUSCATION OF REMOVAL TO BANKRUPTCY COURT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. See attached papers concerning failure to serve and service fraud by the Court. Further, the Court has engaged in a scheme to obfuscate the fact that this matter was removed to bankruptcy court on 6/26/2017 and remanded back to State Court on 8/8/201. See docket.

The Court engaging in a scheme to attempt to fraudulently evade and misrepresent the removal to Bankruptcy Court reveals a bias, animus or other improper motive. The justice system's function is to find out the truth, not cover it up. Further the conduct of the Court evidences contempt for the power, authority and jurisdiction of the Federal Courts and it is a clear attempt to misrepresent the propriety of federal court jurisdiction.

Dated at Bonita Springs, Florida this 26TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134

(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION VACATE ORDERS ISSUED ON OR ABOUT 1/18/2017 – FAILURE TO SERVE AND SERVICE FRAUD
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski only received service of one of these orders. The remainder are void for want of service.

The one motion Huminski did receive in the mail certified service on 1/19/2017. That is a **lie and a fraud** as the envelope reveals the motion was still at the Court on 1/22/2017 as it was processed by the Court's Hasler postage meter on 1/22/2017.

Attached hereto is an order of Judge Krier further detailing how negligent Court Judges and personnel are concerning service. The custom and practice of failure to serve or service fraud is obvious. Notably the attached order was authored when the case resided in the U.S. Bankruptcy Court and the State Court was divested of any and all jurisdiction.

Dated at Bonita Springs, Florida this 26TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

Huminski, Scott et al
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421

Judge: Elizabeth V Krier

DENYING

ORDER ~~GRANTING~~ PLAINTIFF'S MOTION TO DISMISS

THIS MATTER comes before the Court upon the Plaintiff's Motion to Dismiss and the Court having reviewed the motion, and court file, it is hereby:

ORDERED AND ADJUDGED as follows:

The Motion is ~~**GRANTED and this action is Dismissed.**~~ Denied. Plaintiff has filed a bankruptcy Case. There is an automatic Stay in the Civil Case (NOT in the related criminal case) once the (*) Bankruptcy case has been dealt with, this Court may dismiss this Case.

DONE AND ORDERED this 18th day of July, 2017, in Lee County Florida.

Elizabeth V. Krier, Circuit Judge

Copies: Plaintiff and Defendant shall pull their respective copies from the Lee Clerk's Court Records Online Access

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY JUDGE, AS HE IS ACTING AS A PROPONENT NOT AN UNBIASED DECISION-MAKER and HAS ABOLISHED PROSECUTORIAL DISCRETION BY EXCLUDING THE PROSECUTION FROM PRE-TRIAL MOTION PRACTICE
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The Court refuses to allow the State's Attorney to respond to defense motions and has taken on all the duties reserved for the prosecution.

Had the Court allowed the State's Attorney to respond to defense motion, it is quite possible that the prosecution might use its discretion and dismiss or settle the case which is plagued with corruption, forging orders (6/30/17 show cause), backdating lost orders (8/14/17 recusal order) and other problems on the record.

Dated at Bonita Springs, Florida this 26TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO ALLOW THE STATE'S ATTORNEY TO PARTICIPATE IN PRE-TRIAL MOTION PRACTICE AND TO RESTORE THE PROSECUTION'S RIGHT TO PROSECUTORIAL DISCRETION
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The Court refuses to allow the State's Attorney to participate in this matter and to exercise prosecutorial discretion during pre-trial motion practice.

If allowed to participate in motion practice, it is quite possible that the State's Attorney might choose to dismiss or settle this matter. Forcing the State's Attorney to trial is not a function of this Court, whether to try the case or not is in the discretion of the prosecutor. The State's Attorney has not opposed one dispositive motion as this Court has chosen to lock out the State's Attorney from all motion practice.

Dated at Bonita Springs, Florida this 26TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY JUDGE – REFUSAL TO FILE A NON-ALTERED SHOW CAUSE ORDER WITH ATTACHMENTS
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The Court refuses to file a non-altered legitimate show cause order with attachments.

Court staff printed out Judge Krier's 6/5 show cause order on 6/30.

Court staff hand modified the 6/5 order on 6/30.

Court staff filed the forged order on 6/30 representing that it is an original and authentic court order.

Court staff bungled the filing by omitting 117 pages of attachments.

Judge Adams refuses to correct this courthouse corruption, his disqualification is mandatory. Judge Adams is propagating forgery of court documents and should be disqualified. This is augmented by the back-dating and filing of the lost recusal order of Judge Krier, that filing is an illegitimate copy of a copy.

When prompted to address the court filing corruption in defense motions, Judge Adams refused to act and allowed the forgery to remain.

Dated at Bonita Springs, Florida this 26TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se

24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR CHANGE OF VENUE –
CIRCUIT COURT SHERIFF SCOTT PROTECTIVE ORDER CONSTITUTES COURTHOUSE BANISHMENT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The CIRCUIT COURT Sheriff Scott protective order banishes Huminski from the courthouse for life.

Proceedings in this Court have zero impact on the legitimacy of Circuit Court orders.

Dated at Bonita Springs, Florida this 26TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO RECONSIDER CHANGE OF VENUE – CIRCUIT COURT SHERIFF SCOTT PROTECTIVE ORDER CONSTITUTES COURTHOUSE BANISHMENT AND TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The CIRCUIT COURT Sheriff Scott protective order banishes Huminski from the courthouse for life.

Proceedings in this Court have zero impact on the legitimacy of Circuit Court orders. Huminski never moved to change venue for any conduct in this Court, only the courthouse banishment ordered by the Circuit Court. The order denying venue change is deceptive and misrepresents the motion.

Dated at Bonita Springs, Florida this 27TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – PROTECTIVE ORDERS WERE AUTHORED WITH CONFLICTS OF INTEREST
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The protective orders were authored by Judge Krier with a conflict of interest which forced her recusal off the case.

Orders issued by conflicted judges violate Due Process and are void ab initio. The order are also invalid as they are not narrowly-tailored to a governmental interest in violation of the First Amendment.

Under two basic constitutional precepts the order are void ab initio.

Dated at Bonita Springs, Florida this 27TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY JUDGE – IMPROPER CONFLICT, ANIMUS AND BIAS
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The Court has never granted a motion to dismiss in a case without allowing the State's Attorney to opine. The Court always allows both parties to participate in dispositive orders that result in dismissal.

Only in this case has the Court prevented the participation of the State's Attorney in dispositive motions. Huminski is being singled out for an improper motive or reason. Conflict counsel, Zachary Miller, told me that the Court does not care about the law and would never grant a motion to dismiss regardless of how lawful it was. If this is true the Court has employed and improper motive in criminal cases.

Dated at Bonita Springs, Florida this 27TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – ARRAIGNMENT WAS HELD WHEN THE CASE WAS REMOVED TO FEDERAL COURT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. As the docket shows, this case was removed to U.S. Bankruptcy Court via Bankruptcy Rule 9027 on 6/26/2017.

It was remanded back to State Court on 8/8/2017. The arraignment is void for want of any and all jurisdiction.

This Court persists to act in contempt of the powers, jurisdiction and authority of the federal courts. This is delusional conduct. Huminski is considering a lawsuit as judges lose immunity when acting absent jurisdiction. Instead of suing the Court perhaps ending the contempt against Bankruptcy Court could settle this problem.

Dated at Bonita Springs, Florida this 27TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF WITHDRAWAL OF WAIVERS OF ARRAIGNMENT AND TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Attorney Huminski never met, consulted with or given permission filed waives of arraignment without permission of Huminski. Failure to consult with clients prior to making court filing is ineffective assistance of counsel and fraud.

Fraudulent filings can not stand as valid in this case. Similarly a defense attorney can not file a guilty plea without the consent of the client.

The counsel engaging in fraud did not seek permission from the court and neither does Huminski who is corrected fraud. Huminski has the right to change his plea to guilty at any time and has the right to correct fraud on the record concerning waiver of rights. It is Huminski's right to have an arraignment, a right that can not be waived by attorneys who are strangers to the case and chose to fraudulently waive Huminski's rights without consent.

The proves Huminski's ineffectiveness of counsel claims, when attorney fail to read the filings in a case that already contained an arraignment. Zero knowledge of the case and the decision to waive a right without permission is the epitome of ineffective assistance of counsel and fraud as the attorney is not representing the wishes of a criminal defendant. The fact there is one arraignment and 3 filings by

cousel of waiver of arraignment exemplifies how clueless Huminski's attorneys were. Aside from being fraud 3 filings of waiver after arraignment at hearing are frivolous and vexatious.

A judge should know that 3 waivers of arraignment indicate clueless negligent attorneys and abuse of process. This court mentioned abuse of process in an order, here it is. Except accompanied by extreme negligence by attorneys for failing to read the case file before waiving a right of the defendant.

Dated at Bonita Springs, Florida this 27TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO SANCTION KATHLEEN SMITH AND ITA NEYMOTION FOR ABUSE OF PROCESS AND INEFECTIVE ASSISTANCE OF COUNSEL- 3 WAIVERS OF ARRAIGNMENT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The public defender has engaged in notorious abuse of process and ineffective assistance of counsel as she attended the 6/29 arraignment hearing and nonetheless filed a waiver of arraignment. This is abuse of process and reveals gross negligence a waives a right of the defendant without permission and waives that right with affirmative knowledge that waiver constituted an abuse of process and gross negligence.

Conflict counsel filed the second and third waivers of arraignment perpetrating the same violations set forth above, but, also indicating gross negligence for waiving a right without permission and refusing to read the case file prior to waiving a right and doing so without consulting the defendant.

One of Huminski's primary defenses is that the 6/29 arraignment occurred while the matter was removed to U.S. Bankruptcy Court on 6/26.

This absolute defense to this matter has been destroyed by attorney misconduct and gross negligence. The Court has refused to allow me to withdraw the bogus waivers.

My imprisonment will be because of error of counsel and I will file suit when I get out of prison. I began preparing this defense which included filing of bankruptcy and then removal under Bankruptcy Rule 9027 in April of 2017 and this absolute defense was destroyed by vast attorney misconduct and negligence. I filed a notice to withdraw the bogus waivers, requiring no input from the Court, but, the Court struck it creating a cause of action against the public defender and conflict counsel in both individual and official capacities. The Court striking my notice of withdrawal is the way the court is punishing negligent attorneys because a lawsuit will follow and that will, in the Courts eyes, stop the attorney misconduct.

Dated at Bonita Springs, Florida this 27TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 27TH day of January, 2018 to all parties. And served upon the public defender and conflict counsel.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR SUBPOENA OF THE PUBLIC DEFENDER AND CONFLICT COUNSEL TO INQUIRE WHY 3 WAIVERS OF ARRAIGNMENTS WER FILED
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The public defender has engaged in notorious abuse of process and ineffective assistance of counsel as she attended the 6/29 arraignment hearing and nonetheless filed a waiver of arraignment. This is abuse of process and reveals gross negligence a waives a right of the defendant without permission and waives that right with affirmative knowledge that waiver constituted an abuse of process and gross negligence.

Conflict counsel filed the second and third waivers of arraignment perpetrating the same violations set forth above, but, also indicating gross negligence for waiving a right without permission and refusing to read the case file prior to waiving a right and doing so without consulting the defendant.

One of Huminski's primary defenses is that the 6/29 arraignment occurred while the matter was removed to U.S. Bankruptcy Court on 6/26.

This absolute defense to this matter has been destroyed by attorney misconduct and gross negligence. The Court has refused to allow me to withdraw the bogus waivers.

My imprisonment will be because of error of counsel and I will file suit when I get out of prison. I began preparing this defense which included filing of bankruptcy and then removal under Bankruptcy Rule 9027 in April of 2017 and this absolute defense was destroyed by vast attorney misconduct and negligence. I filed a notice to withdraw the bogus waivers, requiring no input from the Court, but, the Court struck it creating a cause of action against the public defender and conflict counsel in both individual and official capacities. The Court striking my notice of withdrawal is the way the court is punishing negligent attorneys because a lawsuit will follow and that will, in the Courts eyes, stop the attorney misconduct.

Dated at Bonita Springs, Florida this 27TH day of January, 2018.

-/S/- Scott Huminski

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Certificate of Services

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-/s/- Scott Huminski

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TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY JUDGE – COVER UP OF ATTORNEY MISCONDUCT AND FRAUD
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. After the arraignment hearing of 6/29 the worthless and clueless attorneys appointed to this case proceeded to file 3 waivers of arraignment. Why? Because they had no idea of what was going on in the case and didn't care to know what was going on and were engaging in ineffective assistance of counsel.

This court has applauded attorney misconduct and fraud and is so obsessed with achieving a wrongful conviction that the Courtt struck Huminski"s withdrawal of the 3 bogus waivers of arraignment.

Huninski's attempt to bring normalcy and legitimacy to these proceedings by withdrawing the bogu waivers is something that the Court has a big problem with and is *per se* evidence of an impropriety. One of the attorneys filing a bogus waiver, Z. Miller, advised me that this Court was well known to act lawlessly and no motion regardless of how lawful or well supported would ever be granted by the Court.

The lawlessness of this Court can be best visualized by denial of the motion to dismiss based upon 117 pages missing from the charging document and the Court's opinion that it was just fine. The Court's ruling that the full charging document does not need to be filed in a criminal case is unfathomable. A first year law student would

know that a criminal case must be instituted by filing the entire charging document, not 3 pages out of 120..

The practice of law is an exacting and precise endeavor. The sloppy justice in this case is conduct that is prejudicial to the administration of justice.

Dated at Bonita Springs, Florida this 27TH day of January, 2018.

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PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS, in the alternative, TO CHANGE VENUE – PRE-TRIAL ORDER AND SHOW CAUSE ORDER CONFLICT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

The show cause order was authored by a Judge in a Court of superior jurisdiction to this Court. It is controlling law of this case. An order of Chief Judge McHugh (the successor to Judge Krier) can not be disobeyed by a court of inferior jurisdiction and it is very clear Judge McHugh does not want me at the courthouse and has ordered it.

Pursuant to the terms of the Show Cause order, Huminski can not be prosecuted in Lee County as that mandates attendance at the Lee Courthouse which is forbidden as Huminski can have no contact with the LCSO by order of the Chief Judge of the Circuit Court.

In this case of sloppy justice, even this Court must admit both orders can be not be valid as they contradict each other, thus, the court of superior jurisdiction prevails and this case must be dismissed under the "no contact" provision concerning Sheriff Scott and his staff. Huminski is effectively banished from the Lee Courthouse for life and has no access to public safety service, FOR LIFE.

Judge Krier was very clear, no contact with the sheriff or his staff even though she issued this order with a vast conflict of interest that forced her recusal. Judge

McHugh presumable believes the courthouse banishment for life is proper and that no access to public safety services for life is appropriate.

In the alternative, venue should be changed to another county. It is painfully clear that Huminski's prior motion to change venue was denied to prevent another county to become aware of what goes on at the Lee courthouse. Sloppy justice and corruption and ADA violation.

Dated at Bonita Springs, Florida this 27TH day of January, 2018.

-/S/- Scott Huminski

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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR ORDER TO SHOW CAUSE WHY HON. JAMES ADAMS SHOULD NOT BE HELD IN CIVIL/CRIMINAL CONTEMPT REGARDING HIS VIOLATION OF THE CIRCUIT COURT PROTECTIVE ORDER OF SHERIFF SCOTT AND THE CRIMINAL SHOW CAUSE ORDER
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

The plain language of the Protective Order of Sheriff Scott and the Show Cause order mandate no contact with the Sheriff or his staff. It is a courthouse banishment identical to the situation in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005). Aanalyzed under the rules concerning statutory construction yields the same result, Hminski is banished from the Lee Courthouse for life. In Corsones, Huminski had no case pending in the courthouse he was banished from. His courthouse access rights are enhanced concerning the instant matter as he is a party in three cases.

The Sheriff's protective order also forbids Huminski access to public safety service for life as the only agency covering Bonita Springs is the LCSO.

Judge Adams should not issue orders or hold hearings that cause violations of the Circuit Court orders. Huminski has moved for disqualification without success.

Judge Adams has mandated Huminski visit the Lee courthouse for hearings or face arrest. Mandating that Huminski violate a Circuit Court order is in itself a contempt conspiracy between the judge and his staff.

The orders were issued by Judge Krier who had a massive conflict of interest evidenced by her recusal and Huminski believes the orders to be void ab initio for Due Process and First Amendment violations. There are 3 motions pending in the Circuit Court since 8/9/2017, but, until those motions are heard and possibly the orders vacated, Judge Adams is in contempt and must discontinue conduct that forces contempt of the Circuit Court orders.

WHEREFORE, Huminski moves that a show cause order be issued to allow Judge Adams explain how his conduct does not force contempt of orders of the Circuit Court Dated at Bonita Springs, Florida this 28TH day of January, 2018.

-/S/- Scott Huminski

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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR PRELIMINARY INJUNCTION AGAINST HON. JAMES ADAMS – TO STOP VIOLATION OF ORDERS OF THE CIRCUIT COURT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

As covered in the concurrently filed motion for order to show cause, Judge Adams has engaged in a long pattern of behavior intending to force Huminski into contempt of this Court's orders in disrespect for the Circuit Court's authority.

Judge Adams has displayed disdain for the authority, jurisdiction and powers of this Court concerning Huminski's courthouse banishment. He continues to engage in conduct that forces Huminski to violate the Circuit Court's orders banishing Huminski from the Lee Courthouse for life.

He should be enjoined and reprimanded for complete and utter disrespect of the Circuit Court regardless of the validity of the orders. His contempt of the show cause and protective order is far worse than anything Huminski is accused of as he is engaging in official crime from a position of power and abusing that power to force Huminski to commit criminal contempt. Huminski is facing a criminal prosecution for alleged violation of these orders, however, Judge Adams collects a paycheck for engaging in the same conduct. There exists a conspiracy between the Judge and his staff to violate Circuit Court orders and force Huminski into contempt.

Dated at Bonita Springs, Florida this 28TH day of January, 2018.

-/S/- Scott Huminski

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MOTION TO REFER SHERIFF SCOTT AND HON. JAMES ADAMS TO THE ATTORNEY GENERAL FOR CRIMINAL INVESTIGATION/PROSECUTION
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

The protective order of Sheriff Scott has obstructed justice with regard to service in an adversarial proceeding in U.S. Bankruptcy Court initiated under Bankruptcy Rule 9027.

The protective order of Sheriff Scott has obstructed justice with regard to service in the District Court of Appeal 2D17-4740.

Sheriff Scott can not undermine court rules promulgated by the U.S. Congress or Florida legislature.

The protective order of Sheriff Scott constitutes a courthouse banishment from the Lee court complex which constitutes *per se* felonies against the Courts concerning Huminski's cases of obstruction of justice, witness tampering, witness intimidation. Huminski is a witness in his cases.

Judge Adam's conduct with his staff constitutes conspiracy, fraud, obstruction of justice.

On 6/30 Judge Adams had his staff print out an order of 6/5, hand modify the order on 6/30 and then file it on 6/30 and hold it out as being an original legitimate order. No judge signed an order on 6/30, the order was manutactured.

The recusal order of Judge Krier was lost. On 9/22 Huminski pointed out this problem at hearing. On 9//22 Judge Adams instructed his staff to find a copy of the order. They did find one double stamped as "COPY". Judge Adams then instructed his staff to file the copy and back date it to 8/14 to add legitimacy to the hearing he held on 8/15. They obeyed and held out the order as an original and legitimate order. This is courthouse fraud. The choice of 8/14 reveals criminal intent, as opposed to filing it on 9/22 when they retrieved a copy.

This conduct pales the former reprimand Judge Adams received from the Florida Supreme Court.

Dated at Bonita Springs, Florida this 28TH day of January, 2018.

-/S/- Scott Huminski

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MOTION TO DISQUALIFY HON. JAMES ADAMS
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Huminski is the Circuit Court complainant concerning criminal charges and allegations against Judge Adams creating in improper and impermissible conflict, motive, animus or bias. The appearance of impropriety exists.

Dated at Bonita Springs, Florida this 28TH day of January, 2018.

-/S/- Scott Huminski

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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR CHANGE OF VENUE CIRCUIT COURT – HUMINSKI IS BANISHED FROM LEE COURT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Huminski forbidden from contact with the Sheriff or his staff. The Sheriff's staff acts as bailiffs and security screeners at the Lee court complex. Huminski is forbidden from attending court proceedings because of the prohibition against contact ordered by the Circuit Court. Huminski believes the protective order to be unconstitutionally over-broad, not narrowly tailored to a legitimate governmental purpose and not a reasonable time, place or manner restriction on speech. See Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005). Huminski finds it difficult to understand how courthouse banishment is not legal in Vermont per Corsones, but is legal in Florida. The Bill of Rights doesn't change when one crosses the Florida border. See attached briefs from the Thomas Jefferson Center for Freedom of Expression.

Dated at Bonita Springs, Florida this 28TH day of January, 2018.

-/S/- Scott Huminski

_____

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-/s/- Scott Huminski

Scott Huminski

No. 02-6150, 02-6199, 02-6201

In the
United States Court of Appeals
for the Second Circuit

SCOTT HUMINSKI

Plaintiff-Appellant/Cross-Appellee

v.

HON. NANCY CORSONES, HON. M. PATRICIA ZIMMERMAN, AND KAREN PREDOM,

Defendants-Appellees/Cross-Appellants,

and

SHERIFF R. J. ELRICK, AND RUTLAND COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellees,

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF VERMONT

BRIEF OF *AMICUS CURIAE* THE THOMAS JEFFERSON CENTER FOR THE PROTECTION OF FREE EXPRESSION IN SUPPORT OF PLAINTIFF-APPELLANT'S REQUEST FOR REVERSAL OF THE DISTRICT COURT DECISION

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Robert M. O'Neil
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SCOTT HUMINSKI

Plaintiff-Appellant Cross-Appellee,

v.

HON. NANCY CORSONES, HON. M. PATRICIA ZIMMER, AND KAREN PREDOM

Defendants-Appellees/Cross-Appellants,

SHERIFF R. J. ELRICK AND RUTLAND COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellees

DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

Pursuant to 2nd Cir. R. 26.1, The Thomas Jefferson Center for the Protection of Free Expression (Name of Party)

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? No

   If the answer is YES, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? No

   If the answer is YES, list the identity of such corporation and the nature of the financial interest:

(Signature of Counsel) March 6, 2003 (Date)

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CONSTITUTION

INTEREST OF *AMICUS CURIAE*

The Thomas Jefferson Center for the Protection of Free Expression is a nonprofit, nonpartisan organization in Charlottesville, Virginia. Founded in 1990, the Center has as its sole mission the protection of freedom of speech and press from threats of different forms. The Center pursues that mission in several ways, notably by filing *amicus curiae* briefs in federal and state courts in cases that raise important free expression issues.

SUMMARY OF FACTS

Plaintiff-Appellant Scott Huminski is a self-described amateur reporter. In the past, he has regularly attended state court proceedings and publicized what be believed to be judicial misconduct by placing critical placards in the windows of his house and his automobile. On May 24, 1999, Mr. Huminski parked his car in the parking lot of the Rutland, Vermont, District Court. Prominently displayed on the vehicle were signs with messages that were highly critical of a state district court judge. Law enforcement officers and court employees directed Huminski either to remove the signs or move the vehicle. When he refused to accede to either demand, he was served with two

notices of trespass. Although both these initial notices were withdrawn, a third trespass notice was served on him five days later. That notice barred Huminski from entering upon "[a]ll lands and property under the control of the Supreme Court and the Commissioner of Buildings and General Services, including the Rutland District Court, parking areas, and lands."

Mr. Huminski brought this action in the United States District Court for the District of Vermont, claiming a violation of his First Amendment rights under 42 U.S.C. § 1983. Included among the defendants named in the complaint were the Rutland County Sheriff's Department, Rutland County Deputy Sheriff R. J. Elrick, Vermont District Court Manager Karen Predom, and Vermont District Court Judges M. Patricia Zimmerman and Nancy Corsones. Upon review of the district court's dismissal of claims against certain defendants, this Court dismissed the appeal for lack of appellate jurisdiction. *Huminski v. Rutland Police Department*, 221 F.3d 357 (2d Cir. 2000). On remand, the district court granted Mr. Huminski's motion for a preliminary injunction. *Huminski v. Rutland County, et. al.*, 134 F. Supp. 2d 362 (D. Vt. 2001) (hereinafter "*Huminski I*"). Subsequently, in ruling on motions for summary judgment filed by the plaintiff and each of the defendants, the district court granted the motions of the Rutland County Sheriff's

Department and Deputy Sheriff Elrick but denied those of the other defendants and Mr. Huminski. *Huminski v. Rutland County, et. al.*, 211 F. Supp. 2d 520 (D. Vt. 2002) (hereinafter "*Huminski II*"). This appeal followed.

SUMMARY OF ARGUMENT

The judgment of the district court fails in three major respects adequately to recognize substantial First Amendment interests that were abridged by the action of Vermont officials in excluding a citizen from any and all access to courtrooms throughout the state. First, the Supreme Court has consistently ruled that access to the courts is protected by the First Amendment, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) – most clearly to the criminal courtroom, but implicitly to civil proceedings as well. Second, in exceptional situations where (despite the presumption of openness) access to the courtroom may be limited or restricted, the Supreme Court has insisted upon a clear and content-neutral rationale, specific and detailed findings made in open court, and a resumption of access as soon as the conditions that warrant its denial have passed. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982).

Third, and perhaps most disturbing, the judgment of the district court fails to recognize the incompatibility with First Amendment rights of denying a

citizen access to any public place in retaliation or reprisal for his expression of views that are critical of government or its officers. When the public official who is the object of that criticism actually plays a part in closing the doors, as in the present case, the dissonance with settled First Amendment principles is starkly clear, as this Court has consistently recognized. *E.g., Naucke v. City of Park Hills*, 284 F.3d 923, 927 (2d Cir. 2002); *Singer v. Fulton County Sheriff*, 63 F.3d 110, 120 (2d Cir. 1995).

Because of the district court's manifest departure from settled First Amendment principles, *amicus* respectfully urges reversal of the judgment below, and a remand for further proceedings consistent with the recognition of such principles.

I. ACCESS TO A COURTROOM MAY SELDOM BE DENIED CONSISTENT WITH THE SETTLED FIRST AMENDMENT RIGHT TO OBSERVE JUDICIAL PROCEEDINGS.

The issue before this Court is whether a citizen may be barred from proceedings of all types in any and every courtroom in the State of Vermont. Such an exclusion is unprecedented, at least in recent times. For nearly a quarter century, a citizen's right of access to the courtroom has been settled beyond doubt. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980);

Bowden v. Keane, 237 F.3d 125, 129 (2d Cir. 2001) (recognizing the First Amendment right of access to "a courtroom whose doors are open to any members of the public inclined to observe a trial.") The basis for citizen access is clearest with respect to criminal proceedings, but implicitly extends to civil proceedings as well. In the present case, no such distinction need be considered since the challenged exclusion covers proceedings of all types, both civil and criminal.

There are circumstances in which denial of access to the courts may be temporarily curtailed to preserve vital interests of the judicial process. Certain pre-trial proceedings may be closed to the press and the public for compelling reasons, *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982), although any such closure must be preceded by a hearing in open court at which specific and detailed findings must be made to support so drastic an exclusion. *Cf. Guzman v. Scully*, 80 F.3d 772, 775-76 (2d Cir. 1996). In very limited circumstances, protests and demonstrations in or near a courtroom may be regulated to ensure the fairness and impartiality of the judicial process.

Within the courtroom, a trial judge is clearly empowered to preserve the order and integrity of his or her court – by citing for contempt, in extremis, any person who physically or verbally disrupts judicial proceedings. Such

disruption must almost invariably occur within the courtroom to constitute actionable contempt; the Supreme Court's ruling in *Bridges v. California*, 314 U.S. 252 (1941) makes clear the First Amendment hazards of permitting any legal sanctions to be imposed on out-of-court statements, however critical of and unwelcome they may be to a trial judge.

Apart from actual disruption, there is at least one situation in which a particular person may be barred from entering the courtroom until a specific moment; a witness whose testimony is pending may be denied access to the courtroom during earlier stages of the case. Such an exclusion, either to ensure the order and integrity of judicial proceedings, or to preserve untainted the testimony of a future witness, poses no affront to a citizen's First Amendment rights to attend and observe events in a courtroom.

The stark contrast between situations such as these and the case now before this Court illustrate how very novel and unprecedented is Mr. Huminski's plight. What Mr. Huminski did that got him barred from all Vermont courtrooms was to display in his car a sign containing comments that were critical of, and offensive to, a district court judge, and the subsequent parking of that car in the Rutland court parking lot. Such an affront is a far cry indeed from the type of in-court disruption that might warrant a contempt

citation. Nor is there any possible analogy to the special circumstances under which all members of the press and the public might be temporarily asked to leave a courtroom – apart from the absence of any of the specific and detailed findings which would be pre-requisite to any such limited closure. Nor is there any suggestion here of any possible actions on Mr. Huminski's part-- an apology, recantation or some other form of penance -- which might dissolve the ban and reinstate his access to Vermont's courtrooms. Under these conditions, the judgment of the district court failed adequately to recognize the grave departure of the challenged action from well settled and fully applicable First Amendment principles.

II. A CITIZEN MAY NOT BE EXCLUDED FROM A PUBLIC PLACE IN RETALIATION FOR CRITICIZING A GOVERNMENT OFFICIAL WHO MANAGES THE SITE.

In its most recent ruling, the district court noted "disputed material facts" concerning the basis on which Huminski had been barred from the Vermont courts. *Huminski II,* 211 F. Supp. 2d at 542. Despite strong, and initially dispositive, evidence of official reprisal or retaliation for voicing unwelcome criticism of a state trial judge, a claim of courtroom security subsequently

entered the equation and brought about the apparent "dispute." *See id.* at 529-531.

Reliance on the security rationale seems untenable for two distinct reasons. For one, the district court found unequivocally in *Huminski I* that "the Defendants' decision to execute the notices of trespass and to immediately eject Huminski from the courthouse was based exclusively on their displeasure with the van's display," adding that "[defendants] do not allege that Huminski engaged in any other type of conduct or speech that might have threatened violence, created a nuisance, or interfered with orderly administration of justice." 134 F. Supp. 2d at 363. While the district court's most recent opinion fails to accept the full implications of that finding, citing instead a possible security concern, the earlier ruling seems as dispositive as it is unambiguous.

The second reason for rejecting the asserted "security" rationale is closely related. The record simply contains no evidence that would support such a basis for barring Huminski from any courtroom. Surely nothing in the unwelcome signs on the van, displayed in May, 1999, could be said to have threatened the security or the integrity of any judicial proceeding; at most such admittedly irreverent and intemperate accusations could tarnish the dignity or stature of a judge – hardly a threat to the security of that judge or of

proceedings in her courtroom. Nor could anything contained in communications after the trespass notice – letters to other state officials, and statements in a complaint to the Judicial Conduct Board – be deemed inimical to security, apart from the fact that such statements are clearly within a citizen's right to petition government for redress of grievances as well as to speak freely on important public issues. Thus there seems little doubt that the only viable basis for taking action against Mr. Huminski's was the offending nature of the signs he displayed on the van in the parking lot.

This Court has affirmed the central principle that rejects such an official reprisal as the one challenged here: "[C]riticism of public officials lies at the very core of speech protected by the First Amendment ... Retaliation by a government actor in response to . . . an exercise of First Amendment rights" violates constitutional protections. *See Naucke v. City of Park Hills*, 284 F.3d 923, 927 (2d Cir. 2002); *see also Singer v. Fulton County Sheriff*, 63 F.3d 110, 120 (2d Cir. 1995) ("allegation of retaliatory prosecution goes to the core of the First Amendment.")

Accordingly, barring a citizen from a governmental facility because he had spoken critically of state government or any of its officials would run directly contrary to this Court's persistent conviction that "[t]he strongest

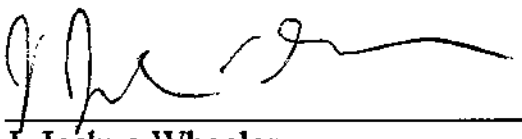
protection of the First Amendment's free speech guarantee goes to the right to critici[ze] government or advocate change in government policy." *Velazquez v. Legal Services Corp.*, 164 F.3d 757, 771 (2d Cir. 1999), *aff'd*, 531 U.S. 533 (2001). When the official who was the target or object of the criticism plays a role in such retaliatory sanction, as is clearly the case here, First Amendment concerns about reprisal for unwelcome expression is substantially compounded.

Finally, the reversal of this ruling would in no way deprive state judges or law enforcement officials of needed authority to maintain the order and integrity of judicial proceedings. Behavior in a courtroom which disrupts legal proceedings may surely be the subject of contempt proceedings. The occasional need to clear a courtroom of press and public to protect an especially sensitive facet of the process is well recognized –as are the procedures by which to establish the basis for such temporary or limited closure. However, none of the circumstances justifying use of such procedures are present in this case.

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully urges this Court to reverse the judgment of the district court, and to remand the case for further proceedings consistent with settled First Amendment principles.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P.32(a)(7)(B) because: This brief contains 2,139 words, excluding the parts of the brief exempted by Fed.R. App. P.32(a)(7)(B)(iii) or

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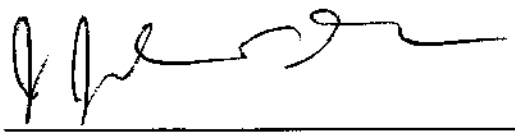

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Dated: March 6, 2003

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Appellate Procedure 25, the undersigned hereby certifies that the requisite number of copies of the foregoing Motion for Leave to File and Brief of Amicus Curiae and were dispatched (First Class, postage prepaid) this 6th day of March, 2003 by United States Postal Service for delivery to the Clerk of Court and counsel for Plaintiff-Appellant/Cross-Appellee and Defendants-Appellees/Cross Appellants and Defendants-Appellees at the following addresses:

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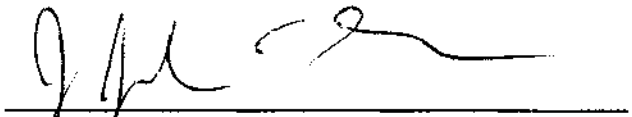

J. Joshua Wheeler
Counsel for *Amicus Curiae*

No. 99-9329

In the
United States Court of Appeals
for the
Second Circuit

SCOTT HUMINSKI
Plaintiff-Appellant,

v.

RUTLAND CITY POLICE DEPARTMENT, RUTLAND COUNTY SHERIFF'S DEPARTMENT, STATE OF VERMONT, NANCY CORSONES, Vermont District Court Judge, KAREN PREDOM, VERMONT STATE POLICE, UNNAMED VERMONT STATE POLICE OFFICER, RUTLAND DISTRICT COURT, R. J. ELRICK, Deputy Sheriff, S. SCHUTT, Deputy Sheriff, ROBERT EMERICK, Officer, M. PATRICIA ZIMMERMAN, Hon. Judge, BENNINGTON COUNTY SHERIFF'S DEPARTMENT, GARY FORREST, Sheriff, and RUTLAND, CITY OF
Defendants-Appellees,

RUTLAND, TOWN OF, UNNAMED MEMBERS RUTLAND COUNTY SHERIFF'S DEPARTMENT, and UNNAMED RUTLAND POLICE OFFICER,
Defendants.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF VERMONT

BRIEF OF AMICUS CURIAE
The Thomas Jefferson Center
for the Protection of Free Expression
IN SUPPORT OF APPELLANT'S REQUEST
FOR REVERSAL OF THE DISTRICT COURT DECISION

Counsel for Amicus Curiae
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SCOTT HUMINSKI
Plaintiff-Appellant,

v.

RUTLAND CITY POLICE DEPARTMENT, et. al.
Defendants-Appellees,

RUTLAND, TOWN OF, et. al.
Defendants.

DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

Pursuant to 2nd Cir. R. 26.1, The Thomas Jefferson Center for the Protection of Free Expression

(Name of Party)

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? No

   If the answer is YES, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? No

   If the answer is YES, list the identity of such corporation and the nature of the financial interest:

(Signature of Counsel)

3/8/2000
(Date)

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INTEREST OF *AMICUS CURIAE*

The Thomas Jefferson Center for the Protection of Free Expression is a nonprofit, nonpartisan organization in Charlottesville, Virginia. Founded in 1990, the Center has as its sole mission the protection of freedom of speech and press from threats of different forms. The Center pursues that mission in several ways, notably by filing *amicus curiae* briefs in cases that raise important free expression issues in both state and federal courts.

SUMMARY OF FACTS

Appellant Scott Huminski is a self-described amateur reporter. He regularly attends state court proceedings and then publicizes the misconduct he allegedly observes by placing placards in the windows of his home and his automobile.

On May 24, 1999, Mr. Huminski parked his automobile in the Rutland District Court parking lot. Displayed in his vehicle were signs critical of a local judge. Several law enforcement officers and court employees told Mr. Huminski to either remove the signs or move his vehicle. He refused. Two notices of trespass were then served on Mr. Huminski. Although both of these trespass notices were eventually withdrawn, a third notice was served on him on May 27, 1999. It prohibits Mr. Huminski from entering upon "[a]ll lands and property under the control of the Supreme Court and the Commissioner of Buildings and General Services, including the Rutland General District Court, parking areas, and lands."

Mr. Huminski brought this action pursuant to 42 U.S.C. § 1983 in the United States District Court for the District of Vermont alleging a violation of his First Amendment rights to attend and report on court proceedings. The defendants named in the complaint included the City of Rutland, Officer Robert Emerick, the Rutland and Bennington County Sheriffs' Departments, Sheriff R. J. Elrick, Sheriff Gary Forrest and Deputy Sheriff S. Schutt. The district court granted the motions for judgment on the pleadings brought by Officer Emerick and the City of Rutland and the motions to dismiss brought by the other defendants named above. This appealed followed.

SUMMARY OF ARGUMENT

The judgment of the district court serves to abridge one of the most basic of First Amendment liberties -- access to the courts. This judgment is as ominous in import as it is lacking in precedent. The appellant has, quite simply, been barred from ever again entering that courthouse which is most relevant to him, both as citizen and as journalist. As the Supreme Court recognized most clearly in *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980), public access to the criminal courts is a right with deep and ancient historic roots in Anglo-American jurisprudence. It is a right which extends not only to the news media, but more broadly to all citizens who may have reason to attend court proceedings.

Access to the courts serves many purposes, most especially to make the judicial system accountable to citizens. To bar any citizen from entering the courts, for any reason, undermines that value. When, as is the case here, the denial of access reflects judicial disapproval of a citizen's critical and unwelcome statements about the very court that imposes such a barrier, the values served by the right of access are most especially imperiled.

Amicus curiae recognizes that the protection of the integrity and fairness of judicial proceedings is a government interest of the highest order. Special conditions may occasionally warrant the closing even of certain portions of presumptively open criminal trials. Judges are empowered to maintain courtroom decorum, and may to that end impose sanctions on those who disrupt the fair and orderly administration of justice. There are even very limited circumstances under which protests and demonstrations that would be fully protected in other places may be curtailed near courthouses in order to ensure due process and impartiality.

Yet none of the circumstances leading to the banishment of the appellant in this case remotely resemble the exigent conditions under which such judicial restraints and sanctions have been sustained. Nor has the action challenged here remotely complied with the Supreme Court's insistence that any court closing or related sanction must narrowly reflect the special conditions on which it is based, supported by detailed findings made in open court in an adversary proceeding.

Instead, what we have here is an unprecedented and indefensible blanket closing of the doors of a courthouse to a citizen and journalist whose publicly expressed views earned the displeasure of the presiding judge.

Amicus therefore urges the reversal of the judgment of the district court and a remand for the granting of the relief which appellant sought. He has every right, under the First Amendment, to enter the courthouse from which he has been banished.

ARGUMENT

I. ACCESS TO THE COURTROOM BY BOTH THE PUBLIC AND THE PRESS IS A CLEARLY ESTABLISHED RIGHT GUARANTEED UNDER THE FIRST AMENDMENT.

The right of access to criminal trials is one which the United States Supreme Court has consistently recognized as being constitutionally protected. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980). Although the Constitution contains no explicit provision addressing this interest,[1] the Court has interpreted the First Amendment guarantees concerning speech and press as securing such a right to every individual: "[T]he right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend

[1]The Supreme Court has noted that the Sixth Amendment guarantees the accused in a criminal trial the "'right to a speedy and public trial.'" *Gannett Co. v. DePasquale*, 443 U.S. 368, 379 (1979) (*quoting* U.S. Const, amend VI). While the Court in *Gannett* held that the Sixth Amendment did not guarantee the public a right of access to criminal trials, it did not at that time decide whether the First and Fourteenth Amendments did so. *See id.* at 392 & n.24.

such trials, which people have exercised for centuries, important aspects of freedom of speech and 'of the press could be eviscerated.'" *Id.* at 579 (*quoting Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)); *see also id.* at 577 ("The right of access to places traditionally open to the public, as criminal trials have long been, may be seen as assured by the amalgam of the First Amendment guarantees of speech and press.").

The right to attend criminal trials is deeply rooted in historical tradition. The Supreme Court has noted that the "modern criminal trial in Anglo-American justice . . . throughout its evolution . . . has been open to all who cared to observe." *Id.* at 564. This presumptive openness "has long been recognized as an indispensable attribute of an Anglo-American trial." *Id.* at 569; *see also id.* at 573 ("From this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, we are bound to conclude that a presumption of openness inheres in the very nature of a criminal trial under our system of justice.").

Indeed, even before the Court expressly recognized such a right of access, it repeatedly noted that trials were by their very nature public. *See, e.g., Craig v. Harney*, 331 U.S. 367, 374 (1947) ("A trial is a public event. What transpires in the court room is public property."); *Pennekamp v. Florida*, 328 U.S. 331, 361 (1946) (Frankfurter, J., concurring) ("Of course trials must be public and the public have a deep interest in trials.").

The premise underlying the right of access to criminal trials is the conviction that increasing the visibility of the judicial process helps to ensure that it operates in a fair and equitable manner. "[A] trial courtroom also is a public place where the people generally—and representatives of the media—have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place." *Richmond Newspapers*, 448 U.S. at 578.

Of equal importance, the existence of a right of access fosters greater public confidence in the criminal justice system. "To work effectively, it is important that society's criminal process 'satisfy the appearance of justice,' and the appearance of justice can best be provided by allowing people to observe it." *Id.* at 571-72 (*quoting Offutt v. United States*, 348 U.S. 11, 14 (1954)). Thus, the presumptive openness of the courtroom is a valuable aspect of the American judicial system. As the Court explained in *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984):

> The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to the public confidence in the system.

Id. at 508.

Implicit in the concept of openness of criminal trials is the right of the press to report on judicial proceedings. "It is true that the public has the right to be informed as to what occurs in its courts, . . . reporters of all media, including television, are always present if they wish to be and are plainly free to report whatever occurs in open court." *Estes v. Texas*, 381 U.S. 532, 541-42 (1965). "One of the demands of a democratic society is that the public should know what goes on in courts by being told by the press what happens there, to the end that the public may judge whether our system of criminal justice is fair and right." *Maryland v. Baltimore Radio Show, Inc.*, 338 U.S. 912, 920 (1952) (Frankfurter, J., dissenting from denial of certiorari).

The Court has never had occasion to decide whether there exists a right to attend civil trials. However, the Court observed in *Richmond Newspapers* that while the issue of whether the public has a right to attend civil trials has not been raised, "historically both civil and criminal trials have been presumptively open." *Richmond Newspapers*, 448 U.S. at 580 n.17. Furthermore, several courts of appeals have recognized such a right. *See Publicker Indus. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1178-79 (6th Cir. 1983).

Because of the centrality of the rights of the both the public and the press to observe trials, it is ordinarily impermissible for the courtroom doors to be closed.

The Supreme Court has noted that the historical right of the press and public to attend criminal trials means that "the First Amendment guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long been open to the public at the time that Amendment was adopted." *Richmond Newspapers*, 448 U.S. at 576. The Court continued, "The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could . . . be foreclosed arbitrarily." *Id.* at 576-77.

Thus, access to the courts is a clearly established constitutional right which is being denied to Mr. Huminski by the prospective bar preventing him from ever entering the Rutland County Courthouse.

II. THE CLOSURE OF A COURTROOM MUST BE BASED ON SPECIFIC FINDINGS WHICH WARRENTED SUCH CLOSURE.

As closure of courtroom proceedings may improperly interfere with the First Amendment right to access of the press and public, any decision to limit access must be made on a case-by-case basis: "[S]uch an approach ensures that the constitutional right of the press and public to gain access to criminal trials will not be restricted except where necessary to protect the State's interest." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 (1982). The notice of trespass indefinitely banning appellant from the Rutland District Courthouse

precludes such a case-by-case review of denial of access and thus impermissibly curtails Mr. Huminski's First Amendment right of access to the court as a member of the press and as a member of the general public. The ban categorically prohibits him from attending civil and criminal trials alike, with no specific findings or substantive reasons provided to explain why Mr. Huminski should be banned. This prospective ban is therefore in conflict with the accepted case-by-case review of access questions. While the right to access to criminal trials is not absolute, "a presumption of openness inheres in the very nature of a criminal trial under our system of justice." *Richmond Newspapers*, 448 U.S. at 573. Therefore, as trials are presumptively open, limitations on public access to open trials must meet stringent standards.

In the context of the Sixth Amendment, "the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Waller v. Georgia*, 467 U.S. 39, 48 (1984) (*citing Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984)). Recognizing the importance of case-by-case resolution of access issues and the necessity of statements of findings to support closure, the Supreme Court of

Vermont stated its support for a significant barrier to closure in *State v. Robillard*, 146 Vt. 623 (1986):

> [W]e recognize and hold that closure lies within the sound discretion of the trial court if circumstances in a particular case require such action, we hold further that, *particularly* in a criminal case, where the constitutional right of the defendant is so significant, closure, during the trial itself, should be undertaken, if ever, only in extremely rare instances. The necessity must be clear to the point that there are not reasonable alternatives available to satisfy the need, and should be continued only as long as closure continues to be reasonably necessary for the accomplishment of its original purpose. Finally, the court ordering closure should support its order with findings of fact placed on the record of each case; a policy applied arbitrarily to all trials generally is not enough.

Id. at 630 (emphasis added).

Even when merely *partial* closure is sought and public access to the courtroom is not entirely barred, a *substantial reason* articulated in findings required to justify the denial of access. *See Press-Enterprise*, 464 U.S. at 510. Denying an individual such as appellant access to the courthouse is an exercise of a partial closure. *See Guzman v. Scully*, 80 F.3d 772 (2d Cir. 1996). Partial closure may be ordered on the basis of conditions in the particular case at hand. *See Richmond Newspapers*, 448 U.S. at 581 n.18. Partial closure may for example be justified to prevent disruption of the courtroom, *see Consentino v. Kelly*, 102 F.3d 71, 73 (2d Cir. 1996), or to avoid the disclosure of trade secrets, *see Richmond Newspapers*, 448 U.S. at 600 (Brennan, J., concurring). In the absence of specific findings related to

such specific trial circumstances, there is no justification for exclusion of Mr. Huminski from the courtroom, and the ban represents an improper incursion into his First Amendment rights. *See id.* at 581.

While some occasions may permit closure of judicial proceedings, other reasons are clearly impermissible. The Supreme Court has made clear that "'[s]tates cannot consistently with out Constitution abridge [the freedoms of speech and of the press] to obviate slight annoyances or inconveniences.'" *Cox v. Louisiana*, 379 U.S. 559, 564 (1965) (*quoting Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 501-02 (1949)).

In addition, the possibility of inviting disrespect for the judiciary through criticism of a judge is not enough to justify impairment of the freedom of speech. *See Bridges v. California*, 314 U.S. 252 (1941). In *Bridges*, the Court stated:

> The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect.

Id. at 270-71 (footnote omitted).

Finally, a court cannot exclude one person from a courtroom to punish that person for expressing particular views that may be considered offensive. *See*

NAACP v. Claiborne Hardware Co., 458 U. S. 886, 910 (1982) ("Speech does not lose its protected character . . . simply because it may embarrass others or coerce them into action."); *FCC v. Pacifica Foundation*, 438 U. S. 726, 745-46 (1978) ("The fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection. For it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas."); *Street v. New York*, 394 U. S. 576, 592 (1969) ("It is firmly settled that . . . the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.").

In this case, the doors of the courtroom have been arbitrarily and *prospectively* closed to Mr. Huminski. Without a case-by-case determination with findings revealing a substantial governmental interest that supports partial closure of the courtroom, members of the press and public may not be turned away. As the Supreme Court stressed in *Richmond Newspapers*,

> Free speech carries with it some freedom to listen. "In a variety of contexts [the] Court has referred to a First Amendment right to 'receive information and ideas.'" . . . What this means in the context of trials is that the First Amendment guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long been open to the public at the time that Amendment was adopted. "For the First Amendment does not speak equivocally. . . . It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow." . . .

> It is not crucial whether we describe this right to attend criminal trials to hear, see, and communicate observations concerning them as a "right of access," . . . or a "right to gather information," for we have recognized that "without some protection for seeking out the news, freedom of the press could be eviscerated." . . . The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily.

Richmond Newspapers, 448 U.S. at 576-77 (citations omitted). The unprecedented breadth and duration of the notice of trespass against appellant seems to reflect a custom and practice that extends for beyond the immediate issue of Mr. Huminski's access to the courtroom.

CONCLUSION

For the forgoing reasons, *amicus curiae* respectfully urge this Court to reverse the judgment of the district court.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

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J. Joshua Wheeler
Counsel for Amicus Curiae

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO REMAND CRIMINAL CASE TO CIRCUIT COURT WHERE IT BEGAN– VAST JUDICIAL MISCONDUCT IN COUNTY COURT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

The show case order filed in County Court is missing 117 pages and when Huminski moved to dismiss for this fatal flow, Hon. James Adams opined that the charging information in a criminal case in County Court can be absent and he essentially told Huminski to shut up and get ready for trial. Contempt is properly adjudicated in the Court where it allegedly occurred.

There was absolutely no reason to bring this case in the depravity of County Court and it could have stayed in Circuit Court. The only proper and complete show cause order exists in the Circuit Court and Judge Adams is comfortable going to trial absent a proper show cause order. Huminski is not OK with the bogus deficient show cause order filed in his criminal case. The practice of law requires exacting precision and sloppy justice has no place in a courtroom.

The show cause order in County Court was doctored by hand on 6/30/2017 and misrepresented as a genuine and legitimate court order and is criminal fraud perpetrated by Judge Adams and his staff. Engaging in official crime to attempt to gain a wrongful conviction is the epitome of courthouse corruption and crime.

Huminski attaches his petition from the District Court of Appeal is support of all pending motions.

Dated at Bonita Springs, Florida this 28TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 28TH day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

No. 2D17-

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

SCOTT A. HUMINSKI,

Petitioner,

TOWN OF GILBERT, ARIZONA, ET AL,

Respondents.

Circuit Court No. 2017CA00421
Circuit Court of the Twentieth Judicial Circuit
In and For Lee County, Florida

PETITION FOR A WRIT OF PROHIBITION AND A WRIT OF MANDAMUS AND A WRIT OF CORAM NOBIS AND QUO WARRANTO– ALL WRITS JURISDICTION

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BASIS FOR INVOKING JURISDICTION

This Court has original jurisdiction to issue writs of prohibition and mandamus under Article V, section 4(b)(3) of the Florida Constitution, and under Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure.

Huminski also asserts jurisdiction for writ of quo warranto and coram nobis and under "all-writs" jurisdiction. Fla. Const. art. V, §§ 3(b), 4(b).

PREFACE

This petition is related to conduct of recused judge Hon. Elizabeth Krier and is not related to the acts/orders of the currently presiding judge, Hon. Michael McHugh. Petitioner's Appendix filed herewith consists of filed documents in the Circuit Court except for the Complaint to the Florida Commission on Ethics with attachments which is the first document set forth in the appendix. The Appendix mirrors the chronology of the Circuit Court docket except with respect to the ethics complaint. Appendix page numbers are encircled and handwritten.

ISSUES PRESENTED

1. Whether a no "contact and communication" protective order concerning the Lee Sheriff's Office with no exceptions and zero narrow tailoring to a legitimate governmental interest is void ab initio for violation of First

Amendment precepts and Equal Protection and Enforcement of the Laws and constitutes a forbidden prior restraint.

2. Whether acts, orders and rulings of the Court Below are *Void Ab Initio* for lack of all jurisdiction after the case was removed to United States Bankruptcy Court divesting it of all jurisdiction until the matter was remanded back to State court.
3. Whether the criminal prosecution initiated in this matter and litigated in the Circuit Court until 8/14/2017 is *void ab initio* as it is predicated upon alleged violation of the Sheriff's protective order which was a legal nullity from its inception. All acts and orders of Judge Krier were filed in the Circuit Court in her capacity as a Circuit Court judge.
4. Whether the criminal prosecution is barred by two exceptions to the Collateral Bar Rule/Doctrine as the protective order is transparently unconstitutional / illegal and the order requires the surrender of constitutional rights.
5. Whether the Circuit Court criminal matter has not been concluded in a lawful manner, conversely, it has been abandoned by the State's Attorney and should be dismissed with prejudice for want of prosecution as it is the duty of the State's Attorney to see to it that the cases criminally prosecuted by the State's Attorney should be disposed of in a legal and regular manner

without lingering in uncertainty and burdening the litigants and the Courts as finality is the goal of all court matters.

6. Whether the State's Attorney having two identical prosecutions pending in the Circuit Court and County Court with the same allegations (contempt) and grounded upon the same fact violates double jeopardy.

FACT FROM PROCEEDINGS BELOW

This matter was initiated in the Circuit Court grounded upon Scott Huminski's ("Huminski") investigation and State FOIA requests concerning death threats Huminski had received via the U.S. Mails. Lee Sheriff Mike Scott requested and was granted a protective order barring all communication and contact from Huminski. A criminal contempt prosecution was initiated in the Circuit Court for Huminski's alleged contact with the Sheriff via email and via the internet. After several months of litigation of the criminal matter in Circuit Court, some Circuit Court files were placed by the Clerk under a County Court docket without input from the State's Attorney. The Circuit Court criminal matter was never concluded and no statute or court rule empowers the clerk's office to "transfer" a case and initiate a new criminal prosecution. The power to bring a criminal case is reserved for the State's Attorney. The criminal case remains in the Circuit Court and has never been concluded, just apparently abandoned by the State's Attorney. The

filing of a second identical criminal matter in County Court by the clerk violates double jeopardy. The State's Attorney's duty is to bring actions in the correct court, not every Court in the 20th Circuit.

The Sheriff's Protective Order

The Court below granted a motion for protective order by Lee Sheriff Mike Scott. See Petitioner's Appendix ("PETAPP") at page(s) 8-10.

The protective order forbids all contact with the Sheriff and his staff effectively:

1. Excluding Huminski from all public safety service and law enforcement in his town of residence, Bonita Springs, FL without exception. See County Court Order narrowly tailoring a similar pre-trial order with vastly vague and overbroad terms. (See PETAPP at line(s) 6-7)
2. Forbidding Huminski's First Amendment reporting of crime. See PETAPP at line(s) 113.
3. Forbidding Huminski's First Amendment core political criticism of the Sheriff to likely political opponents (members of the Sheriff's Department).

4. Forbidding Service of the Sheriff in a matter pending before the United States Bankruptcy Court whereby the Sheriff and Huminski were both *pro se*. Service was mandated by bankruptcy rule 9027.
5. Forbidding/threatening Huminski concerning his attendance at the Lee Courthouse complex whereby prohibited contact has to be made with the Sheriff's staff who perform security screening and act as bailiffs. Huminski's individual right to courthouse access has been determined in Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) and denied once again in the Sheriff's protective order.
6. Huminski is barred from asking the Circuit Court to hear his motions to vacate by the terms of the protective order.
7. Huminski's banishment from the lee courthouse and the protective order's prohibition against filing present an exhaustion of all redress to the indigent Huminski in the Circuit Court who was appointed a public defender by the Circuit Court and is now represented by regional conflict counsel.
8. Huminski is forbidden from serving this petition upon the Sheriff under the terms of the protective order, effectively obstructing justice. See motion to enjoin protective order to allow service filed herewith.

The case below has had all judges assigned disqualify and the last act of the Circuit Court except for multiple recusals and re-assignment orders was on 8/8/2017. Currently, the Chief Judge is assigned to the case, however, Huminski is forbidden a hearing on his pending motions to vacate under the terms of the sheriff's protective order.

ALL ACTS TAKEN WHILE CASE WAS REMOVED TO U.S. BANKRUPTCY COURT ARE VOID AB INITIO

The case below was removed to the United States Bankruptcy Court at 5:02 p.m. on 6/26/2017 and was remanded back to State Court via a federal order docketed in the Circuit Court on 8/8/2017. See PETAPP at line(s) 28-30, 91-94. All acts and orders taken by the Circuit Court in defiance of the federal court's jurisdiction are VOID AB INITIO, ironically, even the recusal of Judge Krier and arraignment of 6/29/2017. (See PETAPP at pages 60-74, 76-82)

MEMORANDUM OF LAW

Removal to Bankruptcy Court

The removal to Bankrutcy Court is a self-executing function of federal law and plainly obvious in the Dockets from the Court Below and the United States Bankruptcy Court. Absent from either the State or Federal record is any motion to remand the case under federal abstention doctrines by the defendants or objection to

the removal. Any objection to federal jurisdiction or removal not pled in the bankruptcy court is waived. 28 U.S.C. §1447(c) All acts and orders of the Circuit Court were entered in a complete absence of jurisdiction as removal divested jurisdiction from the State Court.

At hearing on 6/29/2017, Hon. Judge Krier could not have been more emphatic by stating that "Nothing gets removed from my court -- ever". As all litigants are aware, any claim mentioning the violation of a federal right/privilege can and usually is removed to federal court by insurance defense attorneys under federal question jurisdiction and bankruptcy removal under Rule 9027 is quite common. The Circuit Court's, Judge Krier presiding, position on federal removal is bewildering.

Court Orders – Collateral Bar Rule

A transparently invalid order cannot form the basis for a contempt citation. See 3 Wright, Federal Practice & Procedure Sec. 702 at 815 n. 17 (1982) (collateral bar rule does not apply if the order violated was transparently unconstitutional); State ex rel. Superior Ct. of Snohomish County v. Sperry, 79 Wash.2d 69, 483 P.2d 608 (1971), cert. denied, 404 U.S. 939, 92 S.Ct. 272, 30 L.Ed.2d 252 (contempt citation improper because order violated was transparently void); see also United States v. Dickinson, 465 F.2d 496, 509-10 (5th Cir.1972) (recognizing exception to

collateral bar rule for transparently invalid orders); Ex parte Purvis, 382 So.2d 512, 514 (Ala.1980) (same).

Court orders are not sacrosanct. See Cobbledick v. United States, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940); accord United States v. Ryan, 402 U.S. 530, 91 S.Ct. 1580, 29 L.Ed.2d 85 (1971). In Cobbledick, the Supreme Court ruled that when a motion to quash a subpoena is denied, the movant may either obey its commands or violate them, and, if cited for contempt, properly contest its validity in the contempt proceeding. Cf. Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972); Maness v. Meyers, 419 U.S. 449, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975) These cases involve orders that require the surrender of irretrievable rights and establish that blind obedience to all court orders is not required. See also Nebraska Press Assoc., 427 U.S. at 559, 96 S.Ct. at 2802 ("A prior restraint ... has an immediate and irreversible sanction.") An appeal can not undo the immediate constitutional injury of a prior restraint such as we have in the instant matter. The instant matter does constitute a prior restraint against core political criticism of a politician (Sheriff) and a prior restraint concerning reporting crime to local law enforcement. An order entered by a court clearly without jurisdiction over the contemnors or the subject matter is not protected by the collateral bar rule. United Mine Workers, 330 U.S. at 293, 67 S.Ct. at 695 Were this not the case, a court could wield power over parties or matters obviously not within its authority--a concept

inconsistent with the notion that the judiciary may exercise only those powers entrusted to it by law. The Circuit Court did issue orders and held hearings in a removed case and in violation of the automatic stay of bankruptcy.

Huminski's email publications to large audiences on the topics of report of terrorist death threats originating in Arizona and transmitted into Lee County, report of crime to law enforcement and criticism of politician/sheriff are pure speech and core political protected expression. The principal purpose of the First Amendment's guaranty is to prevent prior restraints. Near, 283 U.S. at 713, 51 S.Ct. at 630 The Supreme Court has declared: "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1577, 29 L.Ed.2d 1 (1971); see also Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963) When, as here, the prior restraint impinges upon the right of the press (Huminski was acknowledge as a Citizen-Reporter, Huminski v. Corsones) to communicate news and involves expression in the form of pure speech--speech not connected with any conduct--the presumption of unconstitutionality is virtually insurmountable. Nebraska Press Assoc., 427 U.S. at 558, 570, 96 S.Ct. at 2802, 2808 (White, J., concurring) Huminski notes his status as a citizen-reporter. See Generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)

The Supreme Court strongly protects "core political speech" as a "value that occupies the highest, most protected position" in the hierarchy of constitutionally-protected speech. R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 422 (1992) (Stevens, J., concurring). See also Burson v. Freeman, 504 U.S. 191, 217 (1992). In defining the core political speech worthy of this elevated level of protection, the Court has broadly included "interactive communication concerning political change.", the essence of Huminski's communications with the sheriff. Meyer v. Grant, 486 U.S. 414, 422 (1988). Huminski's electronic communications objected to the Sheriff's position on interstate terrorist death threats. Huminski has also published his opposition to the sheriff's policies as signage at his home and on the internet. For example, see https://www.youtube.com/watch?v=-dJYlLMBLVk and see generally https://www.youtube.com/channel/UC-y4hdd9G-cN3GxkJIMpF9w and see a google search on the petitioner.

Political speech gets higher protection because it is an essential part of the democratic process. Indeed, evaluating a statute that would have restricted all anonymous leafleting in opposition to a proposed tax, the Supreme Court reflected on the importance of specifically protecting such political speech which applies equally here to Huminski's speech regarding corruption, misconduct and oppression by police and government actors who support the death threats received by Huminski. The First Amendment affords the broadest protection to such political

expression in order "to assure [the]unfettered interchange of ideas for the bringing about of political and social changes desired by the people." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 346-47 (1995), quoting Roth v. United States, 354 U.S. 476, 484 (1957)

Recently, the Supreme Court made it abundantly clear that laws or in this case a court order that burden political speech are subject to strict scrutiny review. Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010), invalidated a federal statute that barred certain independent corporate expenditures for electioneering communications. Highlighting the primacy of political speech, the Court noted that "political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction' furthers a compelling interest and is narrowly tailored to achieve that interest.'" Citizens United, 558 U.S. at 340 (quoting Federal Election Comm'n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 464 (2007)). There exists no compelling reason to silence Huminski's reporting of crime or criticism of the sheriff.

The order and the threats from the Sheriff/Court under State law/Common Law cut off the "unfettered interchange of ideas" in an important place for individual political expression--the Courts and internet. McIntyre, 514 U.S. at 346-

47. Treading upon core First Amendment expression must be accomplished in as minimally a restrictive manner as possible, and should never be done so in the form of an absolute bar on all political expression as is the case at Bar whereby criticism, reporting of crime and civil/bankruptcy litigation has been viewed as a per se criminal activity by the State Court. See Bd. of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 574 (1987) (invalidating a statute because it "reache[d] the universe of expressive activity, and, by prohibiting all protected expression, purport[ed] to create a virtual 'First Amendment Free Zone.' ") (emphasis in original).

Validating a sweeping ban on core political speech would seriously undermine the Supreme Court's stated goal of safeguarding the democratic process. The alleged contact with the Sheriff made by Huminski were related to reporting crime and criticism of a political figure. A constitutional solution should have been to direct the sheriff to delete any emails he considered junk mail. Shutting down Huminski's reporting crime to law enforcement is an extreme remedy that does not survive constitutional scrutiny under vagueness and over-breadth precepts.

Grayned v. The City of Rockford, 408 U.S. 104 (1972) summarized the time, place, manner concept: "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular

time." Time, place, and manner restrictions must withstand intermediate scrutiny. Note that any regulations that would force speakers to change how or what they say do not fall into this category (so the government cannot restrict one medium even if it leaves open another) Ward v. Rock Against Racism, 491 US 781 (1989) held that time, place, or manner restrictions must:

* Be content neutral
* Be narrowly tailored
* Serve a significant governmental interest
* Leave open ample alternative channels for communication

If the government tries to restrain speech before it is spoken, as opposed to punishing it afterward, it must be able to show that punishment afte r the fact is not a sufficient remedy, and show that allowing the speech would "surely result in direct, immediate, and irreparable damage to our Nation and its people" (New York Times Co. v. United States, 403 U.S. 730 (1971)).

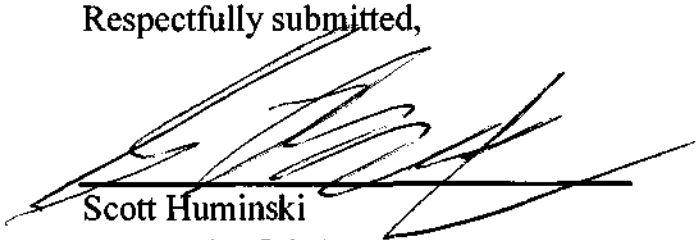
In Bridges v California, 314 U.S. 252 (1941), Mr. Justice Black, for the five-to-four majority, presented clear and present danger as "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterance can be punished"; adding that even this did not "mark the

furthermost constitutional boundaries of protected expression." Bridges v. California, 314 U. S. 252, 263 (1941).

CONCLUSION

For all of the forgoing reasons, the Court should grant the Petitions and issue a Writ of Prohibition, Writ of Mandamus, Writ of Coram Nobis and Writ of Quo Warranto requiring the Circuit Court vacate all acts, orders and rulings entered while the case was removed to U.S. Bankruptcy Court, vacate the protective order as void ab initio for First Amendment violations, order the initiation of the criminal matter *Void Ab Initio* and dismiss it with prejudice and find that the orders involved in this case are exceptions to the Collateral Bar Rule which allows violation of a transparently unconstitutional order and allows violation of an order that requires the surrender of Constitutional rights.

Respectfully submitted,



Scott Huminski
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(239) 300-6656
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CERTIFICATE OF SERVICE – FOR PETITION, APPENDIX AND MOTIONS

I HEREBY CERTIFY that on or before December 07, 2017, a true copy of the foregoing and Petitioner's Appendix and Motion to Stay Matters Below and MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER and MOTION TO REPLEAD WITH ASSISTANCE OF COUNSEL have been served pursuant to the Rules upon,

20th Circuit Public Defender's Office (Kevin Sarlo, esq.),

Regional Conflict Counsel (Zachary Miller, esq.),

State's Attorney (ASA Anthony Kunasek, esq.),

Hon. Michael McHugh,

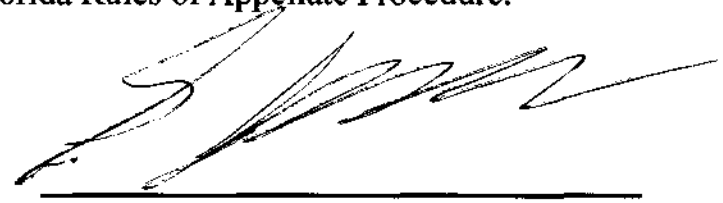
Hon. James Adams,

All parties in 17-CA-421 (except the Sheriff Defendants and Scribd, Inc., defendants whereby service is prohibited by order, see MOTION TO ENJOIN PROTECTIVE ORDERS and PRE-TRIAL ORDER filed herewith which, if granted, would allow service to complete).

Scott Huminski

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.21 (a)(2), I certify that this computer-generated brief/petition is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.



Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR CIRCUIT COURT TO ASSERT JURISDICTION IN CRIMINAL MATTER
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

No valid case exists in the County Court. Judge Adams claims there was an administrative transfer to County Court. These is no such thing as an administrative transfer supported by statute, rule or any other authority and a valid charging document does not exist in County Court, only a doctored fraudulent show cause order exists missing 117 pages of attachments.

The legitimate un-doctored full show cause order only exists in Circuit Court. Further Judge Adams refuses to allow the State's Attorney to participate in the County Court. Judge Adams has assumed all prosecutorial functions.

Dated at Bonita Springs, Florida this 28TH day of January, 2018.

-/S/- Scott Huminski

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(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 28TH day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE PROTECTIVE ORDERS AS VOID AB INITIO FOR VIOLATION OF THE FIRST AMENDMENT AND DUE PROCESS AND TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Courthouse banishment violates the First Amendment and banishment on cases where Huminski is a party violate Due Process. See Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005).

Huminski further asserts the two briefs filed concurrently today from the Thomas Jefferson Center for Freedom of Expression and the petition filed in 2d17-4740 all filed today as attachments.

Dated at Bonita Springs, Florida this 28TH day of January, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS CRIMINAL CONTEMPT CHARGES – THE CIRCUIT COURT WAS NEVER DIVESTED OF JURISDICTION
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

The Circuit Court was never divested of jurisdiction and the State does not deserve another bite of the apple because of the dubious nature of the criminal prosecution to date. Further the protective orders are void for want of Due Process and violation of the First Amendment and the orders were authored with a judicial conflict that caused recusal of Judge Krier. Said judicial conflict of interest violates Due Process.

The only valid show cause order exists in the Circuit Court. The State has abandoned the prosecution of this case and has not opposed any dispositive defense motions.

Dated at Bonita Springs, Florida this 28TH day of January, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE ALL ACTS AND ORDERS OF THE CIRCUIT COURT WHILE BANISHMENT WAS PENDING
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Court proceedings that occurred while the protective order of Sheriff Scott was pending, constituting courthouse banishment, patently violate Due Process and are void or void ab initio. The vastly overbroad protective orders where a product of Judge Krier's irate approach to this case and consistent with her tone at hearing on 6/29/2017 when in a frenzy she stated "Nothing gets removed from my court – EVER" when the court's efiling system list removal to U.S. District Court as a frequently filed motion. Judge Krier lapsed into a state of delusion and irrationality as evidenced by her recusal.

Dated at Bonita Springs, Florida this 28TH day of Janu ary, 2018.

-/S/- Scott Huminski

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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR ADA ACCOMMODATIONS
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Huminski seeks an accommodation that parties opposing Huminski's motions, do so in writing and that he be given 10 days to respond to opposition in writing prior to hearing or disposition.

Attached hereto is Huminski's ADA accommodations report.

Dated at Bonita Springs, Florida this 28TH day of Janu ary, 2018.

-/S/- Scott Huminski

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S_huminski@live.com

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-/s/- Scott Huminski

Rebecca Potter, LMHC
Certified Disability Advocate
Licensed Mental Health Counselor
Email: tlc211@gmail.com
Phone: (561)267-3831

REPORT AND REQUEST FOR ADAA ACCOMMODATION

NAME: **SCOTT HUMINSKI**
CASE NO: **17-ca-421**
17-mm-815
17-ca-943
DATE: **JANUARY 26, 2018**

*******THIS REPORT CONTAINS PRIVATE MEDICAL INFORMATION AND MUST BE KEPT FROM PUBLIC VIEW.**

The REPORT is to request that Mr. Huminski, who suffers from disabilities which prohibit equal access to the Court. Mr. Huminski has asked this writer to prepare this report for the Court. It contains private protected health information and is provided to the Court to ensure the necessity of accommodations for Mr. Huminski, guaranteeing he has equal access to the Court and receives fair due process. The report/accommodation request is protected by the Health Insurance Portability and Accountability Act of 1996 (HIPPA) Pub law 104.191.

The Americans with Disabilities Act, 42 USC Section 12131 requires that states insure that disabled citizens are provided with necessary accommodations to services, programs and agencies. To guarantee equal access, these citizens must be provided with reasonable accommodations to protect the compromised citizen from discrimination. If the accommodations are not provided, the disabled citizen is at an unfair disadvantage.

This report has been compiled from personal, telephonic conferences, email correspondence, review of court records, legal documents, review of medical records, mental status examination, structured interviews and assessments.

The ADAA defines in part....

Section 35.150(b)(2)-- Safe harbor

The "program accessibility" requirement in regulation implementing title II of the Americans with Disabilities Act requires that each service, program, or activity, *when viewed in its entirety,* be readily accessible to and usable by individuals with disabilities. 28CFR 35.150(a)

35.178 State Immunity.

A state shall not be immune under the eleventh amendment to the Constitution of the United State from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

PRESENTING PROBLEM:

Mr. Huminski has been involved in protracted litigation. He suffers from a cognitive disability and has to represent himself in this litigation. He is struggling to communicate to the Court. The physical effects of his disability interfere with his ability to process information and to communicate when he is symptomatic. Mr. Huminski becomes symptomatic when he encounters the stress created by the Court when there is not appropriate accommodations. There is no effective cure to his disability and he must be allowed accommodations to reduce his physical symptom responding in order to have equal access to the Court and due process.

His diagnosis by Dr. Leonard Lado, MD, RPh, ABPN is as follows:

Axis I	**Post Traumatic Stress Disorder** **Generalized Anxiety Disorder** **Social Phobia**
Axis II	**Deferred**
Axis III	**Hip Replacement, both hips**
Axis IV	**legal and social stressors**
Axis V	**Due to complex legal stressors: 60**

The Court has not given Mr. Huminski reasonable accommodations to allow access to the Court and due process. He has struggled to communicate to the Court his needs and the Court has reacted to his inability to clearly communicate.

Due process is a right guaranteed by The US Constitution and a disabled litigant is unable to access the legal system without appropriate accommodations.

He requires the following accommodations:

1. The use of audio and/or videotaping of all proceedings.
a. He will not be able to affectively process information when he becomes symptomatic. The Court has not worked effectively with Mr. Huminski and has now become an additional source of fear which activates his adrenal responses, causing loss of cognition and communication. These services are therefore necessary to review material presented in court proceeding and meetings.

b. Disabled litigants are financially compromised and may not be able to access court transcripts due to the cost. Without a means to review the court proceedings at a later time when he is not symptomatic, he is not able to participate fully in the court process.

2. He must be given extended deadlines to participate in the Court.

a. He becomes symptomatic when he reviews court documents/correspondence and is unable to process the information while he is physically compromised.

b. He is pro se litigant and is not trained in court rules and deadlines. The Court has set deadlines for the attorney profession and not a cognitively disabled litigant. These deadlines must be extended to allow him to cognitively process and fairly engage in litigation.

c. Each time that Mr. Huminski must present to court, prepare for court or review court documents and correspondence, he becomes symptomatic.

d. Mr. Huminski will need additional time to make any decision regarding legal matters to ensure he is not symptomatic and able to cognitively understand the consequences of any decision and to ensure that he has a cognitive capacity to understand his decision.

3. All court correspondence and documents need to be accessible to Mr. Huminski. All Court staff must respond to his questions and requests.

a. Mr. Huminski needs to be provided timely service of court documents.

b. Mr. Huminski must have access to court personnel and receive return phone calls and communication from the court personnel.

c. Many of the court records have not been provided to Mr. Huminski and he is unable to access many of these records within the electronic files. He must be provided with all documents in order to fully engage in the legal process.

d. All court records need to be accurate. If a document is altered, or back dated, it is a violation of FSS 415.101-115. Court personnel need to ensure he is not exploited and the court record is not used as an means to deceive a vulnerable adult.

e. Mr. Huminski reports, the current docket is missing factual documentation, i.e. pleading cycles, motions, opposition to motions. The misrepresentation on a public document leads to confusion/ exploitation to the litigant. The record and docket must be factual to allow equal access to the Court. Non factual records will cause increase in adrenal responding and will affect the disabled litigant's ability to cognitively process and proceed with litigation.

4. Court hearings must be on different days.

a. Mr. Huminski needs time, several days, between any court hearing to heal from the physical symptoms which cause loss of effective cognition and communication.

b. He is unable to recover from the powerful physical nervous system responding that the court process creates. He requires several days between any court meeting or hearing. allowing his nervous system to recover. Without this accommodation, he does not have the cognitive capacity to participate in court proceedings.

5. .Sheriff Scott's staff will not be in attendance at any hearings and/or trials which involve the vulnerable disabled litigant. He requires a safe venue where the staff of Sheriff Scott will not be present and he will not be intimidated by all court personnel.

a. There is a protective order against Mr. Huminski and he is barred (for life) from contact and communication with the Sheriff or his staff (the Lee County Sheriffs and Sheriff Scott-- i.e. court security officers and bailiffs). Mr. Huminski is in fear of violating this protective order and he requires a safe venue to obtain due process.

b. Security personnel and bailiffs are members of the Lee County Sheriff Department. Mr. Huminski has metal hips which set off the security alarms and he would not be able to explain or communicate his medical condition to the personnel in the circuit court.

c. Without safe accommodation and a safe venue to conduct his hearing, he is being denied equal access to the Lee Court complex staffed by Sheriff Scott's deputies. It is not a safe venue and denial of equal access to the court and due process for Mr. Huminski if he is unable to communicate with court personnel.

d. He has been denied access to Lee County Sheriff and reports he is fearful of entering the courtroom without being arrested. He is unable to have equal access to the court and due process under a physical threat from the Sheriff's office.

e. Without this accommodation, Mr. Huminski is under threat of intimidation, direct violation of FSS 415.101(13). If this accommodation is not given, all court personnel are mandatory reporters and need to report this violation to the appropriate authorities.

6. Mr. Huminski requires competent legal representation.

a. Mr. Huminski suffers from a cognitive disorder. He is not able to control the neurological physical responding of his body.

b. He is unable to effectively communicate or process information while he is symptomatic.

c. He requires a legal representative to ensure he has equal access and due process in the court agencies.

d. He has been denied access to Lee County Sheriff and reports he is fearful of entering the courtroom without being arrested. He is unable to have equal access to the court and due process under a physical threat from the Sheriff's office. He requires competent legal representation to assure he has access to the Court and will not lose his freedom while in the legal process.

e. Mr. Huminski reports that he has not received vital court orders and orders have been changed. It is necessary for Mr. Huminski to have competent legal

representation to ensure court compliance to all rules and regulations. This accommodation will ensure equal access and due process to Mr. Huminski and will discourage any appearance of deception. Many pro se litigants do not have access to the internet and do not have the ability to access court records online. The electronic records systems are a "new" science and are not completely reliable.

CONCLUSION"

The following report is respectfully submitted to the Court to provide reasonable accommodations for Mr. Scott Huminski, a disabled citizen who qualifies for these accommodations under the Americans With Disabilities Act.

The State of Florida guarantees additional protection to persons because of disabilities. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. FSS 415.101-115.

The above FSS, defines "deception" as a misrepresentation or concealment of a material fact relating to services rendered.... The requested accommodations are to protect the litigant and the Court from any perception of neglect, abuse, exploitation, intimidation and denial of equal access to the court agencies.

** Please also note that the FSS 415-101-115 requires mandatory reporting from all court representatives/officers of any exploitation, neglect, abuse, or intimidation of a vulnerable adult.

_____

Rebecca Potter,LMHC

Submitted to the Twentieth Judicial Circuit In and For Lee County, Florida -- Civil/Criminal Division on this _____ day of _____ 2018.

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO APPOINT CRIMINAL DEFENSE COUNSEL AS AN ADA ACCOMMODATION AND PURSUANT TO THE SIXTH AMENDMENT AND TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Huminski needs the appointment of private counsel because both the Public Defender and Conflict Counsel refused to file motions to dismiss grounded upon a fraudulent and doctored show cause order missing 117 pages filed in County Court.

Further both agencies advised me to violate the protective order of Sheriff Mike Scott filed in the Circuit Court and both agencies claimed a conflict of interest. The ADA and Sixth Amendment support appointment of counsel.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 29TH day of January, 2018 to all parties and to D. Howells and B. Dean.

-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE THE PROTECTIVE ORDER OF SHERIFF MIKE SCOTT AS AN ADA ACCOMMODATION
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Huminski is banished from the Lee court complex pursuant to the plain language of Sheriff Scott's protective order entered in this matter. If Huminski attends hearings at the courthouse, it is the equivalent of attending with a gun to his head with fear of arrest and violence from enforcement of the protective order by bailiffs and other Sheriff staff looming high in his consciousness. Huminski's disabilities prohibit his effective participation in his own defense under these circumstances.

If Huminski reports a crime to Sheriff Scott, he can chose to delete it from his email program, courthouse banishment is an extreme and draconian remedy devised by a rogue sheriff and irate, disabled or improperly motivated Judge.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street

Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO ADVANCE WITHOUT HEARING AFTER ADA MOTION PLEADING CYCLE COMPLETES
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

After a Huminski motion, written opposition and 10 days for Huminski to file a written reply to opposition as an ADA accommodation, the Circuit Court should rule on the motion without hearing absent opposition by adversaries as an ADA accommodation. If adversary parties wish a hearing, they should make arrangements as an ADA accommodation to Huminski's disabilities.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

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24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO COMPEL STATE'S ATTORNEY TO APPEAR IN THIS CIRCUIT COURT MATTER
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

The instant matter in Circuit Court contains the only valid charging information, which in this case is the show cause order of 6/5 signed by Judge Krier. The show cause order filed in County Court is forged and incomplete.

If the State wishes to pursue this matter, their opportunity is now.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR ORDER TO SHOW CAUSE AS TO WHY B. DEAN AND D. HOWELLS SHOULD BE HELD IN CRIMINAL/CIVIL CONTEMPT FOR VIOLATION OF THE ADA ADMINISTRATIVE ORDERS OF THIS COURT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Court administrators B. Dean and D. Howells have refused to provide Huminski with ADA accommodations in violation of the Administrative Orders entered by Hon. Michael McHugh for the 20th Circuit.

They are in per se criminal contempt of the aforementioned orders and have exhibited complete disrespect for the Orders of this Court. As the presiding judge in this matter is also the signatory of the ADA orders, this conduct is incredibly disrespectful. This Court and the aforementioned administrators are in receipt of the ADA accommodation report citing PTSD, Social Phobia and Generalized Anxiety Disorder diagnosed by the Lado Healing Institute.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street

Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE/STRIKE HEARING OF 2/13 PURSUANT TO THE ADA, in the alternative, MOTION TO VACATE COURTHOUSE BANISHMENT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Adversary counsel never coordinated this hearing with me. Huminski is scheduled for trial on the same day which was docketed prior to the scheduling of the hearing. He can not attend. Holding a hearing in the case violates due process.

Huminski informed adversary counsel he is banished from the Lee Courthouse via the protective order of Sheriff Scott filed in this matter. Adversary counsel refused to respond. Under the ADA hearing can be held in another County or at a site where Sheriff Scott and his staff are not present. Huminski has filed his motion for ADA accommodations with the Court and with the ADA person at the courthouse. Huminski's request for ADA accommodations were denied by the court staff responsible for accommodations.

Dated at Bonita Springs, Florida this 28TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se

24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 28TH day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS CRIMINAL CASE
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Nothing has divested the Circuit Court's jurisdiction, the County Court case was improperly brought and the County Court has no jurisdiction because no valid show cause order exists in that court, the County Court show cause order was doctored and 117 pages of attachments were never filed.

Huminski was never served with the 120 page show cause order as clearly revealed by the docket.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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Copies of this document and any attachment(s) was served via the court's efiling system on this 29TH day of January, 2018 to all parties and to D. Howells and B. Dean.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO SANCTION PHOENIX ET AL.
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

The Phoenix et al. defendants failed to coordinate the hearing of 2/13 with me. Phoenix et al. knows that I am banished from the Lee courthouse for life and nonetheless has engaged in deception with its representations to the Court failing to mention the lifetime courthouse banishment and hoping to deny Huminski Due Process.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO ENJOIN HON. JAMES ADAMS PREVENTING HIS USURPING JURISDICTION AND DIPOSING OF MOTIONS FILED IN THE CIRCUIT COURT
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Judge Adams has taken on the duties of prosecutor concerning the show cause order filed in the Circuit Court. No such valid order exists in the County Court and the State's Attorney has abandoned the prosecution, only Judge Adams and Huminski remain active. Only the Circuit Court has jurisdiction over the criminal contempt charges instituted by the show cause order issued by Judge Krier in Circuit Court when she had a disability or other prohibited factor impacting her ability to rule pursuant to Due Process. Her recusal evidences this judicial disability/impropriety.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656

S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO ADVANCE WITHOUT HEARING AFTER ADA MOTION PLEADING CYCLE COMPLETES
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

After a Huminski motion, written opposition and 10 days for Huminski to file a written reply to opposition as an ADA accommodation, the Circuit Court should rule on the motion without hearing absent opposition by adversaries as an ADA accommodation. If adversary parties wish a hearing, they should make arrangements as an ADA accommodation to Huminski's disabilities.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO COMPEL STATE'S ATTORNEY TO APPEAR IN THIS CIRCUIT COURT MATTER
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

The instant matter in Circuit Court contains the only valid charging information, which in this case is the show cause order of 6/5 signed by Judge Krier. The show cause order filed in County Court is forged and incomplete.

If the State wishes to pursue this matter, their opportunity is now.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTION FOR CONTINUANCE

THIS CAUSE comes before the Court on Defendant's "Motion For Continuance To Allow Court Administration To Address Huminski's Request For ADA Accommodations," filed January 23, 2018. Since that request has been denied pursuant to a contemporaneously entered order, the motion for a continuance is moot. To the extent Defendant complains the State has not responded to his motions, the Court is not required to seek a State response or hold hearings when the Court has determined that neither will assist the Court in deciding the matter.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion for continuance is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; Office of Regional Counsel, 2101 McGregor Blvd., Ste. 101, Ft. Myers, FL 33901; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER STRIKING MOTIONS FOR HEARING

THIS CAUSE comes before the Court on Defendant's "Re-Newed Motion To Assert Prior Motions And Motion To Appoint Counsel" filed January 12, 2018, "Motion For Hearing – Denial Of Huminski's Sixth Amendment Right To Counsel" filed January 12, 2018, and "Motion For Hearing Re: All Pro Se Motions Filed Since Inception And Motion To Vacate Orders Striking *Pro Se* Defense Motions" filed January 19, 2018. These motions are successive to prior motions filed by Defendant. The Court denied Defendant's prior motions, and the Court finds that a hearing would not assist the Court. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions for hearing are STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; Office of Regional Counsel, 2101 McGregor Blvd., Ste. 101, Ft. Myers, FL 33901; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION TO DISQUALIFY STATE ATTORNEY

THIS CAUSE comes before the Court on Defendant's "Supplemental Motion For Recusal Of State's Attorney Or Disqualification Of State's Attoney [sic] And Motion To Refer This Case To The Attorney General For Prosecution," "Motion To Expedite Hearing On Motions To Disqualify/Recuse State's Attorney" filed January 19, 2018, and "Motion To Dismiss – Failure Of State's Attorney to Prosecute Re: Recusal/Disqualification" filed January 24, 2018. In order to move to disqualify a state attorney, Defendant must show actual prejudice to himself which he would not otherwise bear, and actual prejudice is something more than the mere appearance of impropriety. Meggs In and For Second Judicial Circuit Of Florida v. McClure, 538 So. 2d 518 (Fla. 1st DCA 1989). Further even if the State Attorney was disqualified, it would not require disqualification of the entire office, nor the assistant state attorney prosecuting this case. Id. at 520. Defendant has failed to demonstrate any actual prejudice, since the contempt charge could have proceeded without the Office of the State Attorney, and the Court simply requested the State's assistance in prosecuting the matter. Defendant's motion to disqualify the State is facially and legally insufficient, and the Court finds a hearing will not assist it.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion to disqualify the State Attorney is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CRIMINAL ACTION**

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTIONS FOR BILL OF PARTICULARS

THIS CAUSE comes before the Court on Defendant's "Renewed Motion For Bill Of Particulars" filed January 18, 2018, and "Motion For State To Produce Witness List For Trial And Re-Newed Motion For Bill Of Particulars" filed January 19, 2018. The State is not required to file a witness list unless it intends to call its own witnesses. The order to show cause adequately advised Defendant as to what conduct was the subject of the contempt proceeding, and a bill of particulars is not required.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER STRIKING NOTICES

THIS CAUSE comes before the Court on the Defendant's: "Notice That Circuit Court Amended No Contact Order On 7/7/2017" filed August 22, 2017, "Notice Of Failure To Serve Motion To Strike" filed August 25, 2017, "Notice Of Order Preventing Huminski's Report To Local Law Enforcement" filed September 15, 2017, "Notice Of State's Attorney Support OF Terrorist Death Cell" filed September 15, 2017, "Notice Of Support Of Emergency Motion – Embezzlement Of State Funds" filed September 20, 2017, "Notice Of Huminski Banishment From County Court On 9/22 For Obeying LCSO Gag Order" filed September 22, 2017, "Notice Of Defense's Zero Knowledge Of The Content Of 12/27/2017 Order" filed January 18, 2018, "Notices Of Issues With Order Of 1/11/2017" filed January 19, 2018, "Notice Of Failure To Serve Order Of 12/27/2017 And Unavailability Online" filed 1/19/2018, and "Notice Of FL Attorney General Concerning The Corruption In This Case And To Allow Plaintiff An Opportunity To Opine" filed January 21, 2018.

The notices are not properly filed motions requesting relief of the Court with legal arguments and legal support, but merely expressions of Defendant's complaints, and are therefore inappropriate, unauthorized, and an abuse of the process.

Accordingly, it is

ORDERED AND ADJUDGED that the "notices" are STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING SUCCESSIVE MOTIONS

THIS CAUSE comes before the Court on Defendant's "Motion To Set Forth Findings" filed January 19, 2018, "Motion To Set Forth Findings" filed January 19, 2018, "Motion To Vacate/Strike All Orders Issued Without Participation And Consent Of The Plaintiff" filed January 19, 2018, "Motion To Allow The State To Opine" filed January 19, 2018, "Motion To Dismiss – State's Attorney Did Not Bring This Litigation And Is Not A Proper Party" filed January 19, 2018, "Motion To Remand Back To Circuit Court" filed January 21, 2018, "Motion To Allow Plaintiff An Opportunity To Opine" filed January 21, 2018, "Motion To Vacate 'Administrative Transfer'" filed January 21, 2018, "Motion To Restore State's Right to Prosecutorial Discrerion [sic]" filed January 21, 2018, "Motion To Dismiss" filed January 23, 2018, "Motion For Contempt Of Rule 9027 Removal To The U.S. Bankruptcy Court" filed January 23, 2018, and "Motion To Vacate All Acts In Violations Of Rule 9027" filed January 23, 2018.

The Court has already ruled on the issues raised in these motions, and the motions are successive.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS REGARDING SERVICE AND FILING

THIS CAUSE comes before the Court on Defendant's "Motion To Strike Orders Not Served Upon Defendant" filed January 18, 2018, "Motion To Strike Show Cause Order As Fraud Upon The Court" filed January 18, 2018, "Second Brady Motion" filed January 18, 2018, "Motion To Vacate Order Of 12/27/2017" filed January 19, 2018, "Motion To Dismiss Re: Court Error In Show Cause Order" filed January 19, 2018, "Motion For Court To Produce The Name Of The Person Who Modified Judge Krier's 6/5 Order" filed January 21, 2018, "Motion To Strike/Vacate Show Cause Order" filed January 21, 2018, and "Motion To Compel Clerk To File Motions/Papers Under The ADA" filed January 23, 2018. These pleadings all refer to Defendant's complaints about service or filing of pleadings by the Clerk's office. If Defendant has issues with the service or filing of documents, he must bring such complaints up to the Clerk of Court, who is responsible for such actions. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: C Haycock
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS

THIS CAUSE comes before the Court on the Defendant's: "Emergency Motion To Vacate Protective Orders" filed September 20, 2017, "Motion For Order To Show Cause As To Why The State's Attorney Should Not Be Found In Contempt" filed September 22, 2017, "Motion To Forward Obstruction Of Justice Charges To State's Attorney" filed September 23, 2017, "Motion To Forward Complaint For Assault And Trespassing To State's Attorney For Prosecution" filed September 23, 2017, "Motion For Order To Show Cause As To Why The LCSO Deputy Who Ejected Huminski From The 9/22 Hearing Should Not Be Held In Contempt Of This Court" filed September 23, 2017, "Emergency Motion For Protective Order Against LCSO Entrapment Schemes" filed September 23, 2017, "Motion To Strike Order To Strike Of 8/22" filed September 23, 2017, "Motion To Vacate Assignment Order" filed September 25, 2017, "Emergency Motion To Schedule Motions Hearing and To Forward Felony Obstruction Of Justice By LCSO To FDLE" filed September 27, 2017, "Motion To Vacate Pre-Trial Order and Protective Orders As Unconstitutional per Stipulation" filed October 2, 2017, "Motion To Vacate Recusal Order As Illegitimate" filed October 3, 2017, "Motion To Dismiss – Obstructive Protective Orders – Witness Intimidation And Tampering" filed October 6, 2017, "Motion To Dismiss For Want Of Procedural And Substantive Due Process" filed October 14, 2017, "Motion

To Vacate Pre-Trial And Protective Orders That Constitute Obstruction Of Justice Re: Federal Court Proceedings" filed October 20, 2017, "Motion To Dismiss For Violation Of Confrontation Clause" filed December 22, 2017, "Motion To Dismiss" filed December 22, 2017, "Motion To Dismiss – Fraud Upon The Court" filed December 28, 2017, "Corrected Motion For Disqualification Of State's Attorney" filed December 29, 2017, "Motion Of Intent To Seek Interlocutory Appeal" filed December 29, 2017, "Motion For Brady Production Of Documents" filed January 4, 2018, "Motion For Order To Show Cause As To Why Sheriff Scott Should Not Be Held In Criminal Contempt" filed January 4, 2018, "Motion To Stay Pending disposition of Rehearing En Banc" filed January 4, 2018, and "Pre-Trial Omnibus Motion And Request For Hearing" filed January 9, 2018.

The above motions are either duplicates, unauthorized, facially and legally insufficient, procedurally barred, or moot.

Accordingly, it is

ORDERED AND ADJUDGED that the above referenced motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,
Plaintiff,
vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,
Defendant.
_____/

ORDER DENYING MOTION TO DISQUALIFY JUDGE

THIS CAUSE comes before the Court on Defendant's "Motion To Enjoin Judge Adams From Further Acting As An Advocate For The State," filed January 23, 2018, which the Court will treat as a successive motion to disqualify. Having reviewed the motion in accordance with Fla. R. Jud. Admin. 2.330, it is

ORDERED AND ADJUDGED that Defendant's motion to disqualify is DENIED, as legally insufficient.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished to: **Scott Huminski**, 24544 Kingfish St., Bonita Springs, FL 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL 33902-0399; and **Court Administration (XIV)**, 1700 Monroe St., Ft. Myers, FL 33901; this 30 day of January, 2018.

LINDA DOGGETT
CLERK OF COURT
By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CRIMINAL ACTION**

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTION TO STAY PROCEEDINGS

THIS CAUSE comes before the Court on Defendant's "Motion To Stay Pending Circuit Court's Ruling On Motion To Vacate Sheriff Scott's Protective Order" filed January 21, 2018. The Court is not required to stay proceedings unless directed to do so by a higher court.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion to stay is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CRIMINAL ACTION**

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DISMISSING MOTION FOR CASE FILES

THIS CAUSE comes before the Court on Defendant's "Motion To For Case Files And All Work Product From Prior Counsel And Agreement To Pay Fees" filed January 19, 2018. Defendant must direct such request to prior counsel, not the Court.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion for case files is DISMISSED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,
Plaintiff,
vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,
Defendant.
_____/

ORDER DENYING MOTIONS TO DISQUALIFY JUDGE

THIS CAUSE comes before the Court on Defendant's "Motion To Recuse Or Disqualify Judge Adams," filed January 19, 2018, and "Motion For Sanctions Against Judge Adams" filed January 21, 2018, which the Court will treat as successive motions to disqualify. Having reviewed the motions in accordance with Fla. R. Jud. Admin. 2.330, it is

ORDERED AND ADJUDGED that Defendant's motions to disqualify are DENIED, as legally insufficient.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished to: **Scott Huminski**, 24544 Kingfish St., Bonita Springs, FL 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL 33902-0399; and **Court Administration (XIV)**, 1700 Monroe St., Ft. Myers, FL 33901; this 30 day of January, 2018.

LINDA DOGGETT
CLERK OF COURT
By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTION TO ADOPT AUTHORITY

THIS CAUSE comes before the Court on Defendant's "Motion To Adopt Authority Re: Huminski Courthouse Banishment" filed January 12, 2018. Pursuant to the order entered on September 22, 2017 granting the stipulated motion modifying Defendant's pretrial release conditions, Defendant is able to attend court proceedings or report crimes. The motion is moot.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion to adopt authority is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTION FOR TRANSCRIPT OF BANKRUPTCY HEARING

THIS CAUSE comes before the Court on Defendant's "Motion For Transcript U.S. Bankruptcy Hearing" filed January 23, 2018. This Court has no jurisdiction over the federal court. Defendant must seek transcripts of bankruptcy court proceedings with the federal court.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion for transcript is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CRIMINAL ACTION**

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION FOR SUBPOENA

THIS CAUSE comes before the Court on Defendant's "Motion For Subpoena" filed January 21, 2018. A motion to the Court is not the proper procedure to obtain or issue a subpoena.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion for subpoena is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30 day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CRIMINAL ACTION**

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTION TO VACATE

THIS CAUSE comes before the Court on Defendant's "Motion To Vacate Any Orders Punishing Huminski For Symptoms Of His Disabilities" filed January 19, 2018. No such orders have been entered.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is DENIED, as moot.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CRIMINAL ACTION**

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION TO COMPEL

THIS CAUSE comes before the Court on Defendant's "Motion To Compel Judicial Assistant 'Lisa' To Schedule A Motions Hearing and Address Huminski's Trial Subpoena Requests" filed January 17, 2018. Defendant is not entitled to hearings on motions when the Court determines a hearing will not assist the Court in deciding the matter. Further, attempting to request subpoenas through a judicial assistant is not the proper procedure to obtain or issue a subpoena. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion to compel is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 30th day of January, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR CLERK TO SUPPY TRANSCRIPT OF 6/29 HEARING AS AN ADA ACCOMMODATION
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

The transcript is critical to Huminski's defense that Judge Krier lied at hearing, she was operating pursuant to an ex parte contact and that the hostility and animus was apparent and it was later confirmed by recusal. Huminski already has the audio which he will play at trial to give the jurors the sense of the meltdown Judge Krier had that was obviously the basis for the courthouse banishment.

Obeying orders is not always appropriate if we look at situations like the holocaust and the Mai Lai massacre in Vietnam and police misconduct in the South during the civil right era. Clearly not all orders need to be obeyed as set forth in exceptions to the collateral bar rule. Some orders should be deliberately disobeyed.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 29TH day of January, 2018 to all parties and to D. Howells and B. Dean.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO CORRECT DOCKET – JUDGE GENTILE NEVER PRECIDED OVER ANY HEARINGS IN THIS MATTER - AS AN ADA ACCOMMODATION
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

The listing of Judge Gentile as presiding in hearings in this case is FALSE and this appears to be a circuit wide problem. Judge Gentile is listed as presiding in dozens of cases he never presided over that were former cases assigned to Judge Krier.

In some instances, Judge Gentile is listed as presiding over cases before he became a Judge. These vast inaccuracies in Court supplied information confuses the disabled Huminski and makes his legal research and other inquiries into this matter exceedingly prejudicial and unnecessarily difficult in violation of the ADA.

The Circuit Court should order the clerk to correct the wholesales inaccuracies set forth in the online docket. In the instant matter, Judge Krier refused to serve an order and directed the parties to look online. See attached order. Not only does this violate Due Process and confirm her vast conflict of interest in this matter, it forces litigants to rely upon the online court data to be accurate and it is obviously not. See also attached docket hearing listing Judge Gentile in the instant matter, patently erroneous. Vast inaccuracies such as this, especially when the Court refuses to serve an order, prejudice the disabled and reveal the hostility, animus and improper

motives of Judge Krier (a judge's refusal to serve a Court order is unprecedented and the epitome of a *per se* Due Process violation) supporting Huminski's prior request to vacate all orders of Judge Krier. The Court's ADA coordinator has refused to correct court data in contempt of this Court's administrative orders concerning ADA compliance. The previously filed motion for contempt should be granted.

Dated at Bonita Springs, Florida this 30TH day of January, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

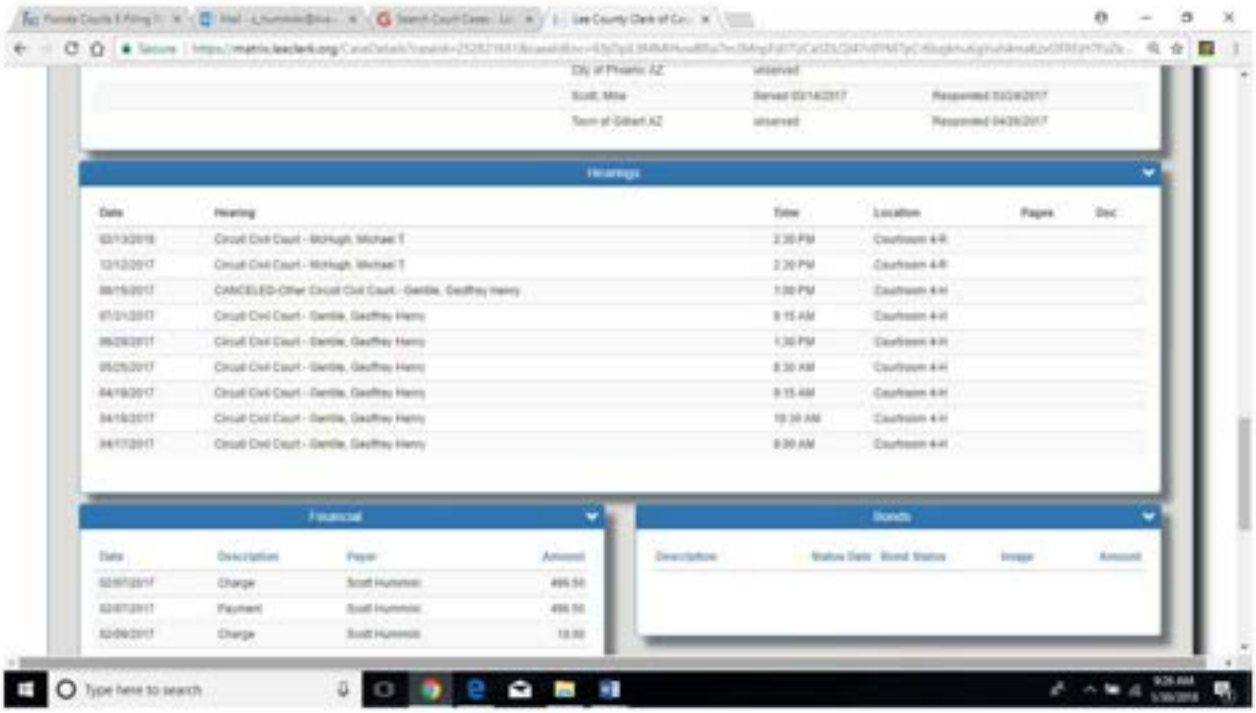
Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 30TH day of January, 2018 to all parties.

-/s/- Scott Huminski

Scott Huminski

Attachments:



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

Huminski, Scott et al
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421

Judge: Elizabeth V Krier

DENYING

ORDER ~~GRANTING~~ PLAINTIFF'S MOTION TO DISMISS

THIS MATTER comes before the Court upon the Plaintiff's Motion to Dismiss and the Court having reviewed the motion, and court file, it is hereby:

ORDERED AND ADJUDGED as follows:

The Motion is ~~**GRANTED and this action is Dismissed.**~~ Denied. Plaintiff has filed a bankruptcy Case. There is an automatic Stay in the Civil Case (NOT in the related criminal case) once the (*) Bankruptcy case has been dealt with, this Court may dismiss this Case.

DONE AND ORDERED this 18th day of July, 2017, in Lee County Florida.

Elizabeth V. Krier, Circuit Judge

Copies: Plaintiff and Defendant shall pull their respective copies from the Lee Clerk's Court Records Online Access

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF SETTLEMENT DEMAND CONCERNING ALL CLAIMS/All PARTIES
AND
TO ALLOW THE STATE TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, notices as above.

As when this case began, Huminski only seeks to end the death threats transmitted via U.S. Mail to him by Trevor Nelson of Glendale/Scottsdale AZ. If the parties can cooperate, this issue can be solved quickly with the cooperation of their police departments. This litigation doesn't need to continue if law enforcement only endeavors to do their jobs. Huminski will even dismiss the false arrest claims against Gilbert and other issues if Nelson is captured and prosecuted. He also engaged in impersonation of Gilbert Police Officer Ryan Pillar in his elaborate terror scheme. The self-adhesive envelopes/stamps have undisputed environmental evidence such as pollen, dust, mold spores and other which identify with seasonal accuracy that the origin of the letters was Arizona specifically, "the Valley".

Nelson has admitted to Glendale AZ police that he blames Huminski for the suicide of his father, Justin M. Nelson. (Obituary, died at 36 http://www.rivernewsonline.com/main.asp?SectionID=3&SubSectionID=28&ArticleID=57106) Once defendants pick up Nelson and polygraph him and arrest and prosecute him, Huminski will not have to continue to seek justice in this matter via attempting to access all information the defendants have concerning the interstate

transmission of terrorist death threats by Nelson and others. Full investigation of Trevor Nelson will shine light on the interstate transmission of terrorist death threats. Obviously, an issue of supreme importance to Huminski. As Nelson began his terrorist activities when he was 15/16 years old, this case should not be hard to crack.

The last communication from Nelson was in December, 2017. Nelson has a propensity for violence and Huminski and his wife fear for their lives and instead of resorting to street justice, this matter can and will provide them evidence to obtain a protective order against Nelson eventually. Huminski does not have the evidence yet to seek redress against Nelson directly. See Nelson First Death threat at (https://www.youtube.com/watch?v=-dJYlLMBLVk).

In these times of disturbing mass shootings and domestic terrorism, Sheriff Scott should not applaud the terrorist conduct of Trevor Nelson.

Dated at Bonita Springs, Florida this 29TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 29TH day of January, 2018 to all parties and to D. Howells and B. Dean.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO REFER OFFICIAL CRIMES OF HON. JAMES ADAMS TO THE JUDICIAL QUALITICATIONS COMMISSION
AND
TO ALLOW THE STATE'S ATTORNEY TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

It is beyond dispute that Judge Adams and his staff printed out the 6/5 show cause order of Judge Krier in the Circuit Court on 6/30, hand modified it and then filed the doctored copy as a legitimate original in County Court on 6/30. This constitutes a conspiracy to commit fraud, forgery and obstruction of justice related to the fraudulently manufactured order. The 6/30 hand-written order modifications can be traced to Judge Adam's staff.

When questioned at hearing on 9/22 concerning the non-existence of Judge Krier's recusal order in County Court. Judge Adams conspired with his staff to dig up a non-original copy of a copy of the order and then file it back-dated to 8/14 to fraudulently add legitimacy to the 8/15 hearing. Criminal intent is clear from the choice of the date of the back-dating.

This conduct pales the previous reprimand Judge Adams received from the Florida Supreme Court. All this crime was intended to secure a wrongful conviction of Huminski. Huminski notes that the State's Attorney has refused to participate in the bogus County Court proceedings of Judge Adams initiated by fraud. Indeed, Judge Adams has prevented the participation by the State in the County Court case

by denying all defense motions prior to response from the State. It is apparent this is good old-fashioned southern attempt to railroad an indigent and disable citizen in Lee County, just like the old days of the civil rights era, now the target is the disabled. Official civil rights violations in Florida should not be allowed to return to the situation of over 40 years ago. Florida has a dark past with regard to civil rights and liberties which seems to be sneaking back into the Courts. General Lee would be proud.

Dated at Bonita Springs, Florida this 30TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 30TH day of January, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	FOR FILING IN BOTH CASES
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR ISSUANCE OF A SUBPOENA FOR HON. JAMES ADAMS TO APPEAR AT HEARING AND EXPLAIN THE CRIMES HE HAS ENGAGED IN AGAINST THE JUSTICE SYSTEM
AND
TO ALLOW THE STATE'S ATTORNEY TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Huminski refers to the pending motions and docket entries in County and Circuit Court which undisputable evidence a prima facie case of official corruption and crime.

Dated at Bonita Springs, Florida this 30TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 30TH day of January, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTIONS FOR JURY TRIAL

THIS CAUSE comes before the Court on Defendant's "Demand For Jury Trial" filed October 5, 2017, and "Jury Trial Demand" filed December 28, 2017. A defendant is entitled to a jury trial in an indirect criminal contempt proceeding when a sentence of more than six months of imprisonment will be imposed. Wells v. State, 654 So. 2d 146 (Fla. 3d DCA 1995). The Court has not determined sentence. However, the Court will not impose an incarcerative portion of the sentence which is more than six months in jail. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions for jury trial are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 30 day of January, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 31 day of Jan, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTION FOR HEARING ON FEDERAL REMOVAL

THIS CAUSE comes before the Court on Defendant's "Motion For Evidentiary Hearing Concerning The Federal Removal Of This Matter" filed January 24, 2018. This motion is successive, as the Court has already ruled on this issue.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 1 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 1ST day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: Melissa Kelly
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,
Plaintiff,
vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,
Defendant.
_____/

ORDER DENYING MOTIONS TO DISQUALIFY JUDGE

THIS CAUSE comes before the Court on Defendant's three "Motion To Disqualify Judge," filed January 26, 2018, which the Court will treat as successive motions to disqualify. Having reviewed the motions in accordance with Fla. R. Jud. Admin. 2.330, it is

ORDERED AND ADJUDGED that Defendant's motions to disqualify are DENIED, as legally insufficient.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 1 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished to: **Scott Huminski**, 24544 Kingfish St., Bonita Springs, FL 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL [redacted] and **Court Administration (XIV)**, 1700 Monroe St., Ft. Myers, FL 33901; this 1st day of February, 2018.

LINDA DOGGETT
CLERK OF COURT
By: Marissa Kelly
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION FOR ADA ADVOCATE

THIS CAUSE comes before the Court on Defendant's "Motion To For Appointment Of ADA Advocate" filed January 19, 2018. Defendant has demonstrated no entitlement to appointment of an ADA advocate.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 1 day of February, 2018.

James Adams
James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 1st day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: Marcia Kelly
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION TO VACATE ORDERS AND MOTION TO ALLOW STATE ATTORNEY PARTICIPATION

THIS CAUSE comes before the Court on Defendant's "Motion Vacate Orders Issued On Or About 1/18/2017 – Failure To Serve And Service Fraud And To Allow The State To Respond To Defense Motions, The Court Is Not A Party" and "Motion To Allow The State's Attorney To Participate" filed January 26, 2018. These motions are successive, as the Court has already ruled on these issues. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 1 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 1ST day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: Maureen Kelly
Deputy Clerk

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STRIKE TRIAL DATE – COURT SABOTAGED SIXTH AMENDMENT RIGHTS
AND
TO ALLOW THE STATE'S ATTORNEY TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Huminski has seen over 10 attorneys for representation. They all denied representation because they did not have time to prepare.

Had the Court given the 90 days he requested for trial, Huminski would have counsel by now. The 1/8/2017 stripping Huminski of counsel and trial a month later sabotaged Huminski's right to counsel assures a wrongful conviction. This conduct belongs in North Korea or Nazi Germany.

Huminski is being railroaded by the Court into a wrongful convection.

Dated at Bonita Springs, Florida this 30TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 30TH day of January, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VIEW DEFENSE CASE FILES
AND
TO ALLOW THE STATE'S ATTORNEY TO RESPOND TO DEFENSE MOTIONS, THE COURT IS NOT A PARTY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Huminski had counsel for six months and request to view the defense case files in the public defender and conflict counsel's office. Huminski will take photos of the various documents he does not already have. Huminski has the right to access the extensive six months of expert legal work. If they prefer, Huminski will pay for any case file materials not already available to the public online.

Dated at Bonita Springs, Florida this 30TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 30TH day of January, 2018.

-/s/- Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR ISSUANCE OF SUBPOENA TO ACCUSERS, SHERIFF SCOTT, JUDGE KRIER, TRIP ALDER AND JASON BENTLEY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Subpoena's can only be issued by attorneys or a court clerk. Huminski is properly moving for an order to issued directing the above persons appear at trial.

Dated at Bonita Springs, Florida this 1st 30TH day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 1st day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR ISSUANCE OF AN ORDER TO CLERK TO ISSUE SUBPOENAS TO ACCUSERS, SHERIFF SCOTT, JUDGE KRIER, TRIP ALDER AND JASON BENTLEY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Subpoena's can only be issued by attorneys or a court clerk. Huminski is properly moving for an order to issue directing the clerk to issue subpoenas requiring the above persons appear at trial. Rule 3.361.

Dated at Bonita Springs, Florida this 1st 30TH day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 1st day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF REQUEST TO CLERK FOR SIXTH AMENDMENT CONFRONTATION SUBPOENAS

From: scott huminski <scott.huminski@hotmail.com>
Sent: Thursday, February 1, 2018 9:14 PM
To: DoITServiceDesk@LeeClerk.org; RMiller@LeeClerk.org; Info_InternalAudit@leeclerk.org; mtesta@leeclerk.org; JBUNTING@leeclerk.org; ldoggett@leeclerk.org; Info_appeals@leeclerk.org
Subject: Please issue subpoenas case 17-mm-815

I moved for an order from the trial judge, but, it looks like you can supply the subpoenas directly. Thank you -- scott huminski 24544 Kingfish Street, bonita springs FL 34134 239 300 6656

MOTION FOR ISSUANCE OF AN ORDER TO CLERK TO ISSUE SUBPOENAS TO ACCUSERS, SHERIFF SCOTT, JUDGE KRIER, TRIP ALDER AND JASON BENTLEY

-

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Subpoena's can only be issued by attorneys or a court clerk. Huminski is properly moving for an order to issue directing the clerk to issue subpoenas requiring the above persons appear at trial. Rule 3.361.

Dated at Bonita Springs, Florida this 1st 30TH day of February, 2018.

-/S/- Scott Huminski

———

Dated at Bonita Springs, Florida this 1st 30TH day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 1st day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS TO DISQUALIFY JUDGE

THIS CAUSE comes before the Court on Defendant's"Motion To Disqualify Judge" filed January 27, 2018, "Motion For Preliminary Injunction Against Hon. James Adams" filed January 28, 2018, "Motion To Disqualify Hon. James Adams" filed January 28, 2018, "Motion To Disqualify Judge" filed January 28, 2018," Motion To Refer Sheriff Scott And Hon. James Adams to The Attorney General For Investigation/Prosecution" filed January 28, 2018, "Motion For Order To Show Cause Why Hon. James Adams Should Not Be Held In Civil/Criminal Contempt" filed January 28, 2018, and "Motion To Refer Official Crimes Of Hon. James Adams To The Judicial Qualifications Commission" filed January 30, 2018, which the Court will treat as successive motions to disqualify. Having reviewed the motions in accordance with Fla. R. Jud. Admin. 2.330, it is

ORDERED AND ADJUDGED that Defendant's motions to disqualify are DENIED, as legally insufficient.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 2 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished to: **Scott Huminski**, 24544 Kingfish St., Bonita Springs, FL 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL 33902-0399; and **Court Administration (XIV)**, 1700 Monroe St., Ft. Myers, FL 33901; this 2nd day of February, 2018.

LINDA DOGGETT
CLERK OF COURT

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CRIMINAL ACTION**

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION FOR SUBPOENA

THIS CAUSE comes before the Court on Defendant's "Motion For Subpoena Of The Public Defender And Conflict Counsel" filed January 28, 2018. A motion to the Court is not the proper procedure to obtain or issue a subpoena.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion for subpoena is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 2 day of February, 2018.

James Adams

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 2nd day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: Melissa Kelly
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER STRIKING NOTICE OF SETTLEMENT DEMAND

THIS CAUSE comes before the Court on Defendant's "Notice Of Settlement Demand" filed January 30, 2018. There is no provision for settlement demand in a criminal case. The only settlement is a negotiated plea agreement with the State, or an open plea to the Court.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's notice of settlement demand is STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 2 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 2nd day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO HOLD IN ABEYANCE or DISMISS WHILE CHIEF JUDGE MCHUGH DECIDES ON THE VALIDITY OF SHERIFF SCOTT'S PROTECTIVE ORDER

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski has filed motions in the Circuit Court seeking to declare the protective order of Mike Scott Void Ab Initio. This would end any criminal litigation. Choosing to continue this matter when its basis is under collateral attack is frivolous and an abuse of process. As no jurisdiction exists regarding this case, the entire matter is frivolous, vexatious and an abuse of process. The State's Attorney should be sanctioned. The Circuit Court was never divested of jurisdiction, more sloppy justice.

Dated at Bonita Springs, Florida this 2nd day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 2nd of February, 2018.

-/s/- Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF SUBPOENA REQUEST TO CLERK RE: U.S. POSTAL INVESTIGATOR, MARC CAVIC

NOW COMES, Scott Huminski ("Huminski"), and, notices as above.

From: scott huminski <s_huminski@live.com>
Sent: Friday, February 2, 2018 7:26 AM
To: scott huminski; DoITServiceDesk@LeeClerk.org; RMiller@LeeClerk.org; Info_InternalAudit@leeclerk.org; mtesta@leeclerk.org; JBUNTING@leeclerk.org; ldoggett@leeclerk.org; Info_appeals@leeclerk.org; mdcavic@uspis.gov
Subject: Please issue subpoenas case 17-mm-815 to Mr. Cavic

Hi I also need a subpoena fot U.S. Postal Inspector Marc Cavic to appear at trial. -- scott huminski

Dated at Bonita Springs, Florida this 30TH day of Janu ary, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – CLERK REFUSES TO PROVIDE HUMINSKI WITH STAMPED SUBPOENAS FOR SERVICE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The Clerk refuses to provide Huminski stamped copies of Subpeonas so he can serve them.

This violates Due Process. The Court has denied Huminski's motion for issuance of subpoenas leaving this case to be a show trial railroading worthy of the *ole south*.

This Court has no jurisdiction, jurisdiction was never divested from the Circuit Court. Law school 101. Huminski has never captioned his motions in County Court as no County Court matter exists. This entire matter is void ab initio as it was brought in the absence of all jurisdiction.

Dated at Bonita Springs, Florida this 2nd day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 2nd of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE ORDER STRIKING SETTLEMENT DEMAND – IN CIRCUIT COURT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The notice of settlement demand is and was strictly a civil motion. It was only filed in the criminal court as a courtesy to the defendants in the civil matter. This Court has no jurisdiction to strike anything before Judge McHugh. This is disrespectful to the authority and jurisdiction of a court of superior jurisdiction. This Court's ruling is in contempt of the Circuit Court concerning civil filings.

Dated at Bonita Springs, Florida this 2nd day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 2nd of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS - DENIAL OF BILL OF PARTICULARS IS UNLAWFUL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The denial of Huminski's Bill of Particulars is unlawful under Rule 3.830.

> (b) Motions; Answer. The defendant, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer the order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the judge. A defendant's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

The Court enunciated zero legitimate reason for denial of statement/bill of particulars other than to advance this witch hunt. Denial of motions because the Court wishes to conduct a show trial, railroad the defendant and wrongfully convict him, fails as an adequate reason to deny a bill of particulars.

Dated at Bonita Springs, Florida this 2nd day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 2nd of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

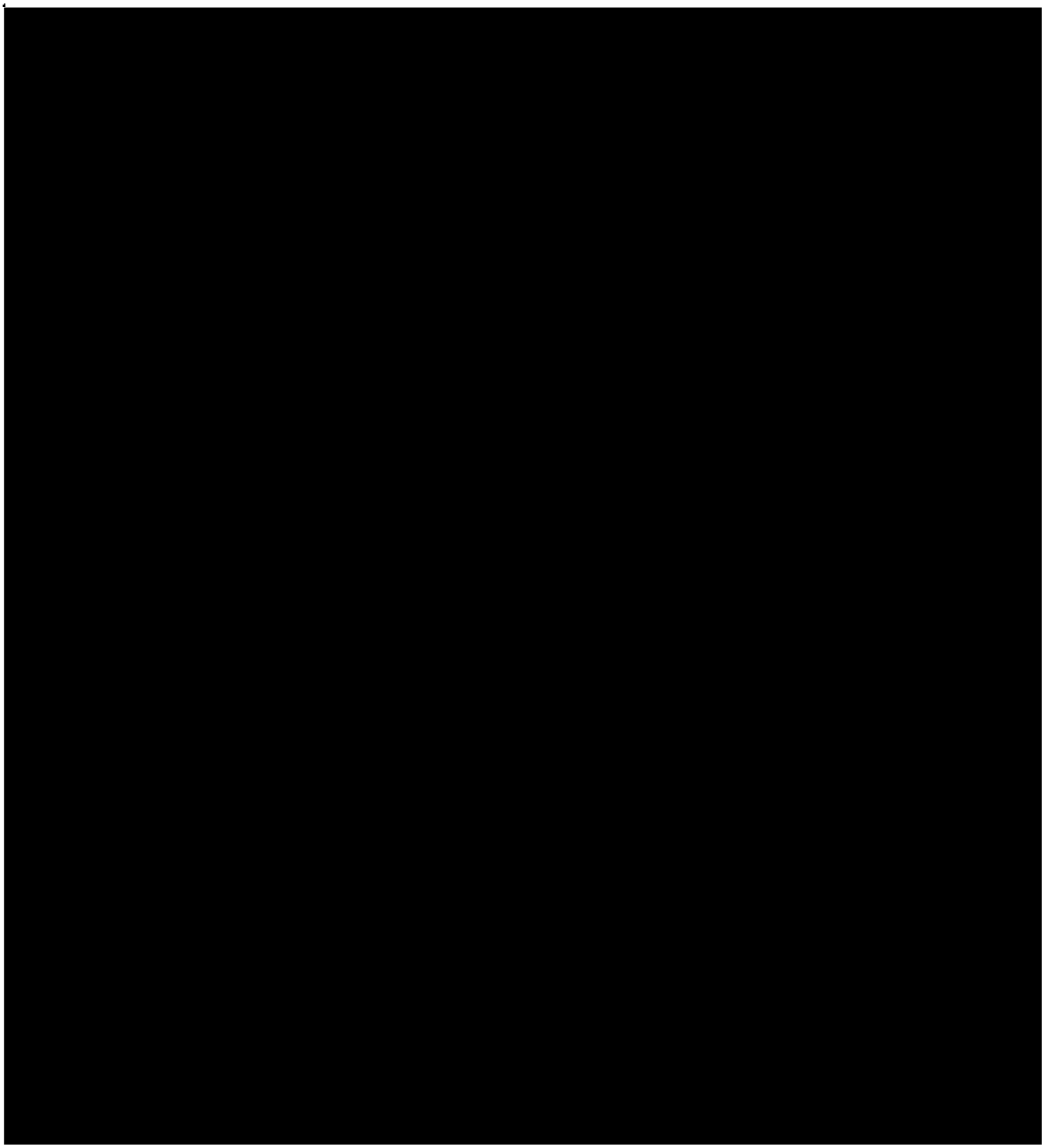
SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

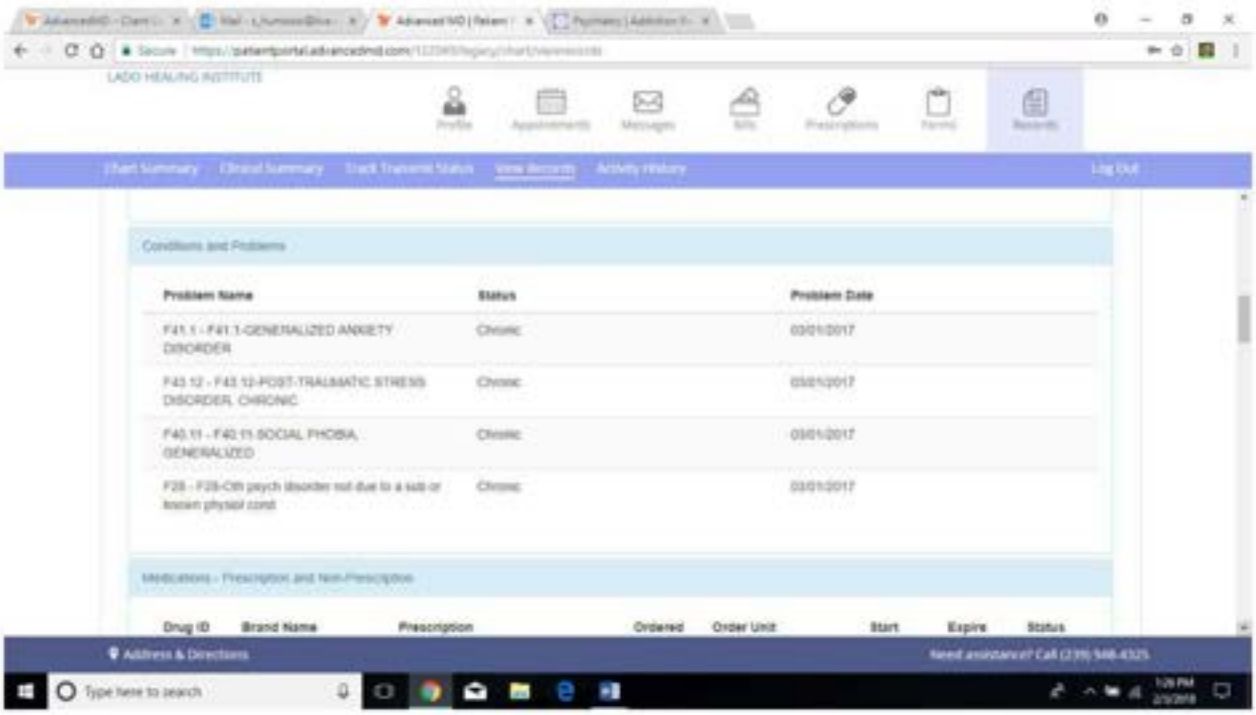
MOTION TO DISMISS – DEFENDANT IS NOT COMPETANT TO ACT AS HIS OWN ATTORNEY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski has no training in the law and this Court is not a medical doctor. Aside from having no idea how to run a criminal trial the [redacted] of Dr. Lado, MD, Rph, ABPN disagrees with this Court's stripping Huminski of counsel and forcing him to conduct his own trial as Huminski's medical conditions will create a wrongful criminal conviction because he has no idea of how to present a criminal defense at trial. The stripping the fully disabled Huminski of counsel intentionally converts any trial to a show trial, railroading the uneducated and disabled defendant. The Court's denial of Huminski's access to his defense files from former counsel ensures a wrongful conviction as defense counsel had information assuring acquittal in their files. This show trial envisioned by the court is nothing less than a modern day good ole boy lynching in the deep south. This terrorizing of disabled Florida citizens is the new discrimination flourishing in Florida and the deep south that police and courts have embraced and derive pleasure from, just like a lynching.

This Court's refusal to allow the Mental Health Court to handle this case affirms the extreme bigotry of this Court against the disabled. Official bigotry was allegedly over in Florida over 40 years ago, this Court has revealed that is alive and well in the corrupt courts. Huminski spent most of his life in New England, this discrimination alive and well in Florida is a shock to him. Purportedly this official

misconduct ended in the South after the civil rights era, not in Florida courts where judges practice of extreme discrimination and lawlessness is the status quo. Just like a crooked prosecutor, this Court will do anything to secure a wrongful conviction.





The State sponsored terrorism against the disabled has got to end.

Dated at Bonita Springs, Florida this 2nd day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – JUDGE ADAMS SABOTAGED THE RIGHT TO COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski was stripped of counsel and trial was set for the next month.

With money from family Huminski has consulted with 10 attorneys and all of them refused to take the case because THEY DID NOT HAVE ENOUGH TIME TO PREPARE. If expert counsel can not prepare in the time allowed by the Court, HOW IN THE WORLD CAN THE DISABLED UNEDUCATED HUMINSKI PREPARE, especially when the Court forbid his access to defense case files from his previous attorneys who had worked on the case for six months.

Dated at Bonita Springs, Florida this 2nd day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

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In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-MM-815
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

*****courtesy copy only, for service, original filed in Circuit Court*****

PETITION FOR WRIT OF MANDAMUS/PROHIBITION OR OTHER EXTRAORDINARY REMEDY OR ALL WRITS

NOW COMES, Scott Huminski ("Huminski"), and, petitions under the above writs or other extraordinary writ to prohibit the County Court from proceeding with the collateral criminal case because this Court had jurisdiction and was never divested of jurisdiction over the criminal matter. The County Court illegally seized jurisdiction with a doctored show cause order, not a legitimate original order.

Dated at Bonita Springs, Florida this 2nd day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
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(239) 300-6656
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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA
vs.
SCOTT ALAN HUMINSKI

CASE NO: 17-MM-000815 - (JRA) (AWK)

ANSWER TO DEMAND FOR DISCOVERY

COMES NOW the STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, pursuant to Defendant's Notice of Discovery, and pursuant to Fla. R. Crim. P. 3.220, and submits the following information.

1. The names and addresses of all persons known to the prosecutor to have information which may be relevant to the offenses charged, and to any defense with respect thereto, are as follows:

   + — indicates victim
   * — indicates witness is under the age of 18

Detective Richard T. White, Lee County Sheriff's Office, Fort Myers, FL 33912 Category A

Together with any other persons named in any investigative or laboratory reports or other documents furnished in compliance with Discovery Rules.

All court filings from Lee County Court Case 17-MM-00815 and 17-CA-000421

2. An affirmative response will appear below for each subparagraph listing items in the State's possession or control.
   a. ☐ Material or information provided by confidential informant, the name(s) of confidential informant(s) will *NOT* be supplied unless the state intends to use same as witness(es) at the trial or unless required by court order after notice and hearing.
   b. ☐ Electronic surveillance of premises of accused or of conversations to which accused was a party. (Documents relating thereto.)
   c. ☐ Search and seizure. (Documents relating thereto.)
3. All tangible papers, objects and statements provided under Fla.R.Crim.P.3.220(b) may be inspected, photographed or tested, upon signed receipt for same during the regular and ordinary business hours at

   a. State Attorney's Office, Fort Myers.

   And/or

b. Lee County Sheriff's Office

Certificates of Assurance for the applicable Alcohol Reference Solution and all relevant intoxilyzer documentation may be inspected, copied, tested, or photographed at the office of the State Attorney, 20th Judicial Circuit. Please provide the undersigned 48 hours (excluding weekends and holidays) written notice of the time you will appear for inspection of the documents.

Certificates of Assurances for the applicable Alcohol Reference Solutions are maintained by the Florida Department of Law Enforcement in Tallahassee but are available online at https://www.fdle.state.fl.us/cms/Alcohol-Testing-Program/Intoxilyzer-8000-Records.aspx Intoxilyzer records, including inspection data, are available in the public records section in the Alcohol Testing Program portion of the FDLE website available online at the above listed web address.

Please give the undersigned 48 hours (excluding weekends and holidays) written notice of the time you will appear for inspection of the disclosures herein.

This document serves as authorization for the attorney for the defendant or his designated representative, to conduct the said discovery of tangible papers, objects and statements in the above-styled cause, with reference to:

Agency Number: Lee County Sheriff's Office

4. The State has herein submitted its witness list and expects the defense to submit its witness list, with names and addresses, within fifteen (15) days as provided in R.Cr.P.3.220(d)(1), or promptly upon receipt of such information. Please notify the undersigned Assistant State Attorney within fifteen (15) days, or promptly upon receipt of such information, whether you have in your possession or control any of the following:

   a. The Statement of any person whom the Defendant expects to call as a witness at a trial or hearing.

   b. Reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.

   c. Any tangible papers or objects, which the Defendant intends to use in a hearing or trial.

AWK:bh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Discovery Disclosure has been furnished to Zachary Miller, Attorney for the Defense, Office of Criminal Conflict & Civil Regional Couns, 2101 McGregor Boulevard, Suite 101, Fort Myers, FL 33901, by United States Mail/Hand Delivery/Electronic Transmission this February 5, 2018.

STEPHEN B. RUSSELL
STATE ATTORNEY

BY: /s/ Anthony W. Kunasek
Anthony W. Kunasek
Assistant State Attorney
Florida Bar Number 0026999
2000 Main Street, 6th Floor
Fort Myers, Florida 33901
(239) 533-1000
eService: ServiceSAO-LEE@sao.cjis20.org

AWK:BH

AWK:bh

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF AFFIRMATIVE DEFENSE AT TRIAL SIXTH AMENDMENT ASSISTANCE OF COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, notices as above. After arraignment, assigned counsel filed three waivers of arraignment which evidences the lack of knowledge of defense counsel concerning basic case information, counsel should have been appointed for Huminski pursuant to the Sixth Amendment. Huminski should not have been punished for issues with counsel such as the filing of three waivers of arraignment after arraignment had already taken place. This was errors and omissions that concerned Huminski.

The Court also denied Huminski's review of defense case files from former counsel which prevents Huminski from benefiting from research, investigation and strategies developed by counsel prior to their departure from the case. This too violates the Sixth Amendment assistance of counsel requirement by forbidding Huminski's review of this case specific work product of his former defense counsel. This attempt to erase any benefit Huminski might glean from former work of defense counsel is inconsistent with the Sixth Amendment.

Dated at Bonita Springs, Florida this 6th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se

24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

attachments

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF AFFIRMATIVE DEFENSE AT TRIAL SIXTH AMENDMENT COMPULSARY PROCESS CLAUSE

NOW COMES, Scott Huminski ("Huminski"), and, notices as above. The denial of Huminski's motion for issuance of subpoenas violates the above clause to the Sixth Amendment.

As a corollary to the right of confrontation, the Sixth Amendment guarantees defendants the right to use the compulsory process of the judiciary to subpoena witnesses who could provide exculpatory testimony or who have other information that is favorable to the defense. The Sixth Amendment guarantees this right even if an indigent defendant cannot afford to pay the expenses that accompany the use of judicial resources to subpoena a witness (United States v. Webster, 750 F.2d 307 [5th Cir. 1984]). Courts may not take actions to undermine the testimony of a witness who has been subpoenaed by the defense. For example, a trial judge who discourages a witness from testifying by issuing unnecessarily stern warnings against perjury has violated the precepts of the Sixth Amendment (Webb v. Texas, 409 U.S. 95, 93 S. Ct. 351, 34 L. Ed. 2d 330 [1972]).

In the alternative, Huminski requests compulsory process for Trip Alder, Jason Bentley, Judge Krier, Sheriff Mike Scott and Judge Michael McHugh. Judge McHugh will testify as to how the Circuit Court was divested of jurisdiction in the criminal matter. There is not anything Huminski can find on the record which divests the Circuit Court of jurisdiction and the County Court's relying upon an

"administrative transfer" is not supported by any Rule, Statute or other Florida authority. The County Court's statements concerning the denial of Huminski's motions for issuance of subpoenas are unconstitutional.

Dated at Bonita Springs, Florida this 6th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

attachments

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In and for Lee County, Florida
- Civil/Criminal Division -

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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE SHERIFF SCOTT PROTECTIVE ORDER TO ALLOW HUMINSKI TO HAVE COMMUNICATION AND CONTACT WITH THIS WITNESS AT CRIMINAL TRIAL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above to the Circuit Court (filing in County Court as a courtesy and to provide service only). The County Court has no jurisdiction to deny this motion. Sheriff Scott is an essential witness for the defense and, at trial, Huminski needs to have contact and communication with the Sheriff during examination. Due Process and the Sixth Amendment confrontation and compulsory process clauses demand that Huminski be allowed to examine the Sheriff at trial free of the looming threats of arrest and prosecution which should have been vacated long ago as wildly vague and over broad. Had the County Court not stripped Huminski of counsel this motion would not have been filed. Stripping Huminski of counsel mandates Huminski engage in criminalized contact and communication with the Sheriff as his examination is necessary to Huminski's defenses. The Court can't have it both ways either it is a crime for Huminski to have contact and communication with Court security screeners and other sheriff staff banishing him from the courthouse or the order needs to be vacated. Either contact is forbidden or the order has zero tailoring to a legitimate governmental purpose in violation of the First Amendment.

The Sheriff will be asked many dispositive questions including why Huminski needed to be prohibited access to public safety services FOR LIFE and why Huminski

needed to be banished from the Lee courthouse for life. Why the sheriff has supported the 3 years of terrorist death threats sent to the Huminskis via U.S. Mail and electronic means by Trevor Nelson of Scottsdale, AZ. It is Huminski's belief that the wlldly broad and vague language of the protective order was not desired by the Sheriff, but, was an invention of his attorney without consent and approval by the Sheriff. The Sheriff will be asked why he should be sheltered by a court order that prohibits contact from his constituents and if, as a public servant, he should be open to contact and communication from his constituents and how he believes the First Amendment protects such speech. This is a sampling among other questions related to his receipt of materials from Huminski.

Dated at Bonita Springs, Florida this 6th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

RE-NEWED MOTION FOR THE ISSUANCE AND SERVICE OF SUBPOENAS UNDER SIXTH AMENDMENT COMPULSORY PROCESS CLAUSE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above for the issuance and service of subpoenas to appear at trial to Trip Alder, Jason Bentley, Judge Krier, Judge McHugh and Sheriff Mike Scott.

Both the confrontation clause and compulsory process clause mandate the Court issue an order for service of subpoenas upon the above witnesses.

The previous denial of a similar motion was patently unconstitutional.

Dated at Bonita Springs, Florida this 6th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

In The

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In and for Lee County, Florida
- Civil/Criminal Division -

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AND FOR THOSE SIMILARLY SITUATED,	)	
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

SUPPLEMENT TO RE-NEWED MOTION FOR THE ISSUANCE AND SERVICE OF SUBPOENAS UNDER SIXTH AMENDMENT COMPULSORY PROCESS CLAUSE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above for the issuance and service of subpoenas to appear at trial and to bring all materials related to the death threats Huminski has been receiving for 3 years to Mark Cavic, U.S. Postal Inspection Service.

Dated at Bonita Springs, Florida this 6th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

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In and for Lee County, Florida
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

BRADY MOTION TO DISCLOSE THE NAME OF THE PERSON WHO DOCTORED THE CIRCUIT COURT 6/5 SHOW CAUSE ORDER AND FILED IT IN COUNTY COURT ON 6/30 AS AN ORIGINAL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above and further moves under Brady for the name of the person who on 9/22/2017 printed out a copy of Judge Krier's 8/1/2017 recusal order and filed it in County Court back-dated to 8/14/2017. Once the identities are determined Huminski will need subpoenas issued for the attendance of these persons at trial to delve into what was going on behind the scenes in this dangerously informal case.

Dated at Bonita Springs, Florida this 6th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

BRADY MOTION TO DISCLOSE THE RULE, STATUTE OR FLORIDA AUTHORITY INVOKED CONCERNING THE "ADMINISTRATIVE TRANSFER" FROM CIRCUIT TO COUNTY COURT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski has not found one shred of law or authority that allows such a transfer. Huminski further moves for the procedures followed concerning this "administrative transfer" process in this case and how they comply with the Rule, Statute or authority defining the details of such a transfer.

Huminski has found a dearth of cases whereby a recusal properly causes reassignment to a judge in the same court, not to a court of inferior jurisdiction.

Dated at Bonita Springs, Florida this 6th day of February, 2018.

-/S/- Scott Huminski

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24544 Kingfish Street
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(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Correspondence re: 17-ca-421, 17-mm-815

From: scott huminski <s_huminski@live.com>
Sent: Tuesday, February 6, 2018 8:46 AM
To: Rebecca Potter; Info_Appeals@leeclerk.org; bdean@ca.cjis20.org; jembury@ca.cjis20.org; charlesr@ca.cjis20.org; doliver@ca.cjis20.org; webm@ca.cjis20.org; howellsd@flcourts.org; ada@flcourts.org
Subject: Please issue subpoenas case 17-mm-815 to Mr. Cavic

Please inform me as to the status of the subpoenas pursuant to the ADA. According to the compulsory process clause of the sixth amendment, the clerk must endeavor to get them served. This is also consistent with the ADA. I also need a subpoena for Judge Michael McHugh at your courthouse 1700 Monroe St. for appearance at trial in addition to the others I have mentioned. All subpoenas are for appearance at trial.

I have filed a motion for an order concerning the Sixth Amendment compulsory process clause. So until that's heard, maybe you should hold the subpoenas until we get a firm trial date and see if the clerk is going to arrange service.

Let me know if there are any problems with providing me accommodations under the ADA concerning this subpoena issue. I was told that a trial call does not mean the trial is going to be held on that day. -- scott huminski

Correspondence re: 17-ca-421, 17-mm-815

From: scott huminski <s_huminski@live.com>
Sent: Monday, February 5, 2018 6:17 PM
To: tphillips@coastalbh.org; redwards@coastalbh.org; bssmith@ca.cjis.org; Rebecca Potter
Subject: Huminski referral to mental health court supplement to referral

I have been diagnosed by Dr. Lado with chronic PTSD, generalized anxiety disorder and social phobia. Never diagnosed with any cognitive issues. I believe some of the scenarios contained in the referral by Rebecca Potter are generally some issues individuals with the aforementioned diagnosis might have when confronted by court proceedings and they seem logical.

I've been receiving death threats or other unwanted communications from Trevor Nelson of Scottsdale AZ for three years. The death threats have governed my conduct for the last 3 years and are responsible for a good deal of my conduct as dealing with death threats is difficult with the above diagnosis. Last contact 12/2017. Before the suicide of Justin M. Nelson he vowed to kill my wife and make me watch. These are violent people that caused us to move from AZ to Florida. According to a Glendale AZ police report, Trevor Nelson blames me for the suicide of his father, Justin M. Nelson, he hung himself, see obituary,
http://www.rivernewsonline.com/main.asp?SectionID=3&SubSectionID=28&ArticleID=57106

Justin Michael Nelson - The Northwoods River News ...

www.rivernewsonline.com

Justin Michael Nelson, age 36, of Glendale, Ariz., passed away on Oct. 30, 2012. Born June 19, 1976, in Escanaba, Mich., he was the son of Michael (Janet) Nelson, of ...

Text of the first death threat is below which I believe to be interstate transmission of terrorist death threats that have been allowed by law enforcement. The forensics on the letters I received in the mail confirm by dust, pollen, mold spores and other trace evidence that they originated in the greater Phoenix area where Trevor Nelson lives.

"Hello Scott,

It's almost time for you to die.

Did you think that I would let you get away with your bullshit and your lawsuits? … Enjoy your last few days on earth.

I'll be there real soon. Officer Pillar"

-- scott huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

BRADY MOTION TO DISCLOSE SPECIFICS RELATED TO THE SERVICE OF SCOTT HUMINSKI WITH PROTECTIVE ORDERS

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Dated at Bonita Springs, Florida this 6th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO UPDATE ONLINE COURT ACCESS AS HUMINSKI HAS NOT BEEN SERVED WITH ADVERSARY PAPER IN BOTH CASES under the ADA

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. He noticed that papers have been filed recently by adversaries and he has not received service at s_huminski@live.com. Although the motions are online, they are not clickable because of the court's VOR system shows a clock icon next to the papers. As ADA acommodation Huminski request the Court order these papers viewable online within two days of filing.

Dated at Bonita Springs, Florida this 6th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Scott Huminski

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NOTICE THAT HUMINSKI WAS NEVER SERVED THE PROTECTIVE ORDERS IN THESE CASES

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Just like Huminski was never served the order filed on 12/27/2017, it took Huminski 3 weeks to figure out what that order was and he was never served with the order filed on 8/14/2017 (filed on 9/22 and back dated to 8/14) and he was never served the order of dated on 7/18/2017 and filed on 8/1/2017.

Attached hereto is the order dated 7/18/2017 displaying the disdain Judge Krier had regarding service of the parties and the pure chaos that existed concerning Judge Krier's orders.

Dated at Bonita Springs, Florida this 6th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

Huminski, Scott et al
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421

Judge: Elizabeth V Krier

DENYING

ORDER ~~GRANTING~~ PLAINTIFF'S MOTION TO DISMISS

THIS MATTER comes before the Court upon the Plaintiff's Motion to Dismiss and the Court having reviewed the motion, and court file, it is hereby:

ORDERED AND ADJUDGED as follows:

The Motion is ~~**GRANTED and this action is Dismissed.**~~ Denied. Plaintiff has filed a bankruptcy Case. There is an automatic Stay in the Civil Case (NOT in the related criminal case) once the (*) Bankruptcy case has been dealt with, this Court may dismiss this Case.

DONE AND ORDERED this 18th day of July, 2017, in Lee County Florida.

Elizabeth V. Krier, Circuit Judge

Copies: Plaintiff and Defendant shall pull their respective copies from the Lee Clerk's Court Records Online Access

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR THE ISSUANCE AND SERVICE OF SUBPOENAS UNDER SIXTH AMENDMENT COMPULSORY PROCESS CLAUSE and ADA

NOW COMES, Scott Huminski ("Huminski"), and, moves as above for the issuance and service of subpoenas to appear at trial and to bring all materials related the Huminski defense file to Zachary Miller, esq. and Kevin Sarlo,esq. to face examination at trial concerning their compliance with the Sixth Amendment. Huminski is pursing a multi-faceted Sixth Amendment defense to this case.

The constitutional right to counsel necessarily encompasses a right to effective counsel. McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970) Mere formal appointment of counsel does not satisfy Sixth Amendment's constitutional guarantees; Avery v. State of Alabama, 308 U.S. 444, 446 (1940) instead, a criminal defendant is entitled to reasonably competent representation. State v. Wissing, 528 N.W.2d 561, 564 (Iowa 1995).

As a starter, Huminski will question his former defense counsel concerning 3 waivers of arraignment maliciously filed after the arraignment when they knew or should have known, one defense proffered by Huminski was that the arraignment was held while the matter was removed to Bankruptcy Court, this is not only ineffective, it is sabotage. The infirm arraignment was clearly set forth on the record via the Notice of Removal filed pursuant to Bankruptcy Rule 9027 three days prior to the arraignment.

Dated at Bonita Springs, Florida this 7th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 7th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
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MOTION to REVERSE FINDING/DITCA THAT HUMINSKI HAD COMPETENT, EXPERIENCED COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. See below correspondence also indicating Huminski was wrongfully stripped of counsel.

From: scott huminski <s_huminski@live.com>
Sent: Wednesday, February 7, 2018 3:33 PM
To: ineymotin@flrc2.org; KevinS@pd.cjis20.org; Smith, Kathleen A; zmiller@flrc2.org; appeals@flrc2.org; appeals@pd.cjis20.org; akunasek@sao.cjis20.org
Subject: Re: PD and RCC subpoenaed in Huminski case- lawsuit pending

Kevin sarlo attended the arraignment, so he knew one of my defenses would be that the arraignment took place while the case was removed to federal court, thus zero jurisdiction. Regardless he went on to file a notice of waiver of arraignment to deliberately sabotage one of my per se defenses to the case.

He also saw and heard Judge Krier lie about "Nothing gets removed from my court -- EVER" emphasis in the original.

He failed to utter a peep, when the court efiling system in Circuit Court lists in the top category FREQUENTLY FILED MOTIONS and on that list is REMOVAL TO U.S. DISTRICT COURT. Kevin failed to defend me from the lies of Krier compounding the criminal case against me as she thought she was proceeding with a sense of legitimacy because even my defense attorney did not call her on the lies. Then Kevin filed his waiver to make my defense concerning the judge's lies and willingness to proceed absent the existence of all jurisdiction moot.

A defense attorney should never sabotage a defense of the client. We'll deal with this sixth amendment issue at trial.

-- scott huminski

Dated at Bonita Springs, Florida this 7th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR SIXTH AMENDMENT COMPULSORY PROCESS OF DAVID CARROLL FOR APPEARANCE AT TRIAL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Mr. Carroll is the executive director of the Sixth Amendment Center and does act as an expert in Sixth Amendment matters. Neither the Court nor the prosecutor has an adequate knowledge of the Sixth Amendment and need guidance in this area. Huminski's disabilities were not a sufficient reason to strip him of counsel. No State law or authority trumps the Bill of Rights.

Dated at Bonita Springs, Florida this 9th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

ONMIBUS MOTION FOR ORDER MANDATING SIXTH AMENDMENT COMPULSORY PROCESS & CONFRONTATION CLAUSES

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, and lists the following persons that must be subpoenaed to appear at trial:

Kevin Sarlo, Public Defender's Office, 2000 Main St, Fort Myers, FL 33901

Zachary Miller, Regional Conflict Counsel, 2101 McGregor Blvd, Suite 101 Fort Myers, FL 33901

Sheriff Mike Scott, 14750 6 Mile Cypress Pkwy, Fort Myers, FL 33912

Mark Cavic, U.S. Postal Inspector, 14080 Jetport Loop, Fort Myers, FL 33913

Trip Alder, 333 Bush Street, Suite 2400 San Francisco CA 94104

Jason Bentley, 333 Bush Street, Suite 2400 San Francisco CA 94104

Judge Krier, 3315 Tamiami Trl E, #102, Naples, FL 34112-4901

Judge McHugh, 1700 Monroe Street, Fort Myers, FL

Green v. State, 377 So.2d 193, 202 (Fla. 3d DCA 1979) ("The law is well-settled that the defendant in a criminal case is constitutionally entitled to compulsory process to have brought into the trial court any material evidence shown to be available and capable of being used by him in aid of his defense.... The constitutional right to compulsory process means not only the issuance and service of a subpoena by which a defense witness is made to appear, but includes the judicial enforcement of that process and the essential benefits of it by the trial court."), approved, 395 So.2d 532 (Fla. 1981).

In Rose v. Palm Beach County, 361 So.2d 135 (Fla. 1978), we invoked the doctrine of inherent judicial power in order to declare statutory maximums on witness compensation and travel expenses directory rather than mandatory. While noting that the doctrine should be invoked only in situations of clear necessity, we held that "if the statute is deemed to establish an absolute maximum in all situations, then it must be said to improperly infringe the prerogative of the court in effectuating the constitutional right to compulsory process." 361 So.2d at 135.

"the courts have authority to do things that are absolutely essential to the performance of their judicial functions," Id., for we must find that the sixth amendment's guarantee of effective assistance of counsel at least equals in fundamentality and importance its sister provision setting forth the right of the accused "to have compulsory process for obtaining witnesses in his favor." U.S. Const. amend. VI. We can do no less than to zealously safeguard each.

This situation involves the right of an accused to compulsory process against witnesses. The right of one accused of crime to compulsory process for obtaining witnesses in his favor "stands on no lesser footing than the other Sixth Amendment rights that [the United States Supreme Court has] held applicable to the States." Washington v. Texas, 388 U.S. 14, 18, 87 S.Ct. 1920, 1923, 18 L.Ed.2d 1019, 1022 (1967).

Huminski has been denied his rights under the 14th Amendment to the Federal Constitution and Section 11 of the Declaration of Rights of the Florida Constitution, F.S.A., the latter of which provides that in all criminal prosecutions the accused "shall * * * have compulsory process for the attendance of witnesses in his favor."

The Sixth Amendment to the United States Constitution provides that:

> *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.*
> *(Emphasis added.)*

Article I, section 9, of the Florida Constitution, entitled "Due process," provides that:

> *No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.*

Section 16, entitled "Rights of accused and of victims," provides in pertinent part:

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation against him, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties he will be tried. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.
(Emphasis added.)

Dated at Bonita Springs, Florida this 9th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

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In and for Lee County, Florida
- Civil/Criminal Division -

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AND FOR THOSE SIMILARLY SITUATED,	)	
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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – STATE WILL BE UNABLE TO PROVE RECEIPT OF PROTECTIVE ORDERS THUS NO MENS REA

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Receipt of the protective orders is an essential element of the alleged crime.

Dated at Bonita Springs, Florida this 9th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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MOTION FOR APPONTMENT OF COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above under both the Florida and Federal Constitutions. Huminski notes that even Charlie Manson was suppied an attorney at trial. Huminski is being treated as having less rights than a mass murderer and the worse thing Huminski is alleged of doing is making person's depress the delete key in their email program, yet, he is receiving treatment worse than if he was a mass murderer.

Since Huminski was stripped of counsel he has contacted 10 criminal attornies who all stated they would not have enough time.

The Florida Supreme Court first stated that pursuant to the U.S. Supreme Court decision Gideon v. Wainwright, Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792 (1963) criminal defendants "are guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution." Nos. SC09-1181 and SC10-1349, slip op. at 6-7. Florida also guarantees this right under Article I, section 16 of the Florida Constitution. Id. The majority reaffirmed that the right to effective assistance of counsel "encompasses the right to representation free from

actual conflict" Hunter v. State, 817 So.2d 786, 791 (Fla. 2002) and that, furthermore, an "actual conflict of interest that adversely affects a lawyer's performance violates a defendant's Sixth Amendment right to effective assistance of counsel." Cuyler v. Sullivan, 446 U.S. 335, 348, 100 S.Ct. 1708 (1980). Both attorneys who recused off this case cited a conflict of interest. They properly withdrew which has no effect upon Huminski's right to counsel.

The United States Supreme Court recently issued two decisions addressing ineffective assistance of counsel in pre-trial matters and plea agreements in Lafler v. Cooper, 566 U.S. 156, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012) and Missouri v. Frye, 566 U.S. ___, 132 S.Ct. 1399, 182 L.Ed.2d 379, cert. denied, ___U.S. ___, 132 S.Ct. 1789, 182 L.Ed.2d 615 (2012) These cases determined that ineffective pre-trial representation was just as critically important as representation at trial, as most criminal cases conclude in plea agreements. Nos. SC09-1181 and SC10-1349, slip op. at 34.

The Sixth Amendment to the United States Constitution provides that:

> *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.*
> *(Emphasis added.)*

Florida Constitution, Section 16, entitled "Rights of accused and of victims," provides in pertinent part:

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation against him, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties he will be tried. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

(Emphasis added.)

Huminski notes that the Court's denial of his motion for a bill of particulars violates both the State and Federal Constitutions.

Dated at Bonita Springs, Florida this 9th day of February, 2018.

-/S/- Scott Huminski

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Scott Huminski

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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Corrected MOTION FOR APPONTMENT OF COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above under both the Florida and Federal Constitutions. Huminski notes that even Charlie Manson was supplied an attorney at trial. Huminski is being treated as having less rights than a mass murderer and the worse thing is all Huminski is alleged of doing is making person's depress the delete key in their email program, yet, he is receiving treatment worse than if he was a mass murderer.

Since Huminski was stripped of counsel he has contacted 10 criminal attorneys who all stated they would not have enough time.

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conflict" Hunter v. State, 817 So.2d 786, 791 (Fla. 2002) and that, furthermore, an "actual conflict of interest that adversely affects a lawyer's performance violates a defendant's Sixth Amendment right to effective assistance of counsel." Cuyler v. Sullivan, 446 U.S. 335, 348, 100 S.Ct. 1708 (1980). Both attorneys who recused off this case cited a conflict of interest. They properly withdrew which has no effect upon Huminski's right to counsel.

The United States Supreme Court recently issued two decisions addressing ineffective assistance of counsel in pre-trial matters and plea agreements in Lafler v. Cooper, 566 U.S. 156, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012) and Missouri v. Frye, 566 U.S. ___, 132 S.Ct. 1399, 182 L.Ed.2d 379, cert. denied, ___U.S. ___, 132 S.Ct. 1789, 182 L.Ed.2d 615 (2012) These cases determined that ineffective pre-trial representation was just as critically important as representation at trial, as most criminal cases conclude in plea agreements. Nos. SC09-1181 and SC10-1349, slip op. at 34.

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(Emphasis added.)

Huminski notes that the Court's denial of his motion for a bill of particulars violates both the State and Federal Constitutions as does stripping him of counsel.

Dated at Bonita Springs, Florida this 9th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

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MOTION TO DISMISS, or in the alternative, FOR APPOINTMENT OF COUNSEL UNDER THE ADA

NOW COMES, Scott Huminski ("Huminski"), and, moves as above under both the Florida and Federal Constitutions and the ADA. See attached ADA report. Huminski notes that even Charlie Manson was supplied an attorney at trial. Huminski is being treated as having less rights than a mass murderer and the worse thing is all Huminski is alleged of doing is making person depress the delete key in their email program, yet, he is receiving treatment worse than if he was a mass murderer.

Since Huminski was stripped of counsel he has contacted 10 criminal attornies who all stated they would not have enough time.

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The United States Supreme Court recently issued two decisions addressing ineffective assistance of counsel in pre-trial matters and plea agreements in Lafler v. Cooper, 566 U.S. 156, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012) and Missouri v. Frye, 566 U.S. ___, 132 S.Ct. 1399, 182 L.Ed.2d 379, cert. denied, ___U.S. ___, 132 S.Ct. 1789, 182 L.Ed.2d 615 (2012) These cases determined that ineffective pre-trial representation was just as critically important as representation at trial, as most criminal cases conclude in plea agreements. Nos. SC09-1181 and SC10-1349, slip op. at 34.

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>
> *(Emphasis added.)*

Huminski notes that the Court's denial of his motion for a bill of particulars violates both the State and Federal Constitutions.

Dated at Bonita Springs, Florida this 11th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

Rebecca Potter, LMHC
Certified Disability Advocate
Licensed Mental Health Counselor
Email: tlc211@gmail.com
Phone: (561)267-3831

REPORT AND REQUEST FOR ADAA ACCOMMODATION

NAME: **SCOTT HUMINSKI**
CASE NO: **17-ca-421**
17-mm-815
17-ca-943
DATE: **JANUARY 26, 2018**

*******THIS REPORT CONTAINS PRIVATE MEDICAL INFORMATION AND MUST BE KEPT FROM PUBLIC VIEW.**

The REPORT is to request that Mr. Huminski, who suffers from disabilities which prohibit equal access to the Court. Mr. Huminski has asked this writer to prepare this report for the Court. It contains private protected health information and is provided to the Court to ensure the necessity of accommodations for Mr. Huminski, guaranteeing he has equal access to the Court and receives fair due process. The report/accommodation request is protected by the Health Insurance Portability and Accountability Act of 1996 (HIPPA) Pub law 104.191.

The Americans with Disabilities Act, 42 USC Section 12131 requires that states insure that disabled citizens are provided with necessary accommodations to services, programs and agencies. To guarantee equal access, these citizens must be provided with reasonable accommodations to protect the compromised citizen from discrimination. If the accommodations are not provided, the disabled citizen is at an unfair disadvantage.

This report has been compiled from personal, telephonic conferences, email correspondence, review of court records, legal documents, review of medical records, mental status examination, structured interviews and assessments.

The ADAA defines in part....

Section 35.150(b)(2)-- Safe harbor

The "program accessibility" requirement in regulation implementing title II of the Americans with Disabilities Act requires that each service, program, or activity, *when viewed in its entirety,* be readily accessible to and usable by individuals with disabilities. 28CFR 35.150(a)

35.178 State Immunity.

A state shall not be immune under the eleventh amendment to the Constitution of the United State from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

PRESENTING PROBLEM:

Mr. Huminski has been involved in protracted litigation. He suffers from a cognitive disability and has to represent himself in this litigation. He is struggling to communicate to the Court. The physical effects of his disability interfere with his ability to process information and to communicate when he is symptomatic. Mr. Huminski becomes symptomatic when he encounters the stress created by the Court when there is not appropriate accommodations. There is no effective cure to his disability and he must be allowed accommodations to reduce his physical symptom responding in order to have equal access to the Court and due process.

His diagnosis by Dr. Leonard Lado, MD, RPh, ABPN is as follows:

Axis I	**Post Traumatic Stress Disorder** **Generalized Anxiety Disorder** **Social Phobia**
Axis II	**Deferred**
Axis III	**Hip Replacement, both hips**
Axis IV	**legal and social stressors**
Axis V	**Due to complex legal stressors: 60**

The Court has not given Mr. Huminski reasonable accommodations to allow access to the Court and due process. He has struggled to communicate to the Court his needs and the Court has reacted to his inability to clearly communicate.

Due process is a right guaranteed by The US Constitution and a disabled litigant is unable to access the legal system without appropriate accommodations.

He requires the following accommodations:

1. The use of audio and/or videotaping of all proceedings.
a. He will not be able to affectively process information when he becomes symptomatic. The Court has not worked effectively with Mr. Huminski and has now become an additional source of fear which activates his adrenal responses, causing loss of cognition and communication. These services are therefore necessary to review material presented in court proceeding and meetings.

b. Disabled litigants are financially compromised and may not be able to access court transcripts due to the cost. Without a means to review the court proceedings at a later time when he is not symptomatic, he is not able to participate fully in the court process.

2. He must be given extended deadlines to participate in the Court.

a. He becomes symptomatic when he reviews court documents/correspondence and is unable to process the information while he is physically compromised.

b. He is pro se litigant and is not trained in court rules and deadlines. The Court has set deadlines for the attorney profession and not a cognitively disabled litigant. These deadlines must be extended to allow him to cognitively process and fairly engage in litigation.

c. Each time that Mr. Huminski must present to court, prepare for court or review court documents and correspondence, he becomes symptomatic.

d. Mr. Huminski will need additional time to make any decision regarding legal matters to ensure he is not symptomatic and able to cognitively understand the consequences of any decision and to ensure that he has a cognitive capacity to understand his decision.

3. All court correspondence and documents need to be accessible to Mr. Huminski. All Court staff must respond to his questions and requests.

a. Mr. Huminski needs to be provided timely service of court documents.

b. Mr. Huminski must have access to court personnel and receive return phone calls and communication from the court personnel.

c. Many of the court records have not been provided to Mr. Huminski and he is unable to access many of these records within the electronic files. He must be provided with all documents in order to fully engage in the legal process.

d. All court records need to be accurate. If a document is altered, or back dated, it is a violation of FSS 415.101-115. Court personnel need to ensure he is not exploited and the court record is not used as an means to deceive a vulnerable adult.

e. Mr. Huminski reports, the current docket is missing factual documentation, i.e. pleading cycles, motions, opposition to motions. The misrepresentation on a public document leads to confusion/ exploitation to the litigant. The record and docket must be factual to allow equal access to the Court. Non factual records will cause increase in adrenal responding and will affect the disabled litigant's ability to cognitively process and proceed with litigation.

4. Court hearings must be on different days.

a. Mr. Huminski needs time, several days, between any court hearing to heal from the physical symptoms which cause loss of effective cognition and communication.

b. He is unable to recover from the powerful physical nervous system responding that the court process creates. He requires several days between any court meeting or hearing. allowing his nervous system to recover. Without this accommodation, he does not have the cognitive capacity to participate in court proceedings.

5. .Sheriff Scott's staff will not be in attendance at any hearings and/or trials which involve the vulnerable disabled litigant. He requires a safe venue where the staff of Sheriff Scott will not be present and he will not be intimidated by all court personnel.

a. There is a protective order against Mr. Huminski and he is barred (for life) from contact and communication with the Sheriff or his staff (the Lee County Sheriffs and Sheriff Scott-- i.e. court security officers and bailiffs). Mr. Huminski is in fear of violating this protective order and he requires a safe venue to obtain due process.

b. Security personnel and bailiffs are members of the Lee County Sheriff Department. Mr. Huminski has metal hips which set off the security alarms and he would not be able to explain or communicate his medical condition to the personnel in the circuit court.

c. Without safe accommodation and a safe venue to conduct his hearing, he is being denied equal access to the Lee Court complex staffed by Sheriff Scott's deputies. It is not a safe venue and denial of equal access to the court and due process for Mr. Huminski if he is unable to communicate with court personnel.

d. He has been denied access to Lee County Sheriff and reports he is fearful of entering the courtroom without being arrested. He is unable to have equal access to the court and due process under a physical threat from the Sheriff's office.

e. Without this accommodation, Mr. Huminski is under threat of intimidation, direct violation of FSS 415.101(13). If this accommodation is not given, all court personnel are mandatory reporters and need to report this violation to the appropriate authorities.

6. Mr. Huminski requires competent legal representation.

a. Mr. Huminski suffers from a cognitive disorder. He is not able to control the neurological physical responding of his body.

b. He is unable to effectively communicate or process information while he is symptomatic.

c. He requires a legal representative to ensure he has equal access and due process in the court agencies.

d. He has been denied access to Lee County Sheriff and reports he is fearful of entering the courtroom without being arrested. He is unable to have equal access to the court and due process under a physical threat from the Sheriff's office. He requires competent legal representation to assure he has access to the Court and will not lose his freedom while in the legal process.

e. Mr. Huminski reports that he has not received vital court orders and orders have been changed. It is necessary for Mr. Huminski to have competent legal

representation to ensure court compliance to all rules and regulations. This accommodation will ensure equal access and due process to Mr. Huminski and will discourage any appearance of deception. Many pro se litigants do not have access to the internet and do not have the ability to access court records online. The electronic records systems are a "new" science and are not completely reliable.

CONCLUSION"

The following report is respectfully submitted to the Court to provide reasonable accommodations for Mr. Scott Huminski, a disabled citizen who qualifies for these accommodations under the Americans With Disabilities Act.

The State of Florida guarantees additional protection to persons because of disabilities. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. FSS 415.101-115.

The above FSS, defines "deception" as a misrepresentation or concealment of a material fact relating to services rendered.... The requested accommodations are to protect the litigant and the Court from any perception of neglect, abuse, exploitation, intimidation and denial of equal access to the court agencies.

** Please also note that the FSS 415-101-115 requires mandatory reporting from all court representatives/officers of any exploitation, neglect, abuse, or intimidation of a vulnerable adult.

_____

Rebecca Potter,LMHC

Submitted to the Twentieth Judicial Circuit In and For Lee County, Florida -- Civil/Criminal Division on this _____ day of _____ 2018.

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS, JUDGE FAILED TO CERTIFY THAT NO JAIL TIME WOULD BE IMPOSED WHEN DEFENDANT WAS STRIPPED OF COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. See Fla. R.Crim. P. 3.111(b)(1) ("In the discretion of the court, counsel does not have to be provided to an indigent person in a prosecution for a misdemeanor or violation of a municipal ordinance if the judge, at least 15 days prior to trial, files in the cause a written order of no incarceration certifying that the defendant will not be incarcerated ." (emphasis supplied) (the current version of this rule permits the defendant or defense counsel to waive the fifteen-day requirement)). Attached hereto is the Florida Supreme Court ruling on the matter. Attached is the FL Supreme Court case of State v. Kelley forbidding the stripping of Huminski of counsel.

Dated at Bonita Springs, Florida this 11th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134

(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 11th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

STATE v. KELLY

Supreme Court of Florida.

STATE of Florida, Petitioner, v. Glenn KELLY, Respondent.

No. SC07-95.

Decided: December 30, 2008

Bill McCollum, Attorney General, Tallahassee, FL, Celia Terenzio, Bureau Chief, Assistant Attorney General, Mitchell A. Egber, Assistant Attorney General, Daytona Beach, FL, for Petitioner. Frank A. Maister and Garrett Elsinger, Fort Lauderdale, FL, for Respondent. Paula S. Saunders, Assistant Public Defender, Second Judicial Circuit, Tallahassee, FL, and Michael Robert Ufferman, Tallahassee, FL, on behalf of The Florida Association of Criminal Defense Lawyers, as Amicus Curiae.

In this case, we review the decision of the Fourth District Court of Appeal in State v. Kelly, 946 So.2d 1152 (Fla. 4th DCA 2006), in which the Fourth District certified the following question to be one of great public importance:

CAN AN UNCOUNSELED PRIOR MISDEMEANOR CONVICTION, IN WHICH THE DEFENDANT COULD HAVE BEEN INCARCERATED FOR MORE THAN SIX MONTHS, BUT WAS NOT INCARCERATED FOR ANY PERIOD, BE USED TO ENHANCE A CURRENT CHARGE FROM A MISDEMEANOR TO A FELONY?

Id. at 1154. We have jurisdiction pursuant to article V, section 3(b)(4) of the Florida Constitution, and for the reasons explained below, we rephrase the certified question as follows:

WHAT IS THE SCOPE OF A CRIMINAL DEFENDANT'S RIGHT TO COUNSEL UNDER ARTICLE I, SECTION 16 I OF THE FLORIDA CONSTITUTION CONCERNING THE STATE'S USE OF PRIOR UNCOUNSELED MISDEMEANOR CONVICTIONS TO ENHANCE A LATER CHARGE FROM A MISDEMEANOR TO A FELONY?

This case results from the State's request that we recede from Hlad v. State, 505 So.2d 928 (Fla.1991), and State v. Beach, 592 So.2d 237 (Fla.1992). Hlad held that the State may not use a criminal defendant's prior uncounseled 1 misdemeanor driving-under-the-influence ("DUI") convictions to increase a subsequent DUI charge from a misdemeanor to a felony, where the prior uncounseled misdemeanors led to actual imprisonment or were punishable by more than six months' imprisonment. See 505 So.2d at 928-30. Beach, in turn, clarified the elements that a defendant must assert through an affidavit to preserve an alleged instance of Hlad error. See 592 So.2d at 239.

The State premises its request entirely upon Nichols v. United States, 511 U.S. 738, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994), a United States Supreme Court decision holding that the prosecution may use an uncounseled misdemeanor conviction which is invalid for purposes of imposing imprisonment in a direct proceeding to impose enhanced imprisonment in a collateral proceeding. See 511 U.S. at 749, 114 S.Ct. 1921. The State correctly notes that Nichols overruled some of the federal precedent upon which this Court relied when deciding both Hlad and Beach. See Nichols, 511 U.S. at 748-49, 114 S.Ct. 1921, overruling Baldasar v. Illinois, 446 U.S. 222, 100 S.Ct. 1585, 64 L.Ed.2d 169 (1980).

The instant case, as with its predecessor Hlad, involves consideration of the State's use of prior uncounseled misdemeanor DUI convictions to enhance a defendant's subsequent DUI offense from a misdemeanor to a felony.

I. BACKGROUND

The events leading to Glenn E. Kelly's felony DUI charge occurred on January 18, 2003, at approximately 10:45 p.m., when deputies with the Broward County Sheriff's Office arrested Mr. Kelly for his fourth DUI offense. Kelly consented to a breathalyzer test, which produced results of .092% and .090% breath-alcohol content; these results are consistent with legal intoxication in Florida. See § 316.193(1)(b), Fla. Stat. (2003). The Sheriff's Office also conducted an inventory search of Kelly's vehicle, during which deputies found an open bottle of whiskey in the vehicle's center console.

The State filed an information based on these events in Broward County Court on February 14, 2003, charging Mr. Kelly with misdemeanor DUI. The State, however, was not prepared for trial and eventually nolle prossed the charge. The State later refiled the case on April 26, 2004, in circuit court as a felony DUI charge based on Kelly's three prior misdemeanor DUI convictions. See § 316.193(2)(b)(3), Fla. Stat. (2003) ("Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior conviction for a violation of this section occurred, commits a felony of the third degree."). Two of Kelly's prior misdemeanor DUI convictions-those from March 3, 1995, and September 18, 1997, respectively-were each punishable by more than six months' imprisonment, and were the result of uncounseled no contest pleas.2 However, Kelly did not file a motion to dismiss or a Beach affidavit until October 21, 2005, due to a substitution of counsel.

In the motion to dismiss, Kelly's counsel explained that based on Hlad and Beach, the circuit court lacked jurisdiction because there was no valid felony charge to prosecute at the circuit level. Counsel also informed the circuit court that Kelly's attached affidavit satisfied each of the four Beach elements required to preserve a Hlad objection to the State's use of prior misdemeanors as enhancers (i.e., Mr. Kelly asserted under oath that: (1) the offenses involved were punishable by more than six months' imprisonment; (2) he was indigent and, thus, entitled to court-appointed counsel; (3) counsel was not appointed; and (4) he did not validly waive his right to counsel). See Beach, 592 So.2d at 239.

In response, the State contended that the United States Supreme Court in a decision focused on federal Sixth Amendment doctrine (i.e., Nichols) overruled this Court's decisions in Hlad and Beach. The circuit court rejected this argument. Additionally, the circuit court, apparently sub silentio, rejected the State's argument that Mr. Kelly had validly waived his right to counsel when he pled no contest in his 1995 and 1997 misdemeanor DUI charges. The evidentiary-hearing transcript reveals the following relevant facts: (1) Kelly's counsel contended that the plea forms Kelly signed in 1995 and 1997 misrepresented a Florida criminal defendant's right to counsel (they stated that the defendant only had a right to court-appointed counsel if (a) he could not afford counsel, and (b) the judge was currently considering 1 jail time as a punishment); (2) the records that the State produced regarding Kelly's 1995 and 1997 misdemeanor DUI pleas failed to demonstrate that the judges engaged in proper colloquies with Kelly concerning his right to counsel; (3) Kelly recalled advising the sentencing judges that he could not afford an attorney, but did not recall whether the judges asked him if he wanted an attorney appointed; (4) Kelly pled no contest because he "thought the [no contest] plea was the ..easiest financial situation for [him]"; and (5) when asked whether he understood he had a right to an attorney, Kelly responded that "[he] understood ..[he] couldn't afford an attorney."3

Following the evidentiary hearing, the circuit court entered an order dismissing the State's felony DUI information for lack of jurisdiction. The State appealed to the Fourth District Court of Appeal. In the district court, the State asserted that the circuit court had abused its discretion by following the decisions of this Court in Hlad and Beach instead of the

decision of the United States Supreme Court in Nichols. In response, Mr. Kelly contended that Hlad and Beach remain controlling authority in Florida's criminal courts unless and until this Court decides to alter its precedent. The Fourth District affirmed the order of the circuit court, but certified the above-stated question as one of great public importance due to the confusion surrounding whether Hlad and Beach remain binding precedent post-Nichols.

II. ANALYSIS

This case presents the following issues: (1) whether Mr. Kelly carried his burden of production under Beach; and if so, (2) whether this Court will continue to follow Hlad and Beach or will, alternatively, adopt the United States Supreme Court's Nichols decision as part of Florida's right-to-counsel jurisprudence. In deciding these issues, we must first address the effect of Mr. Kelly's deficient plea forms. Next we need to clarify, under Beach, the significance of a record that is silent as to whether the defendant's prior convictions were supported by proper plea colloquies. We also consider any differences or distinguishing factors between Florida's misdemeanor right-to-counsel standard and that presented as the federal standard. Finally, we must analyze whether Nichols should be positioned as persuasive precedent and as a guidepost when interpreting article I, section 16 of the Florida Constitution. We conclude that we should reaffirm a modified version of our Hlad/Beach framework, which is explicitly premised upon independent state-law grounds.

A. The Effect of the Deficient Plea Forms

Mr. Kelly contends that his 1995 and 1997 plea forms did not accurately reflect a criminal defendant's right to counsel in Florida. We agree with this assessment as applied to the facts of this case. The versions of Florida Rule of Criminal Procedure 3.111(b)(1) that applied to each of Kelly's no-contest pleas are identical. In relevant part, these provisions indicate that Florida is a "prospective imprisonment" jurisdiction that provides indigent criminal defendants a right to counsel in all criminal prosecutions "punishable by imprisonment," except in misdemeanor or ordinance-violation cases where the trial judge affirmatively certifies in writing before trial that the defendant will not face a term of imprisonment for the charged offense. See Fla. R.Crim. P. 3.111(b)(1) (1995). In other words, in Florida, indigent defendants have a right to counsel in all criminal prosecutions punishable by imprisonment-even misdemeanor prosecutions-unless the trial judge "opts out" by providing the defendant a written, pretrial certification that the defendant will not be imprisoned for the charged offense. See id.; see also Fla. R.Crim. P. 3.160 (advising indigents of the right to appointed counsel); § 27.51, Fla. Stat. (2003) (mandating that the public defender represent indigents charged with violations of chapter 316, Florida Statutes; DUI is a chapter 316 offense punishable by imprisonment).

This is not the legal landscape Mr. Kelly's State-prepared plea forms described. Rather, they provided the misleading impression that an indigent criminal defendant lacks a right to counsel so long as the trial judge is not currently considering jail time as an appropriate sentence. This mischaracterization relieved the trial judges of their duty to make the affirmative, written, pretrial certification that the rule then required, and still requires today in a slightly modified form. See Fla. R.Crim. P. 3.111(b)(1) ("In the discretion of the court, counsel does not have to be provided to an indigent person in a prosecution for a misdemeanor or violation of a municipal ordinance if the judge, at least 15 days prior to trial, files in the cause a written order of no incarceration certifying that the defendant will not be incarcerated ." (emphasis supplied) (the current version of this rule permits the defendant or defense counsel to waive the fifteen-day requirement)). Consequently, even if Mr. Kelly read and understood these plea forms, he would not have been properly informed of his right to counsel.

Nevertheless, if the misdemeanor trial judges had properly executed on-the-record plea colloquies, which indicated that Mr. Kelly had a right to counsel but chose to waive that right, these hypothetical colloquies could have cured this error. Cf., e.g., Ramos v. Rogers, 170 F.3d 560, 565 (6th Cir.1999) ("[A] state trial court's proper colloquy can be said to have cured any misunderstanding [the defendant] may have had about the consequences of his plea."). The record in this case, however, is silent as to whether there were proper colloquies with Mr. Kelly before he pled no contest to his prior misdemeanor DUI charges.

B. The Significance of a Silent Record Under Beach

It is undisputed that: (1) Mr. Kelly's 1995 and 1997 misdemeanor DUI offenses were each punishable by more than six months' imprisonment; (2) Kelly was indigent and, thus, entitled to court-appointed counsel; and (3) counsel was not appointed to represent Kelly. However, the State and Kelly dispute the significance of the absence of an on-the-record plea colloquy, which could have confirmed Kelly's alleged waiver of counsel. Kelly relies upon Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), for the proposition that courts may not presume a waiver of constitutional rights from a silent record. It is well-established that the State cannot do so in direct proceedings; however, the same cannot be said concerning collateral proceedings. Compare Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) ("Presuming waiver from a silent record is impermissible. Anything less is not waiver." (citations and quotations omitted)), with Parke v. Raley, 506 U.S. 20, 29, 113 S.Ct. 517, 121 L.Ed.2d 391 (1992) ("To impart Boykin's presumption of invalidity [regarding direct review of a conviction based upon an uninformed guilty plea] into th[e] very different context [of collateral review of a prior conviction's validity] would, in our view, improperly ignore another presumption deeply rooted in our jurisprudence: the 'presumption of regularity' that attaches to final judgments, even when the question is waiver of constitutional rights.").

The United States Supreme Court has thus modified Boykin's broad rule that a waiver of constitutional rights cannot be implied from a silent record by restricting that rule to direct proceedings. The Court stated in Parke:

On collateral review, we think it defies logic to presume from the mere unavailability of a transcript (assuming no allegation that the unavailability is due to governmental misconduct) that the defendant was not advised of his rights. In this situation, Boykin does not prohibit a state court from presuming, at least initially, that a final judgment of conviction offered for purposes of sentence enhancement was validly obtained.

506 U.S. at 30, 113 S.Ct. 517 (emphasis supplied). As the Parke Court recognized, the states remain free to adopt different approaches, which afford greater protection for defendants' constitutional rights. See Parke, 506 U.S. at 34, 113 S.Ct. 517 ("[W]e hold that the Due Process Clause permits a State to impose a burden of production on a recidivism defendant who challenges the validity of a prior conviction under Boykin." (emphasis supplied)).

This Court appears to have resolved this issue-at least as far as felony DUI is concerned-in State v. Beach, 592 So.2d 237 (Fla.1992), which was decided just over one month after the decision of the United States Supreme Court in Parke. In Beach, we clarified the procedural framework required to assert an action based on Hlad error (i.e., a claim that the State may not use prior uncounseled misdemeanors to enhance a later offense from a misdemeanor to a felony). We placed "the initial burden of showing entitlement to counsel" on the defendant because Hlad error does not exist if the defendant did not possess a right to counsel in the prior proceedings. Beach, 592 So.2d at 239. The initial burden, however, appears minimalistic, and is-as explained below-properly viewed as a burden of production. See Black's Law Dictionary 209 (8th ed. 2004) ("[B]urden of production. A party's duty to introduce enough evidence on an issue to have the issue decided by the fact-finder, rather than decided against the party in a peremptory ruling.").

The defendant need only

assert such: (1) that the offense involved was punishable by more than six months of imprisonment or that the defendant was actually subjected to a term of imprisonment; (2) that the defendant was indigent and, thus, entitled to court-appointed counsel; (3) [that] counsel was not appointed; and (4) [that] the right to counsel was not waived.

Beach, 592 So.2d at 239 (emphasis supplied). "If the defendant sets forth these [minimal] facts under oath, then the burden shifts to the state to show [1] either that counsel was provided or [2] that the right to counsel was validly waived." Id. (emphasis supplied). Hence, if the defendant adequately presents each of the four Beach elements thereby saddling the State with a burden of persuasion-the State cannot then point to a silent record to claim that a purely hypothetical plea colloquy cured any error surrounding the waiver issue. See Black's Law Dictionary 209 (8th ed. 2004) ("[B]urden of persuasion. A party's duty to convince the fact-finder to view the facts in a way that favors that party." (emphasis supplied)).

Several factors support our interpretation of the Beach framework as placing a burden of production upon the defendant, which, if satisfied, shifts a burden of persuasion to the State to prove either that the trial court appointed counsel or that the defendant waived that right. First, this Court has held on several occasions that when the State prosecutes a defendant for felony DUI, the State has the additional burden of proving "the existence of three or more prior misdemeanor DUI convictions." State v. Harbaugh, 754 So.2d 691, 694 (Fla.2000). Hence, "the requirement of three prior misdemeanor DUI[s] . . is considered an element of felony DUI." State v. Fissell, 780 So.2d 31, 33 (Fla.2001) (emphasis supplied); see also State v. Woodruff, 676 So.2d 975, 977 (Fla.1996) (same). As a result, the State has the burden of proving three valid prior misdemeanor convictions beyond a reasonable doubt, while the defendant shares no comparable burden. See In re Winship, 397 U.S. 358, 361-65, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) (holding that it is the prosecution's constitutional burden to prove each element of a criminal offense beyond a reasonable doubt); Burgett v. Texas, 389 U.S. 109, 114-15, 88 S.Ct. 258, 19 L.Ed.2d 319 (1967) (holding that convictions obtained in violation of a defendant's right to counsel are void).[7]

Second, the United States Supreme Court has characterized the initial burden placed upon a recidivist defendant challenging the validity of prior convictions as "a burden of production." Parke, 506 U.S. at 36, 113 S.Ct. 517 (emphasis supplied). Third, where the written plea agreement is deficient on its face--as it appears to be in this case--the State should bear the risk of loss if it cannot produce a record of the plea colloquy, as "[t]he language of [Florida Rule of Criminal Procedure] 3.172(c) is mandatory. The rule does not permit a written plea agreement to substitute for an on-the-record plea colloquy," and "the plea colloquy must reflect that the defendant has personally been advised pursuant to the requirements of Rule 3.172(c) and has expressed an understanding of the rights guaranteed therein." Perry v. State, 900 So.2d 755, 757 (Fla. 4th DCA 2005) (quoting Portello v. State, 684 So.2d 258, 260 (Fla. 4th DCA 1996)); see also Fla. R.Crim. P. 3.111(d)(2) (1992) ("A defendant shall not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry has been made into both the accused's comprehension of that offer and the accused's capacity to make an intelligent and understanding waiver."). Fourth and finally, this Court held in Beach--just as Parke--that "[a]bsent such evidence in the record of the trial court's prior proceedings, waiver cannot be presumed." Beach, 592 So.2d at 239 (addressing a collateral challenge to a prior DUI conviction) (emphasis supplied).

Given the facts of this case, the State cannot, on one hand, fail to acknowledge the inaccuracy inherent in its plea forms and then, on the other hand, claim protection under a presumption of validity that normally attaches to final judgments. Mr. Kelly's satisfactory Beach affidavit, his presentation of facially misleading plea forms, and his testimony at the evidentiary hearing satisfied the Beach burden of production. This created prima facie evidence that Kelly did not validly waive his right to counsel.

In response to that evidence, the State failed to satisfy its burden of proving that Kelly was either provided counsel or validly waived that right. The State conceded that Kelly did not receive counsel and then simply attempted to rely on the same inaccurate plea forms as creating a knowing, intelligent, and voluntary waiver of the right to counsel. Cf. Fla. R.Crim. P. 3.111(d)(1) (1992) ("The failure of a defendant to request appointment of counsel or the announced intention of a defendant to plead guilty shall not, in itself, constitute a waiver of counsel at any stage of the proceedings." (emphasis supplied)). The danger of misleading plea forms is self-evident: if an indigent defendant, like Mr. Kelly, cannot afford an attorney and believes that he has no right to appointed counsel, he is more likely to plead guilty or no contest even when he did not commit the underlying offense. For these reasons, the State may not rely upon a misleading plea form and a record which is silent concerning whether the defendant received a constitutionally sufficient plea colloquy to contend that the defendant knowingly, intelligently, and voluntarily waived his or her right to counsel. Cf., e.g., Durocher v. Singletary, 623 So.2d 482, 485 (Fla.1993) ("[T]he [S]tate has an obligation to assure that the waiver of . counsel is knowing, intelligent, and voluntary." (emphasis supplied)). Voluntariness is a necessary but not a sufficient condition to demonstrate an effective waiver; in addition, the State must also establish a knowing and intelligent relinquishment or abandonment of a known right or privilege. See, e.g., Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). If a defendant does not intelligently understand when he or she is entitled to the representation of appointed counsel, then a forfeit the defendant cannot effectively waive that right. This is why we require accurate plea forms and accurate plea colloquies. See Fla. R.Crim. P. 3.111(d)(2), 3.171, 3.172; see also Perry, 900 So.2d at 757 (explaining that rule 3.172(c) and associated case law do not permit a written plea agreement to serve as a substitute for a constitutionally sufficient plea colloquy).

The State, therefore, did not carry its Beach burden of proving that Kelly validly waived his right to counsel with regard to his 1993 and 1997 misdemeanor DUI convictions (further, the State has not undertaken this responsibility with regard to Kelly's 1987 conviction). With that question resolved, we now address the second issue presented in this case: whether this Court will continue to follow Hall and Beach or will, alternatively, incorporate Nichols as part of Florida's right-to-counsel jurisprudence.

C. Florida's Misdemeanor Right-to-Counsel Standard

The State contends that Florida's misdemeanor right-to-counsel standard should mirror the federal standard enunciated in Nichols. However, the Florida standard already differs from its federal counterpart. Therefore, we decline to follow a more limited federal standard that would afford Florida's criminal defendants less constitutional protection, or fewer constitutional rights, than they currently enjoy under the Florida Constitution and under Hall and Beach.[8]

In contrast to search-and-seizure jurisprudence, the law of Florida may afford greater right-to-counsel protections than those afforded by the Sixth Amendment. Cf. art. I, § 12, Fla. Const. (mandating that United States Supreme Court Fourth Amendment precedent control Florida search-and-seizure jurisprudence). Under established Florida law, the right of indigents to appointed counsel in misdemeanor cases differs from its federal counterpart. In Argersinger v. Hamlin, 407 U.S. 25, 35-40, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), the United States Supreme Court appeared to hold that prospective imprisonment for a misdemeanor offense guarantees indigents a right to appointed counsel, but the Court clarified in Scott v. Illinois, 440 U.S. 367, 373-74, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979), that under the Sixth Amendment this right is limited to cases in which the defendant is actually imprisoned for the charged offense. Florida, however, has provided a different standard through its Constitution, Rules of Criminal Procedure, and the Florida Statutes. See art. I, §§ 2, 16, Fla. Const.; Fla. R.Crim. P. 3.111, 3.160; § 27.51, Fla. Stat. (2003). In Florida, indigent criminal defendants have a right to appointed counsel "for offenses punishable by imprisonment." Fla. R.Crim. P. 3.111(b)(1) (1992) (emphasis supplied).

This standard provides a more broadly constructed right to counsel than the federal actual-imprisonment standard, as it encompasses all cases in which imprisonment is a prospective penalty. The trial judge only possesses restricted discretion to limit this right by certifying, in writing, before trial that the defendant will not be imprisoned. See Fla. R.Crim. P. 3.111(b)(1) (1992). Florida Rule of Criminal Procedure 3.160 further supports this divergent standard by providing:

Prior to arraignment of any person charged with the commission of a crime, if he or she is not represented by counsel, the court shall advise the person of the right to counsel and, if he or she is financially unable to obtain counsel, of the right to be assigned court-appointed counsel to represent him or her at the arraignment and at all subsequent proceedings.

Fla. R.Crim. P. 3.160(e) (emphasis supplied). Moreover, section 27.51(1)(b)(1)-(7), Florida Statutes, provides:

The public defender shall represent, without additional compensation, any person determined to be indigent . and . [u]nder arrest for, or charged with . [1][a]a misdemeanor authorized for prosecution by the state attorney [.] [or] [7][a] violation of chapter 316 punishable by imprisonment .

(Emphasis supplied.) (DUI is a chapter 316 offense punishable by imprisonment.)

These rules and statutory sections unambiguously differentiate an indigent criminal defendant's right to counsel in a misdemeanor case under Florida law from that of a similarly situated defendant under federal law. The courts of this state have also recognized this distinction. See, e.g., Case v. State, 865 So.2d 557, 558 (Fla. 1st DCA 2003) ("A defendant who is charged with a misdemeanor punishable by possible imprisonment is entitled to counsel unless the judge timely issues a written order guaranteeing that the defendant will never be incarcerated as a result of the conviction." (emphasis supplied)).

Florida law draws the entitlement line at *prospective punishment* (i.e., offenses punishable by imprisonment), while federal law draws a less protective entitlement line at *actual imprisonment* (i.e., there is no right to counsel unless the defendant is actually incarcerated as a result of the offense). The committee comments to Florida Rule of Criminal Procedure 3.111 further emphasize the difference between the Florida and federal standards. Compare Fla. R.Crim. P. 3.111, committee note (1972) ("The committee determined that possible deprivation of liberty for any period makes a case serious enough that the accused should have the right to counsel." (emphasis supplied)), with Scott, 440 U.S. at 373-74, 99 S.Ct. 1158 ("[A] trial imprisonment is a penalty different in kind from fines or the mere threat of imprisonment. [that standard] is eminently sound and warrants adoption of *actual* imprisonment as the line defining the constitutional right to appointment of counsel." (emphasis supplied)).

The instant case provides an excellent example of the practical differences between the federal actual-imprisonment standard and the Florida prospective-imprisonment standard. Here, an indigent criminal defendant pled no contest to misdemeanor DUI charges without having been provided appointed counsel, despite his "right to be assigned court-appointed counsel to represent him ...at the arraignment and at all subsequent proceedings." Fla. R.Crim. P. 3.160(e). Moreover, there is no indication in the record that either trial judge in Mr. Kelly's cases certified, in writing, before trial that Kelly would not face imprisonment for the charged offenses. Cf. Fla. R.Crim. P. 3.111(b)(1)-(1992). Finally, the record does not reflect that either of the trial judges engaged in a proper colloquy with Kelly regarding his right to counsel. Cf. Fla. R.Crim. P. 3.111(d)(2) (1992).

Under Florida law, Mr. Kelly therefore maintained a right to counsel pursuant to Rule of Criminal Procedure 3.111 because misdemeanor DUI is an offense punishable by imprisonment. As a corollary, Kelly was entitled to appointed representation from the Public Defender's Office under section 27.51, Florida Statutes. In contrast, under federal law, Kelly would not have had a right to counsel because he was not imprisoned as a result of either plea. See Scott, 440 U.S. at 373-74, 99 S.Ct. 1158.

This Court clearly stated in Traylor v. State, 596 So.2d 957, 962 (Fla.1992):

[W]hen called upon to construe their bills of rights, state courts should focus primarily on factors that inhere in their own unique state experience, such as the express language of the constitutional provision, its formative history, both preexisting and developing state law, evolving customs, traditions and attitudes within the state, the state's own general history, and finally any external influences that may have shaped state law.

Id. (emphasis supplied). Here, a consideration of these factors leads to the conclusion that Florida provides a broader right to counsel under article I, section 16 of our state Constitution than that provided by the federal courts under the Sixth Amendment. See, e.g., Fla. R.Crim. P. 3.111, 3.160; § 27.51, Fla. Stat. (2003) (adopting a prospective-imprisonment scheme for determining whether defendants have a right to counsel in misdemeanor cases).

Our interpretation of the right to counsel under article I, section 16 of the Florida Constitution should, therefore, reflect Justice Brennan's admonishment:

[T]he decisions of the [United States Supreme] Court are not, and should not be, dispositive of questions regarding rights guaranteed by counterpart provisions of state law. Accordingly, such decisions are not mechanically applicable to state law issues, and state court judges and the members of the bar seriously err if they so treat them. Rather, state court judges, and also practitioners, do well to scrutinize constitutional decisions by federal courts, but only if they are found to be logically persuasive and well-reasoned, paying due regard to precedent and the policies underlying specific constitutional guarantees, may they properly claim persuasive weight as guideposts when interpreting counterpart state guarantees.

William J. Brennan, Jr., State Constitutions and the Protection of Individual Rights, 90 Harv. L.Rev. 489, 502 (1977) (emphasis supplied) (footnote omitted). Thus, an independent analysis under the Florida Constitution is necessary to remain faithful to our statement regarding Florida's Declaration of Rights that "[n]o other broad formulation of legal principles, whether state or federal, provides more protection from government overreaching or a richer environment for self-reliance and individualism than does this 'stalwart set of basic principles.'" Traylor, 596 So.2d at 963 (quoting State ex rel. Davis v. City of Stuart, 97 Fla. 69, 120 So. 335, 347 (1929)).

D. Nichols Is Not Controlling Under Article I, Section 16

It is true that in Hall and Beach this Court relied in part upon Baldasar v. Illinois, 446 U.S. 222, 100 S.Ct. 1585, 64 L.Ed.2d 169 (1980), which the Supreme Court subsequently overruled in Nichols v. United States, 511 U.S. 738, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994). However, it is equally true that the federal Constitution generally sets the floor, not the ceiling, with regard to the extent of personal rights and freedoms afforded by the State of Florida. See, e.g., Traylor, 596 So.2d at 962; In re T.W., 551 So.2d 1186, 1191 (Fla.1989) ("State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. ...[W]ithout [independent state law], the full realization of our liberties cannot be guaranteed." (quoting Brennan, 90 Harv. L.Rev. at 491) (emphasis supplied)); State v. Dreyer, 448 So.2d 1184, 1185 (Fla. 4th DCA 1984) (holding that the right to counsel attaches at an earlier point during the prosecutorial process under Florida law than under federal law). Moreover, this Court is the ultimate "arbiter[ ] of the meaning and extent of the safeguards provided under Florida's Constitution." Busby v. State, 894 So.2d 88, 102 (Fla.2004). In fulfillment of that constitutional role, we specifically held in Traylor, 596 So.2d at 960-70, that article I, section 16 of the Florida Constitution (right to counsel), read in light of article I, section 2 of that same document (equal protection), mandates that

the right of indigent defendants to [the] assistance of court-appointed counsel in criminal prosecutions is constitutionally required ... The rule is grounded in Sections 2 and 16 of our state Constitution.

(Emphasis supplied.) Further, we clarified that this rule is not subsumed by, or derived from, the federal Sixth Amendment:

In light of the widely-recognized and oftentimes decisive role the lawyer plays in the judicial process, we conclude that our state Constitution requires that the Section 16 right to counsel be made available to impoverished defendants. No Florida citizen can be deprived of life or liberty in a criminal proceeding simply because he or she is too poor to establish his or her innocence.

Traylor, 596 So.2d at 969 (emphasis supplied). In opposition to this precedent, the dissent proceeds under the incorrect assumption that there is no independent right to the assistance of appointed counsel under the Florida Constitution and that, consequently, this right is secured exclusively through the Sixth Amendment to the United States Constitution. However, the dissent overlooks the true content of our decision in Traylor, including its state-law posture.[3] The reasoning of the dissent is thus unsound from its inception because it assumes that we lack the ability to independently interpret the Florida Constitution. We establish no new precedent in this regard as asserted by the dissent; we specifically held in Traylor-and reaffirm today-that article I, sections 2 and 16 of our state Constitution afford indigent criminal defendants a free-standing right to appointed counsel. See 596 So.2d at 969-70. Owen did not even mention this aspect of the Traylor decision.

For reasons unexplained by our dissenting colleague, he would have us preposterously follow the decisions of the United States Supreme Court when we are faced with questions of state law. In reply, we explain that we have the duty to independently examine and determine questions of state law so long as we do not run afoul of federal constitutional protections or the provisions of the Florida Constitution that require us to apply federal law in state-law contexts. No such considerations restrict our ability to definitively decide this case.

We live in a federalist republic, with multiple, independent levels of government, rather than in a unitary state, which, in contrast, is controlled by a centralized governing regime and court system. Far better writers than we have explained this dual system of republican government. For example, writing as Publius, James Madison explained this foundational aspect of our nation, which has subsequently been labeled "dual" or "cooperative federalism," [4] by stating:

In a single republic, all the power surrendered by the people, is submitted to the administration of a single government; and the usurpations are guarded against, by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people, is first divided between two distinct levels of government [referring to the national and state governments], and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself.

The Federalist No. 51, at 292 (James Madison) (M'Carty & Davis, Philadelphia, PA, Gleaner & Co., Hallowell, ME 1826).

In keeping with this foundational concept, our decision today reflects the differences that exist between Florida and federal law and promotes a "double security" for the constitutional rights of Floridians.

Unsurprisingly, our acknowledged role as the definitive arbiter of the Florida Constitution requires a unique standard of review in this case:

When called upon to decide matters of fundamental rights, Florida's state courts are bound under federalist principles to give primacy to our state Constitution and to give independent legal import to every phrase and clause contained therein. We are . [thus] bound under our Declaration of Rights to construe each provision freely in order to achieve the primary goal of individual freedom and autonomy.

Traylor, 596 So.2d at 962-63. Accordingly, we examine Nichols, and reexamine our current Hadbach framework, to determine if either comports with Florida's prospective-imprisonment misdemeanor right-to-counsel standard.

To properly frame this inquiry, we must first explore the United States Supreme Court precedent that preceded and eventually led to Nichols. Four major Supreme Court decisions have directly shaped indigent defendants' Sixth and Fourteenth Amendment right to appointed counsel in misdemeanor cases: Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), Scott v. Illinois, 440 U.S. 367, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979), Baldasar v. Illinois, 446 U.S. 222, 100 S.Ct. 1585, 64 L.Ed.2d 169 (1980), overruled by Nichols v. United States, 511 U.S. 738, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994), and Nichols.

i. Argersinger and Scott

In Argersinger a case that resulted from this Court's holding in State ex rel. Argersinger v. Hamlin, 236 So.2d 442 (Fla.1970) the United States Supreme Court explained that the expansive right-to-counsel language appearing in Gideon v. Wainwright [1] was not limited to felony cases. The High Court explained:

[T]he problems associated with misdemeanor and petty offenses often require the presence of counsel to insure the accused a fair trial. "[T]he prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or 'petty' matter and may well result in quite serious repercussions affecting his career and his reputation."

. [A]bsent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.

Argersinger, 407 U.S. at 36-37, 92 S.Ct. 2006 (emphasis supplied) (footnotes omitted) (quoting Baldwin v. New York, 399 U.S. 66, 73, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970)). The Court also addressed the importance of appointed counsel for defendants when entering pleas:

Beyond the problem of trials and appeals is that of the guilty plea, a problem which looms large in misdemeanor as well as in felony cases. Counsel is needed so that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.

Id. at 38, 92 S.Ct. 2006 (emphasis supplied).

Some justices interpreted the "prospect of imprisonment" language appearing in Argersinger as indicating that the right to counsel attached whenever the charged offense was punishable by imprisonment. See, e.g., Scott v. Illinois, 440 U.S. 367, 382-88, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979) (Brennan, J., dissenting) (advocating that the Court adopt an "authorized imprisonment" standard similar to the one Florida employs today). In Scott, however, the High Court clarified that Argersinger limited indigent defendants' Sixth Amendment right to appointed counsel to cases in which the defendant is "actual [ly] imprison[ed]." Scott, 440 U.S. at 373, 99 S.Ct. 1158. But, in clarifying Argersinger, Scott did not disturb the Argersinger Court's rationale for ensuring that indigent defendants do not face jail time as the result of uncounseled misdemeanors uncounseled misdemeanors lack the requisite reliability to impose imprisonment. See Argersinger, 407 U.S. at 35-36, 92 S.Ct. 2006 (" 'The misdemeanor trial is characterized by insufficient and frequently irresponsible preparation on the part of the defense, the prosecution, and the court. Everything is rush, rush.' . There is evidence of the prejudice which results to misdemeanor defendants from this 'assembly-line justice.' " (citation omitted)); see also Baldasar, 446 U.S. at 227, 100 S.Ct. 1585 (Marshall, J., concurring) ("We should not lose sight of the underlying rationale of Argersinger, that unless an accused has 'the guiding hand of counsel' at every step in the proceedings against him, ' his conviction is not sufficiently reliable to support the severe sanction of imprisonment." (emphasis supplied) (quoting Powell, 287 U.S. at 68-69, 53 S.Ct. 55)).

ii. Baldasar

Baldasar represented the United States Supreme Court's attempt to apply Argersinger and Scott's actual-imprisonment standard to an Illinois recidivism statute. Petitioner Baldasar had previously been convicted of misdemeanor theft. See Baldasar, 446 U.S. at 222-23, 100 S.Ct. 1585. In the prior proceeding, he was unrepresented and did not waive his right to counsel. See id. As punishment, he paid a fine of $110 and received a one-year probation sentence. See id. Six months later, Illinois charged him with stealing a $29 showerhead, which the State sought to prosecute as a felony based on Baldasar's prior uncounseled misdemeanor conviction. See id.

The Illinois courts permitted the prosecution to introduce evidence of the prior uncounseled misdemeanor conviction to enhance Baldasar's subsequent offense from a misdemeanor to a felony. See id. Baldasar objected, contending that this enhancement violated the rule of Argersinger and Scott. In other words, Illinois was increasing his punishment as a direct result of his prior uncounseled misdemeanor conviction and that uncounseled misdemeanor conviction, which was unreliable for the purpose of imposing imprisonment in the first instance, remained unreliable for the purpose of enhancing his imprisonment in a collateral proceeding. See id. at 223-24, 100 S.Ct. 1585.

A four-justice plurality [2] agreed with Baldasar, while a four-justice dissent did not. See id. at 224, 100 S.Ct. 1585 (Stewart, J., concurring, joined by Brennan and Stevens, JJ.) ("[P]etitioner . was sentenced to an increased term of imprisonment only because he had been convicted in a previous prosecution in which he had not had the assistance of appointed counsel in his defense. It seems clear to me that this prison sentence violated the constitutional rule of Scott."); id. at 227, 100 S.Ct. 1585 (Marshall, J., concurring, joined by Brennan and Stevens, JJ.) ("The sentence petitioner actually received would not have been authorized by statute but for the previous conviction. It was imposed as a direct consequence of that uncounseled conviction and is therefore forbidden under Scott and Argersinger."); id. at 230-34, 100 S.Ct. 1585 (Powell, J., dissenting, joined by Burger, C.J., White and Rehnquist, JJ.) (claiming that the enhanced punishment Baldasar received was not imposed as a result of his prior misdemeanor, and thus did not violate Argersinger or Scott).

Justice Blackmun, meanwhile, developed his own approach without addressing the issue framed by the Court [3] . Instead, he adopted a hybrid construct, which he lifted verbatim from his dissent in Scott. His approach combined Argersinger and Scott's actual-imprisonment standard with a right-to-jury standard articulated by the Supreme Court in Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). Justice Blackmun, thus, offered the following rule in his concurrence:

[A]n indigent defendant in a state criminal case must be afforded appointed counsel whenever the defendant is prosecuted for a nonpetty criminal offense, that is, one punishable by more than six months' imprisonment, see Duncan v. Louisiana, 391 U.S. 145[, 88 S.Ct. 1444, 20 L.Ed.2d 491] (1968); Baldwin v. New York, 399 U.S. 66[, 90 S.Ct. 1886, 26 L.Ed.2d

437] (1970), or whenever the defendant is convicted of an offense and is actually subjected to a term of imprisonment, Argersinger v. Hamlin, 407 U.S. 25[, 92 S.Ct. 2006, 32 L.Ed.2d 530] (1972).

446 U.S. at 229, 100 S.Ct. 1585 (Blackmun, J., concurring) (quoting Scott, 440 U.S. at 369-00, 99 S.Ct. 1158 (Blackmun, J., dissenting)). This is the same rule that was adopted in Hlad v. State, 505 So.2d 928, 929-30 (Fla.1991).

The most accurate description of Baldasar appears to be the one that Justice Souter later offered in Nichols: "[T]he Baldasar Court was in equipoise, leaving a decision in the same posture as an affirmance by an equally divided Court, entitled to no precedential value." Nichols, 511 U.S. at 750, 114 S.Ct. 1921 (Souter, J., concurring in the judgment). Cf. Marks v. United States, 430 U.S. 188, 193, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977) ("[W]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'" (as recognized by numerous courts, it is difficult to determine Baldasar's narrowest grounds)). But see Kirsten M. Nelsen, Note, Nichols v. United States and the Collateral Use of Uncounseled Misdemeanors in Sentence Enhancement, 37 B.C. L.Rev. 507, 582 (1996) ("All three concurring opinions in Baldasar share one common and narrow reasoning: the deprivation of liberty cannot occur without the right to counsel." (footnote omitted)).

iii. Nichols' Contrast With the Sixth Amendment Reliability Concern

In 1994, the United States Supreme Court overruled Baldasar in Nichols v. United States. See Nichols, 511 U.S. at 748-49, 114 S.Ct. 1921, overruling Baldasar, 446 U.S. at 222-23, 100 S.Ct. 1585. In the process, the Court endorsed and adopted the Baldasar dissent as the Nichols majority opinion: "[A]n uncounseled conviction valid under Scott [because no imprisonment was imposed] may be relied upon to enhance the sentence for a subsequent offense, even though that sentence entails imprisonment." Nichols, 511 U.S. at 746-47, 114 S.Ct. 1921 (emphasis supplied). Nichols' factual posture, however, differed from Baldasar in an important respect. While Baldasar involved a recidivism statute and the use of an uncounseled misdemeanor to enhance a subsequent offense from a misdemeanor to a felony, Nichols involved the consideration of a defendant's prior uncounseled misdemeanor under the federal Sentencing Guidelines. Justice Souter addressed the importance of this factual distinction in his concurrence:

There is an obvious and serious argument that the line drawn in Scott is crossed when, as Justice Stewart put it to Baldasar, a defendant is "sentenced [under a recidivism statute] to an increased term of imprisonment only because he had been convicted in a previous prosecution in which he had not had the assistance of appointed counsel in his defense."

Fortunately, the difficult constitutional question that argument raises need not be answered in deciding this case, for unlike the sentence-enhancement scheme involved in Baldasar, the United States Sentencing Commission's Guidelines . . . do not provide for automatic enhancement based on prior uncounseled convictions. . . .

Under the Guidelines . . . the rule prior convictions play in sentencing is presumptive, not conclusive, and a defendant has the chance to convince the sentencing court of the unreliability of any prior valid but uncounseled convictions.

Nichols, 511 U.S. at 750-52, 114 S.Ct. 1921 (Souter, J., concurring in the judgment) (citations omitted) (some emphasis supplied).

Therefore, Justice Souter contrasted the use of uncounseled misdemeanors under the federal Sentencing Guidelines with the use of such misdemeanors under recidivism statutes similar to the one at issue in this case:

Because the Guidelines allow a defendant to rebut the negative implication to which a prior uncounseled conviction gives rise, they do not ignore the risk of unreliability associated with such a conviction. Where concern for reliability is accommodated, as it is under the Guidelines, nothing in the Sixth Amendment or our cases requires a sentencing court to ignore the fact of a valid uncounseled conviction, even if that conviction is a less confident indicator of guilt than a counseled one would be.

Id. at 752-53, 114 S.Ct. 1921 (Souter, J., concurring in the judgment) (emphasis supplied). Hence, Justice Souter would limit the use of prior uncounseled misdemeanors in situations "where [Argersinger's] concern for reliability is accommodated." Id. at 753, 114 S.Ct. 1921 (Souter, J., concurring in the judgment). [11]

The Nichols majority, however, did not address the Sixth Amendment reliability concern, which the Court has subsequently reaffirmed as "the key Sixth Amendment inquiry." Alabama v. Shelton, 535 U.S. 654, 667, 122 S.Ct. 1764, 152 L.Ed.2d 888 (2002) ("[T]he key Sixth Amendment inquiry [is] whether the adjudication of guilt corresponding to the prison sentence is sufficiently reliable to permit its accession." (emphasis supplied)). Furthermore, in adopting the Baldasar dissent as the Nichols majority opinion, the High Court appears to have imported all of its attendant issues. For example, the Baldasar dissent and the Nichols majority opinion do not seem to logically follow from Argersinger and Scott. Argersinger and Scott held that the Sixth Amendment right to counsel in misdemeanor cases is limited to cases where the defendant is actually imprisoned, and they did so because of the lack of reliability associated with uncounseled misdemeanors. See Argersinger, 407 U.S. at 34-37, 92 S.Ct. 2006 (outlining the reliability concerns associated with uncounseled misdemeanors); Scott, 440 U.S. at 373-74, 99 S.Ct. 1158 (reaffirming Argersinger in toto). Thus, if an uncounseled misdemeanor is too unreliable to impose imprisonment in a direct proceeding, it remains too unreliable to enhance imprisonment in a collateral proceeding; the key issue remains its unreliability for purposes of imposing imprisonment.

In contrast, the Baldasar dissent and the Nichols majority opinion endorsed a somewhat incongruous rule that deems an uncounseled conviction invalid for imposing a prison term directly, but valid for imposing a prison term collaterally, which some justices have characterized as "an illogical and unworkable deviation from [the Supreme Court's] previous cases," and as not addressing the underlying Sixth Amendment reliability concern. Baldasar, 446 U.S. at 228-29, 100 S.Ct. 1585 (Marshall, J., concurring) (referencing the Baldasar dissent, which became the position of the majority in Nichols). [12]

The justifications underpinning Nichols' Sentencing Guidelines rationale are unpersuasive when applied to a recidivism statute, under which the defendant's prior misdemeanor convictions constitute an element of his or her later felony offense. The Baldasar dissent and the Nichols majority included dicta from an 1895 double jeopardy case which when used there made sense and proceeded to use it in a context for which it was perhaps ill-suited. See Baldasar, 446 U.S. at 232, 100 S.Ct. 1585 (Powell, J., dissenting) (citing Moore v. Missouri, 159 U.S. 673, 677, 16 S.Ct. 179, 40 L.Ed. 301 (1895); Oyler v. Boles, 368 U.S. 448, 451, 82 S.Ct. 501, 7 L.Ed.2d 446 (1962) (reaffirming Moore in the context of an equal protection and due process challenge)); Nichols, 511 U.S. at 747, 114 S.Ct. 1921 (exhibiting the same reasoning as the Baldasar dissent). In particular, the observation that the High Court has "consistently . . . sustained repeat-offender laws as penalizing only the last offense committed by the defendant," [13] makes sense when one is determining whether a criminal defendant is being tried and punished for the same offense twice (i.e., a double jeopardy violation), because at least one element of the subsequent offense differs from that of the previous offense(s). [14] But, that reasoning does not seem to make sense in the context of a rule holding that, on the one hand, uncounseled misdemeanor convictions are unreliable and invalid for purposes of imposing imprisonment directly but, on the other, valid for imposing imprisonment collaterally. See Nichols, 511 U.S. at 746, 114 S.Ct. 1921. Neither Moore nor Oyler addressed a violation of the right to counsel, and as noted by other courts "[p]recedents from cases, shorn of their factual context, are not much help in making a decision." United States v. Galindo-Gallegos, 244 F.3d 728, 730 (8th Cir.2001).

Under a recidivism statute such as the one at issue in this case, the fact remains that the enhanced portion of the term of imprisonment would not have been imposed but for the previous conviction, and the uncounseled conviction should remain invalid for purposes of imposing imprisonment. See Baldasar, 446 U.S. at 227, 100 S.Ct. 1585 (Marshall, J., concurring). It has been recognized that courts

should not lose sight of the underlying rationale of Argersinger, that unless an accused has "the guiding hand of counsel at every step in the proceedings against him," his conviction is not sufficiently reliable to support the severe sanction of imprisonment. An uncounseled conviction does not become more reliable merely because the accused has been validly convicted of a subsequent offense.

Id. at 228-29, 100 S.Ct. 1585 (Marshall, J., concurring) (citations omitted) (emphasis supplied) (quoting Powell v. Alabama, 287 U.S. 45, 69, 53 S.Ct. 55, 77 L.Ed. 158 (1932)).

There are no principled means of separating the enhanced term of imprisonment from the uncounseled misdemeanor convictions when addressing a recidivism statute of the type at issue in this case; the defendant's prior misdemeanor convictions are an element of the later felony offense, thus any enhanced imprisonment directly flows from the defendant's prior convictions. See, e.g., Finelli, 780 So.2d at 33 (holding that a defendant's prior misdemeanor DUI convictions are an element of his or her subsequent felony DUI offense). Therefore, "the adjudication of guilt corresponding to the [enhanced] prison sentence is [not] sufficiently reliable to permit incarceration." See Shelton, 535 U.S. at 667, 122 S.Ct. 1764 (emphasis supplied) (holding that uncounseled suspended sentences violate Argersinger and Scott). When faced with this reality, we cannot apply dicta from federal cases to artificially separate the uncounseled misdemeanor from the defendant's potentially much longer prison term because under a recidivism statute, the defendant is only serving the enhanced portion of his or her sentence because of an uncounseled "conviction [that] is not sufficiently reliable to support the severe sanction of imprisonment." Baldasar, 446 U.S. at 227, 100 S.Ct. 1585 (Marshall, J., concurring) (emphasis supplied). Therefore, we find Nichols unpersuasive in this context. We cannot agree with the rationale of the United States Supreme Court, which intimates that a repeat DUI offender is not receiving punishment for his or her prior uncounseled convictions. We come to this conclusion because proving those convictions beyond a reasonable doubt is part of the State's burden in seeking to convict the defendant for his or her later felony offense. See, e.g., Finelli, 780 So.2d at 33.

In sum, these prior uncounseled convictions are part of the defendant's later felony offense because they are elements of that offense. Therefore, in a situation such as this, we decline to endorse any holding which would conclude that the recidivist defendant is not receiving punishment for his or her prior uncounseled convictions. Consequently, we hold that Nichols is not persuasive precedent for purposes of interpreting article I, section 16 of the Florida Constitution. In addition, under article I, sections 2 and 16 of the Florida Constitution, the Florida Rules of Criminal Procedure, and the Florida Statutes, we reaffirm that this state is a prospective-imprisonment jurisdiction and that indigent defendants possess an independent state-law constitutional right to appointed counsel during criminal prosecutions.

iv. Our Revised Hlad/Beach Framework

In the preceding section, we recognized that uncounseled misdemeanor convictions are unreliable for purposes of imposing imprisonment and that such uncounseled convictions lead directly to increased terms of imprisonment when they constitute elements of a later felony offense. Therefore, we must next address whether our current Hlad/Beach framework reflects these tenets. We previously based our holdings in Hlad and Beach, in part, upon Justice Blackmun's Baldasar concurrence. Compare, Hlad, 505 So.2d at 830, with Baldasar, 446 U.S. at 229, 100 S.Ct. 1585 (Blackmun, J., concurring); see also Beach, 592 So.2d at 238-40. However, there are two problems associated with the current articulation of our Hlad/Beach framework.

First, the current framework injects a right-to-jury standard into right-to-counsel cases. Specifically, the framework requires that when the defendant was not imprisoned for a prior misdemeanor conviction in a direct proceeding, he or she may only mount a Hlad/Beach challenge to the later use of the misdemeanor as an enhancer if the misdemeanor was prospectively punishable by more than six months' imprisonment. This rule is derived from the United States Supreme Court's time-based right-to-jury standard. See Duncan v. Louisiana, 391 U.S. 145, 159, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968) ("Crimes carrying possible penalties up to six months do not require a jury trial if they otherwise qualify as petty offenses[.]" (emphasis supplied)) The Supreme Court, however, has explicitly held that this time-based right-to-jury standard has no place in right-to-counsel cases. See Argersinger, 407 U.S. at 30-31, 92 S.Ct. 2006 ("We reject ...the premise that since prosecutions for crimes punishable by imprisonment for less than six months may be tried without a jury, they may also be tried without a lawyer.").

We agree with this position. The right to counsel is distinct from the right to a jury trial because each right emerged from a different common-law genealogy. See Argersinger, 407 U.S. at 29, 92 S.Ct. 2006. The English common law historically limited "the 'deep commitment' to trial by jury to 'serious criminal cases,' " i.e., those cases punishable by more than six months' imprisonment. Id. at 30, 92 S.Ct. 2006. Contrastingly, the common law recognized a right to counsel in "petty criminal cases," i.e., those cases where there is no possibility of imprisonment in excess of six months. Id. The Sixth Amendment later expanded the right to counsel to felony cases. See id. at 30-31, 92 S.Ct. 2006. Therefore, Duncan's right-to-jury standard should no longer play a role in our Hlad/Beach framework.

The second problem with our existing framework is that, in some circumstances, it permits the imposition of increased terms of imprisonment as a direct result of prior uncounseled misdemeanor convictions. This is currently permitted if those convictions did not originally lead to incarceration and were not prospectively punishable by more than six months' imprisonment. See Hlad, 505 So.2d at 929-30; Beach, 592 So.2d at 239-40. However, the unreliability of an uncounseled misdemeanor conviction does not turn on the length of the prospective term of imprisonment. Rather, it turns on the fact that even an uncounseled innocent gains little by contesting a "petty" misdemeanor where the prosecuting attorney is offering a low fine and community service in exchange for a guilty or no-contest plea. Cf. Nichols, 511 U.S. at 752, 114 S.Ct. 1921 (Souter, J., concurring in the judgment) (noting that the federal Sentencing Guidelines unlike many recidivism statutes allow the defendant to "show ...that his prior conviction resulted from ...a frugal preference for a low fine with no counsel fee, or from a desire to put the matter behind him instead of investing the time to fight the charges").

If one cannot afford an attorney, and the prosecutor is offering no jail time, what real incentive is there to reject the plea bargain? That is the crux of the problem, and that is why the State may not, consistent with our state Constitution, impose deprivation of liberty as a penalty upon a defendant based on prior misdemeanor convictions, unless the defendant was either provided with counsel or validly waived that right. If the State would like to use prior misdemeanor convictions as enhancers, it should ensure that these misdemeanors are reliable enough to impose imprisonment by recommending that the trial court either appoint counsel or assist a willing indigent defendant in knowingly, intelligently, and voluntarily waiving the right to counsel.

We thus agree with courts from other jurisdictions which have held that the State may not use an uncounseled conviction to increase a defendant's loss of liberty in the absence of a valid waiver of counsel.[10] However, the loss of liberty is a penalty different in kind and severity from other penalties. We therefore hold that when the State prosecutes a repeat DUI offender, it may constitutionally seek applicable enhanced penalties and fines short of incarceration based upon prior uncounseled misdemeanor DUI offenses. Cf. Hrycak, 877 A.2d at 1216 (coming to a substantially similar conclusion). For example, on remand, if the State continues to prosecute this case, it may not use any of Mr. Kelly's prior misdemeanor DUI offenses to enhance his current offense unless it proves that Kelly was either represented by counsel or validly waived that right during those prior proceedings. In other words, any enhanced loss of liberty may only be based on the counseled offense(s) and the offense(s) for which Kelly validly waived his right to counsel. However, during any resulting DUI prosecution, the State may use each of Kelly's prior uncounseled misdemeanor DUI offenses to seek the enhanced penalties and fines short of incarceration that apply to a fourth DUI offense.[11] Here, these penalties and fines could include, inter alia, a fine between $1,000 and $5,000; probation, including the completion of a substance-abuse course and a psychosocial evaluation; the impoundment and immobilization of all vehicles that Mr. Kelly owns for 90 days; and the permanent revocation of Kelly's driver's license or driving privilege. See §§ 316.193(2)(b)(3), 775.083(1)(c), 316.193(5), 316.1930(1), 322.28(2)(e), Fla. Stat. (2003).

III. CONCLUSION

Consistent with the views we have expressed in this opinion, we answer the rephrased certified question as follows: Article I, section 16 of the Florida Constitution, as influenced by Florida's prospective-imprisonment standard, prevents the State from using uncounseled misdemeanor convictions to increase or enhance a defendant's later misdemeanor to a felony, unless the defendant validly waived his or her right to counsel with regard to those prior convictions. However, the State may constitutionally seek the increased penalties and fines short of incarceration associated with the defendant's relevant number of DUI offenses. In accordance with this holding, we adopt our Hlad/Beach framework along the following lines. To meet the initial burden of production, the defendant must assert under oath, through a properly executed affidavit that:

(1) the offense involved was punishable by imprisonment;20

(2) the defendant was indigent and, thus, entitled to court-appointed counsel;

(3) counsel was not appointed; and

(4) the right to counsel was not waived.

If the defendant sets forth these facts under oath, then a burden of persuasion shifts to the State to show either that counsel was provided or that the right to counsel was validly waived. Cf. Beach, 592 So.2d at 239.21

For these reasons, we approve the decision of the Fourth District Court of Appeal, but disapprove any of its reasoning that is inconsistent with our modified framework. Accordingly, we remand to the Fourth District for further proceedings consistent with this opinion.

It is so ordered.

Recently, in my dissent in State v. Powell, 998 So.2d 531 (Fla. 2008), I noted the following in respect to the majority suppressing a confession based upon the majority's construction of a Miranda23 form widely used by law enforcement:

Additionally, it will result in reversing the convictions of individuals who have confessed to crimes based upon a holding that is at most an extreme technical adherence to language and that has no connection with whether the person who confessed understood his or her rights.

Again in this case, the majority begins with a very technical constitutional construction of language in a plea form containing an express waiver of the right to counsel that was used in Broward County for at least ten years without being held to be constitutionally infirm. The majority then does not accept the uncontroverted record that a knowing waiver of counsel was executed in both of the questioned prior driving under the influence (DUI) pleas. Recognizing that the United States Supreme Court's latest decision on point was directly contrary to its decision in this case, the majority discards this Court's long adherence to United States Supreme Court decisions as to the constitutional rights involved and reaches its conclusion by a new reliance on the Florida Constitution. The result of the majority's complex analysis is that the State cannot prosecute this defendant for his fourth DUI, despite the fact that in each of the prior three cases, the defendant pled to DUI, testified that he knew he had a right to counsel, and knowingly waived that right while pleading to the three prior DUI charges. This result is not in accord with the legislative scheme for removing repeat DUI offenders from Florida roads. Predictably, and to my view unfortunately, since the majority does not determine whether its decision is to be applied retroactively, many other final convictions of repeat DUI offenders will be subject to further postconviction litigation to determine whether those DUI convictions must be reversed because of the majority's new construction of the Florida Constitution.

My analysis in this case starts with the fundamental fact that Kelly was not prejudiced by what was at most a questionable, technical defect in the long-used plea forms in which he acknowledged that he knew he had the right to counsel, waived that right, and pled to the DUI charges. First, it is necessary to understand just how technical and nonprejudicial the defect upon which the majority premises its decision is. The three plea forms executed by Kelly in pleading no contest to the DUI charges on October 27, 1987, on March 2, 1995, and on September 18, 1997, contained the same affirmative statement that Kelly understood that he had "the right to an attorney and the right to have an attorney appointed if [he] cannot afford one and if the Judge is considering a jail sentence on this charge." The form contained an express acknowledgement by Kelly that he wished to waive that right. Until this case, no case that I have found or that has been cited has held or even called into question whether this form was a valid waiver of counsel. We know that the form was used for at least ten years since Kelly executed the form three times in ten years.

The technical defect that the present majority finds in the form is that the form states "if the judge is considering jail sentence on this charge." The majority holds as to the plea forms:

Florida is a "prospective-imprisonment" jurisdiction that provides indigent criminal defendants a right to counsel in all criminal prosecutions "punishable by imprisonment," except in misdemeanor or ordinance-violation cases where the trial judge affirmatively certifies in writing before trial that the defendant will not face a term of imprisonment for the charged offense. See Fla. R.Crim. P. 3.111(b)(1) (1992). In other words, in Florida, indigent defendants have a right to counsel in all criminal prosecutions punishable by imprisonment even misdemeanor prosecutions unless the trial judge "opts out" by providing the defendant a written, pretrial certification that the defendant will not be imprisoned for the charged offense. See id.; see also Fla. R.Crim. P. 3.160 (advising indigents of the right to appointed counsel); § 27.51, Fla. Stat. (2003) (mandating that the public defender represent indigents charged with violations of Chapter 316 of the Florida Statutes; DUI is a Chapter 316 offense punishable by imprisonment).

This is not the legal landscape Mr. Kelly's State-prepared plea forms described. Rather, they provided the misleading impression that an indigent criminal defendant lacks a right to counsel so long as the trial judge is not currently considering jail time as an appropriate sentence. This mischaracterization relieved the trial judges of their duty to make the affirmative, written, pretrial certification that the rule does required, and still requires today in a slightly modified form. See Fla. R.Crim. P. 3.111(b)(1) ("At the discretion of the court, counsel does not have to be provided to an indigent person in a prosecution for a misdemeanor or violation of a municipal ordinance if the judge, at least 15 days prior to trial, files in the cause a written order of no incarceration certifying that the defendant will not be incarcerated." (emphasis supplied) (the current version of this rule permits the defendant or defense counsel to waive the fifteen-day requirement)). Consequently, even if Mr. Kelly read and understood these plea forms, he would not have been properly informed of his right to counsel.

Majority op. at 1035-36. To boil this down, the defect which results in the majority holding that the waivers of the right to counsel were invalid was that prior to the plea agreement being signed, the trial judge had not issued a written order stating that Kelly would not be sentenced to jail time. The majority finds this to be a defect sufficient to invalidate the waivers of counsel even though the waiver of counsel was included in a plea which was entered upon the agreement that Kelly would receive no jail time and that immediately upon the execution of the pleas, Kelly was sentenced to no jail time.

I do not conclude that the majority's technical holding is a fair construction of the plea form. The plea form advised Kelly that he had a right to counsel "if the judge is considering jail time." Thus, a reasonable understanding of what occurred at the time of both the 1995 plea and the 1997 plea was that Kelly was advised that if the judge was considering jail time, he was entitled to counsel. Plainly, for the waiver of counsel to be effective, this meant that the trial judge would not and could not sentence Kelly to jail time. Here, it is undeniable that the trial judge was not considering jail time. The proof of this, of course, is in the pudding, as the saying goes, since Kelly was sentenced at the same time that he executed the pleas, and he was not sentenced to jail time.

From reading Kelly's testimony at the evidentiary hearing in the present case, in which Kelly was represented by counsel, it is clear that Kelly knew he had a right to counsel at the time of both the 1995 and the 1997 pleas and that he knowingly waived counsel so that he could take advantage of the deals he had been offered in exchange for his no contest pleas. Specifically, the transcript indicates: 25

Q. . But, you wanted to plea the case out on the date that was alleged, March 2nd, 1995?

A. I thought it was the easiest way to resolve my problem, mainly easiest financial situation for me.

.

Q. Mr. Kelly, do you recognize the signature that's on the plea form in this case?

A. Yes, that's my signature.

Q. Okay. So did you review this plea form at the time you pled the case out that's dated March 2nd, 1995?

A. Yes, I did.

Q. And that plea form also informed you at paragraph number 4 of a right to an attorney?

[Prosecutor read from the plea form:] Judge, I will have a right to an attorney and right to have an attorney appointed if I cannot afford one and if the Judge is considering a sentence of considering a jail sentence on this charge. And it says, previous to that I have sworn under oath to the Judge, I have sworn under oath before the judge that I understand the following and includes the paragraph 4.

Q. So Mr. Kelly, before you signed this document you read this plea form?

A. Yes I did.

Q. And you understood all those rights?

A. To the best that I understand, yes I-I'm no attorney.

Q. Okay. But again, you were pleading the case out on that date, you knew you had a right to an attorney and in exchange you preferred to waive the right to an attorney in order to go forward with the plea on the day of arraignment?

A. Yeah.

Thereafter, Kelly was asked the following in regard to his 1997 plea:

Q. Now, with regard to the 1997, 21062 NH1DA case, do you recall pleading out the DUI case in September of 1997?

A. Yes.

Q. And do you have an independent recollection of that plea?

A. I don't know. Independent, meaning very vivid memory of it?

Q. Yeah.

A. I know that I, that I followed suit with the way that I did prior, that I didn't try to obtain an attorney or try to get the Court to appoint one for me.

Q. Well, let me ask you this-

A. I know that I read the rights form and signed it and took the plea offer.

Q. Now, Mr. Kelly, when you pled the case out you had the understanding that you had the right to an attorney at the time of the plea?

A. I understood that I knew that I couldn't afford an attorney.

Q. Okay.

A. I understand that the Court's [sic] could possibly try to help me with a Public Defender.

Q. Okay. But rather than obtaining the services of [the] Public Defender you felt that the plea was in your best interest [24] and you went forward without an attorney?

A. Yes.

The record simply does not support the majority opinion's summary of relevant facts. See Majority op. at 1034. Also, after reading the transcript, I do not find support for the following statement in the majority's opinion:

[T]he circuit court, apparently sub silentio, rejected the State's argument that Mr. Kelly had validly waived his right to counsel when he pled no contest to his 1995 and 1997 misdemeanor DUI charges.

Majority op. at 1034 (footnote omitted). The trial court did not deal at all with this issue in its order. All the trial court's order said was: "ORDERED AND ADJUDGED that the Defendant's Motion to Dismiss is Granted." During the oral hearing, the trial court made no statement as to how or why he was going to rule. Therefore, there is no way to know on what basis the trial judge would have found the waiver not to be valid. Moreover, the record evidence which I have set out above does not support such a determination.

Next, it is my view that the majority misapplies State v. Beach, 592 So.2d 237 (Fla.1992). From the record, I note that the trial judge did not deal with Beach at all. But, on the essential Beach issue of whether Kelly waived his right to counsel in exchange for the pleas, the trial record is uncontroverted that Kelly did so. I again refer to the transcript testimony that I set out above. Therefore, under Beach, the prior convictions could be used.

Though I conclude that there was a valid waiver and that should end consideration of the issues in this case, I recognize that the district court's certified question poses the question as to whether "an uncounseled prior misdemeanor conviction, in which the defendant could have been incarcerated for more than six months, but was not incarcerated for any period, [] can[ ]be used to enhance a current charge from a misdemeanor to a felony?" State v. Kelly, 946 So.2d 1152, 1154 (Fla. 4th DCA 2006). This question raises the issue as to whether we will continue to apply our decision in Hlad v. State, 585 So.2d 928 (Fla.1991), in view of the fact that the underpinnings of Hlad, namely the United States Supreme Court's decision in Baldasar v. Illinois, 446 U.S. 222, 100 S.Ct. 1585, 64 L.Ed.2d 169 (1980), has been taken away by the United States Supreme Court's later decision in Nichols v. United States, 511 U.S. 738, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994).

The majority rephrases the question and then adopts the dissent in Hlad and finds a constitutional violation on the basis of state law that is contrary to this Court's majority holding in Hlad as well as being contrary to the United States Supreme Court's decision in Nichols. In rejecting Hlad in favor of the Hlad dissent's view, the majority casts aside this Court's often and recently stated commitment to stare decisis. See Strand v. Escambia County, 992 So.2d 150 (Fla.2008); N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So.2d 612, 637 (Fla.2003):

Until today, this Court had always followed the United States Supreme Court's interpretation when addressing right to counsel issues. See, e.g., Cash v. Culver, 120 So.2d 590, 594 (Fla.1960) (following Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932)); Gideon v. Wainwright, 153 So.2d 299, 300 (Fla.1963) (following Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), on remand); Rollins v. State, 299 So.2d 586, 588 (Fla.1974) (following Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972)); Goode v. State, 365 So.2d 381, 383 (Fla.1978) (following Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)); Hill v. State, 688 So.2d 901, 904 (Fla.1996) (same). Hlad, 585 So.2d at 929-30 (following Baldasar, 446 U.S. 222, 100 S.Ct. 1585); Beach, 592 So.2d at 239 (same); see also Patterson v. State, 938 So.2d 625, 628-29 (Fla. 2d DCA 2006) (recognizing that in Beach and Hlad, this Court followed United States Supreme Court precedent).

The majority asserts that I have incorrectly overlooked the true content of Traylor v. State, 596 So.2d 957 (Fla.1992), including its state-law posture. Of course, I do recognize our Traylor opinion, but unlike the majority, I have not overlooked what we later clarified about the Traylor opinion in State v. Owen, 696 So.2d 715, 719 (Fla.1997):

Though our analysis in Traylor was grounded in the Florida Constitution, our conclusions were no different than those set forth in prior holdings of the United States Supreme Court.

This is precisely the point that I now make. It is perplexing how the majority can state that Owen did not involve a right-to-counsel claim when the very issue confronted by this Court was whether the principles concerning requests for counsel, as discussed in Davis and Traylor, applied in equal force to requests to terminate an interrogation-a question we answered in the affirmative.

Indeed, in Hlad, we adopted what we discerned to be the federal standard articulated in Baldasar. Baldasar held that a previous misdemeanor conviction could not be used to enhance a current charge to a felony if the defendant (1) was actually imprisoned or (2) could have been imprisoned for more than six months as a result of the uncounseled conviction. Hlad, 505 So.2d at 930. Three years after we decided Hlad, Baldasar was no longer good law. Recognizing that its splintered decision in Baldasar had caused a high degree of confusion, the United States Supreme Court receded from Baldasar in Nichols and clarified that the Sixth Amendment only precludes enhancement if the defendant was actually imprisoned. Nichols, 511 U.S. at 746-47, 114 S.Ct. 1921.

Though the majority refers extensively to Justice Souter's concurring opinion in Nichols, a concurring opinion no other justices joined, the present majority rejects the United State Supreme Court's majority opinion in Nichols. My view is that the Nichols majority stated important reasons for its decision.

Five Members of the Court in Baldasar-the four dissenters and Justice Stewart-expressed continued adherence to Scott v. Illinois, 440 U.S. 367 [, 99 S.Ct. 1158, 59 L.Ed.2d 383] (1979). There the defendant was convicted of shoplifting under a criminal statute which provided that the penalty for the offense should be a fine of not more than $500, a term of not more than one year in jail, or both. The defendant was in fact fined $50, but he contended that since imprisonment for the offense was authorized by statute, the Sixth and Fourteenth Amendments to the United States Constitution required Illinois to provide trial counsel. We rejected that contention, holding that so long as no imprisonment was actually imposed, the Sixth Amendment right to counsel did not obtain. Id. at 373-374[, 99 S.Ct. 1158]. We reasoned that the Court, in a number of decisions, had already expanded the language of the Sixth Amendment well beyond its obvious meaning, and that the line should be drawn between criminal proceedings that resulted in imprisonment, and those that did not. Id. at 373[, 99 S.Ct. 1158].

We adhere to that holding today, but agree with the dissent in Baldasar that a logical consequence of the holding is that an uncounseled conviction valid under Scott may be relied upon to enhance the sentence for a subsequent offense, even though that sentence entails imprisonment. Enhancement statutes, whether in the nature of criminal history provisions such as those contained in the Sentencing Guidelines, or recidivist statutes that are commonplace in state criminal laws, do not change the penalty imposed for the earlier conviction. As pointed out in the dissenting opinion in Baldasar, "[t]his Court consistently has sustained repeat-offender laws as penalizing only the last offense committed by the defendant. E.g., Moore v. Missouri, 159 U.S. 673, 677[, 16 S.Ct. 179, 40 L.Ed. 301] (1895); Oyler v. Boles, 368 U.S. 448, 451[, 82 S.Ct. 501, 7 L.Ed.2d 446] (1962)." 446 U.S. at 232, 100 S.Ct. 1585.

Nichols, 511 U.S. at 746-47, 114 S.Ct. 1921.[1] This Court should follow the United States Supreme Court as it has on this issue until today.

We should follow the law as determined in Nichols and find no constitutional prohibition against the State enhancing Kelly's charge with his misdemeanor offense because no incarceration was imposed. As the Fourth District implicitly recognized in certifying the question, the rule of law dictates that we recede from Hlad and Beach, both of which relied on the now-discarded Supreme Court decision in Baldasar. Accordingly, we should answer the certified question in the affirmative and hold that an uncounseled prior misdemeanor conviction in which the defendant could have been incarcerated for more than six months but was not incarcerated for any period can be used to enhance a current charge from a misdemeanor to a felony.

The majority relies upon Florida Rule of Criminal Procedure 3.111(b) and section 27.51, Florida Statutes (1985). Ironically, these two sources were adopted in order to implement the Sixth Amendment as interpreted by the United States Supreme Court prior to Nichols. Neither the rule nor the statute was adopted based on the Counsel Clause of article I, section 16.

Rule 3.111(b) requires the appointment of counsel to indigent persons in all prosecutions for offenses punishable by incarceration. But, as this Court itself explained, rule 3.111(b) was adopted to comply with the Supreme Court's decision in Argersinger:

On June 12, 1972, the Supreme Court of the United States extended the right to counsel requirement embodied in the Sixth Amendment to all cases which result in a loss of liberty. Argersinger v. Hamlin. The Court extended the logic of Powell v. Alabama, and Gideon v. Wainwright, both involving felony convictions, saying: "their rationale has relevance to any criminal trial, where an accused is deprived of his liberty." A guilty plea resulting in a jail sentence is also invalid absent counsel. Any trial, whether on a felony or misdemeanor charge, requires counsel if it may end up "in the actual deprivation of a person's liberty."

We have provided a method of insuring that this requirement is satisfied in our new rules of criminal procedure, which became effective February 1, 1973, through Rule 3.111(b)(1).

Rollins, 299 So.2d at 589 (some emphasis added) (footnotes omitted). Thus, the adoption of rule 3.111 was not based upon article 1, section 16.

Second, chapter 27, which created the Public Defender's Office, was in response to the United States Supreme Court's decisions interpreting the scope of the Sixth Amendment right to counsel, particularly Gideon. "The purpose of chapter 27, part II, Florida Statutes (concerning public defenders), is to ensure that indigent defendants are afforded the opportunity for representation by counsel as commanded by Gideon v. Wainwright." Behr v. Gardner, 442 So.2d 980, 981-82 (Fla. 1st DCA 1983) (on motion for rehearing); see also State ex rel. Smith v. Brummer, 443 So.2d 957, 959 (Fla.1984). More particularly, the provisions of section 27.51, requiring the public defender to represent defendants charged with misdemeanors, were enacted in response to Argersinger. Because the Supreme Court's decision in Argersinger interpreting the Sixth Amendment precipitated the adoption of rule 3.111 and section 27.51, not article I, section 16, the majority's reliance on these provisions as the basis to find a broader right to counsel in Florida's Constitution is misplaced.

After Florida adopted rule 3.111 and section 27.51 to provide for counsel in cases of prospective imprisonment following Argersinger, the United States Supreme Court subsequently restricted the right to appointed counsel to cases where the defendant was actually imprisoned. Scott v. Illinois, 440 U.S. 367, 373-74, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979). However, because Florida never codified the Scott decision in its rules or statutes, the prospective imprisonment standard from Argersinger remains despite the delimitation of its source.

Finally, what should be corrected is the procedure that this Court created in Beach. In Beach, this Court allowed a collateral attack in the subsequent DUI case of the validity of the convictions in prior DUI cases. This is contrary to our procedures in other criminal cases in which we require the collateral attack on a conviction to be filed in the case in which the conviction was entered. The motion in other cases is required to be brought pursuant to Florida Rule of Criminal Procedure 3.850. If the defendant wishes to withdraw the plea, the motion must be in accord with Florida Rule of Criminal Procedure 3.170. This provides an orderly process and prevents what happened in the instant case, in which the defendant did not attack the prior convictions until many years after the convictions when there is no transcript of what occurred. The Beach decision is out of sync with this Court's longstanding commitment to finality.

In conclusion, based upon the record in this case, it is clear that Kelly knew he had a right to counsel at the time of both his 1995 and 1997 pleas and that he knowingly waived counsel so that he could take advantage of the deals that he had been offered in exchange for his no contest pleas. Therefore, under Beach, the prior convictions could be used to enhance his subsequent DUI charge. In addition, continuing to follow United States Supreme Court precedent on this issue, my answer to the district court's certified question would be that an uncounseled prior misdemeanor conviction in which the defendant could have been incarcerated for more than six months but was not incarcerated for any period can be used to enhance a current charge from a misdemeanor to a felony.

FOOTNOTES

FN1. Based on article I, sections 2 and 16 of the Florida Constitution, this Court has already held that indigent defendants possess an independent state-law constitutional right to appointed counsel during criminal prosecutions. See Traylor v. State, 596 So.2d 957, 969-70 (Fla.1992).. FN1. Based on article I, sections 2 and 16 of the Florida Constitution, this Court has already held that indigent defendants possess an independent state-law constitutional right to appointed counsel during criminal prosecutions. See Traylor v. State, 596 So.2d 957, 969-70 (Fla.1992).

2. When "uncounseled" is used in this context, the term "refers to an indigent defendant who was not provided a lawyer." Hlad, 585 So.2d at 939 n. 1.

3. Kelly's October 27, 1987, misdemeanor DUI no-contest plea was also uncounseled, but was not punishable by more than six months' imprisonment. Kelly served probation, completed community service hours, and paid fines as a result of this 1987 conviction.

4. The Fourth District analyzed the situation as follows: "This issue was contested at the evidentiary hearing on the motion to dismiss, at which Kelly testified, and the court, although not expressly saying so, obviously resolved the waiver issue against the state." State v. Kelly, 946 So.2d 1152, 1154 n. 1 (Fla. 4th DCA 2006) (emphasis supplied). The dissent overlooks both this explanation from the Fourth District and the fact that the State presented a waiver argument in the circuit court. As part of this process, the circuit court had the opportunity to directly judge the credibility of Mr. Kelly. In response, the circuit court granted Kelly's motion to dismiss based upon Hlad and Beach. Both lower courts thus heard and, without further exposition, rejected the State's waiver argument. Cf. Black's Law Dictionary 1469 (8th ed.2004) ("sub silentio. Under silence; without notice being taken; without being expressly mentioned." (emphasis supplied)).

5. "Considering" is a present participle, which is generally defined as "taking into account." Merriam Webster's Collegiate Dictionary 246 (10th ed.1998). As we further explain below, whether a trial judge is currently "considering" jail time is not the legal standard in Florida with regard to determining whether a criminal defendant charged with a misdemeanor is entitled to the representation of appointed counsel. Rather, in such contexts, to obviate the need for appointing counsel to represent an indigent defendant, trial judges have the affirmative duty to provide the defendant a written, pretrial certification that the defendant will not be imprisoned for the charged offense. See Fla. R.Crim. P. 3.111(b)(3); Case v. State, 865 So.2d 557, 558 (Fla. 1st DCA 2003).

6. The dissent contends that "[t]he record simply does not support [our] summary of the relevant facts." Dissenting op. at 1057. However, the extended evidentiary-hearing quotations presented by our colleague in dissent merely reaffirm that, in response to the State's leading questions, Mr. Kelly explained that he understood he could not afford to retain a private attorney to represent him, and that he viewed appointed representation as a mere possibility, rather than an affirmative constitutional right because, as he stated, he was "no attorney." Further, the record reveals the telling absence of any documents demonstrating that Kelly received proper plea colloquies. These are some of the very defects that the presence of appointed counsel would have remedied. In this context, we are dealing with often uneducated, indigent lay persons who frequently do not understand if, or when, they are entitled to appointed representation. All told, the dissent and the State offer the same faulty conclusions in this regard, which we definitively reject in our analysis below.

7. In light of the dissent, it is important to thoroughly explain that a DUI defendant's prior misdemeanors are elements of the current, enhanced felony offense, which the State must PROVE beyond a reasonable doubt. This indisputable legal proposition supplies the rationale that explains and justifies why instances of Hlad error are not addressed through postconviction motions and are, instead, subject to our Beach framework. As in any criminal case, the defendant possesses the right and ability to contest elements of the charged offense. Further, uncounseled misdemeanors for which no imprisonment is, or was, imposed are VALID convictions; however, they remain INVALID for purposes of depriving the defendant of his or her liberty. Therefore, when the State files an information charging felony DUI (which is inherently based on a defendant's prior misdemeanor convictions), and the defendant knows that he or she did not validly waive the right to counsel in those prior cases, the defendant may then directly contest that element of the current felony offense in the instant felony prosecution.By force of logic, we decline to adopt the perspective of the dissent, which would ignore the basic fact that prior misdemeanor convictions constitute elements of a later felony DUI offense. It is also important to highlight for our colleague that Nichols did not involve or address this type of recidivism statute.

8. As we explained in Traylor:Special vigilance is required where the fundamental rights of Florida citizens suspected of wrongdoing are concerned, for here society has a strong natural inclination to relinquish incrementally the hard-won and stoutly defended freedoms enumerated in our Declaration [of Rights] in its effort to preserve public order. Each law-abiding member of society is inclined to strike out at crime reflexively by constricting the constitutional rights of all citizens in order to limit those of the suspect-each is inclined to give up a degree of his or her own protection from government intrusion in order to permit greater intrusion into the life of the suspect. The framers of our Constitution, however, deliberately rejected the short-term solution in favor of a fairer, more structured system of criminal justice.596 So.2d at 963.

9. The dissent relies upon State v. Owen, 696 So.2d 715 (Fla.1997), for the proposition that our conclusions in Traylor "were no different than those set forth in prior holdings of the United States Supreme Court." Dissent at 10 (quoting Owen, 696 So.2d at 719). However, our colleague again overlooks a significant point: Owen did not involve a right-to-counsel issue under either the federal Sixth Amendment or article I, section 16 of the Florida Constitution (rights which apply during criminal prosecutions); rather, Owen solely and exclusively addressed Miranda-based rights derived from the federal Fifth Amendment and article I, section 9 of the Florida Constitution that apply during custodial interrogation. These are distinct rights governed by equally distinct doctrine, which the dissent regrettably confuses and conflates. See, e.g., Rhode Island v. Innis, 446 U.S. 291, 300 n. 4, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980) (observing that "the policies underlying the two constitutional protections are quite distinct." (emphasis supplied)); see also Davis v. United States, 512 U.S. 452, 456-57, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994) (highlighting differences between these protections and explicitly clarifying that Davis involved the Miranda-based right to counsel, not the constitutional right to counsel under the Sixth Amendment). Moreover, in Owen, it is clear that we never purported to address any portion of Traylor with regard to the right to counsel under article I, section 16 of the Florida Constitution (Traylor offered separate analyses and holdings with regard to the right against self-incrimination under article I, section 9 of the Florida Constitution and the right to counsel under article I, section 16 of that same foundational document). Compare Traylor, 596 So.2d at 964-66 (addressing article I, section 9), with id. at 968-70 (addressing article I, sections 2 and 16). A simple textual search of Owen demonstrates that we never addressed, let alone mentioned, "article I, section 16" or the "Sixth Amendment." Rather, Owen dealt exclusively with the issue of equivocal invocations of the right to cut off questioning during custodial interrogation (i.e., an issue with regard to the right against self-incrimination). Thus, in Owen, we addressed an issue involving article I, section 9 of the Florida Constitution (i.e., a Miranda issue), not article I, section 16. Furthermore, we nevertheless clarified in Owen that Traylor "remind[s] us that we have the authority to [independently interpret the right against self-incrimination under the Florida Constitution] regardless of federal law "; we simply chose not to do so in that decision. Owen, 696 So.2d at 719 (emphasis supplied).

10. See, e.g., Dameron v. Brodhead, 345 U.S. 322, 326, 73 S.Ct. 721, 97 L.Ed. 1041 (1953); see also Black's Law Dictionary 648 (8th ed.2004) ("cooperative federalism. Distribution of power between the federal government and the states in which each recognizes the powers of the other while jointly engaging in certain governmental functions.").

11. "The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." Gideon v. Wainwright, 372 U.S. 335, 344, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963) (emphasis supplied).

12. Justices Stewart and Marshall wrote separate concurrences in Baldasar because Justice Stewart endorsed Scott's actual-imprisonment standard, while Justice Marshall continued to express disagreement with Scott, but accepted it as

valid for purposes of striking his Baldasar concurrence. Thus, Justices Stewart and Marshall expressed very similar ideas, but Justice Marshall only accepted Scott's validity for the sake of argument. Justices Brennan and Stevens joined both Stewart and Marshall's concurrences. Consequently, a four-justice block existed, which agreed with the central premise that a conviction that is invalid for purposes of imposing imprisonment may not later be used collaterally to increase a defendant's term of imprisonment for a subsequent offense. Compare Baldasar, 446 U.S. at 224, 100 S.Ct. 1585 (Stewart, J., concurring, joined by Brennan and Stevens, JJ.), with id. at 225-29, 100 S.Ct. 1585 (Marshall, J., concurring, joined by Brennan and Stevens, JJ.).

13. The issue, as framed by the Court, presumed the validity of Scott's actual-imprisonment standard. See Baldasar, 446 U.S. at 222, 100 S.Ct. 1585 ("[W]hether [an uncounseled misdemeanor] conviction may be used under an enhanced penalty statute to convert a subsequent misdemeanor into a felony with a prison term" without violating the rule in Scott.). Justice Blackmun, however, dissented in Scott and expressed the same views in Baldasar. See id. at 229-30, 100 S.Ct. 1585 (Blackmun, J., concurring); Scott, 440 U.S. at 389-90, 99 S.Ct. 1158 (Blackmun, J., dissenting).

14. Such an approach would also be constitutionally required with regard to Florida's Criminal Punishment Code. Cf. Fla. R.Crim. P. 3.704(d)(27) (authorizing the trial judge to depart downward for permissible reasons when memorialized in a contemporaneous writing, and referring to a non-exhaustive justification list appearing in section 921.0026(2), Florida Statutes). The inquiry remains whether the adjudications of guilt corresponding to the prior uncounseled convictions are sufficiently reliable to permit enhanced incarceration.

15. See also Ralph Ruebner et al., Shaking the Foundations of Gideon: A Critique of Nichols in Overruling Baldasar v. Illinois, 25 Hofstra L.Rev. 507, 550-51 (1996) (explaining how Nichols is inconsistent with prior United States Supreme Court right-to-counsel precedent).

16. Baldasar, 446 U.S. at 232, 100 S.Ct. 1585 (Powell, J., dissenting) (emphasis supplied) (citing Moore v. Missouri, 159 U.S. 673, 677, 16 S.Ct. 179, 40 L.Ed. 301 (1895) (double jeopardy case did not involve the right to counsel); Oyler v. Boles, 368 U.S. 448, 451, 82 S.Ct. 501, 7 L.Ed.2d 446 (1962) (equal protection and due process case did not involve the right to counsel)); see also Nichols, 511 U.S. at 747, 114 S.Ct. 1921.

17. See, e.g., Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932) (the "Blockburger test" asks whether an offense contains an element not contained in the other relevant offense, to determine whether a double-jeopardy violation has occurred).

18. See, e.g., State v. Hrycak, 184 N.J. 331, 877 A.2d 1200, 1216 (2005) ("We are convinced that a prior uncounseled DWI conviction of an indigent is not sufficiently reliable to permit increased jail sanctions under the enhancement statute." (emphasis supplied)); State v. Smagaga, 81 Hawai'i 421, 918 P.2d 228, 241, 252 (Ct.App.1996) ("[T]he rationale for not allowing the consideration of an uncounseled criminal conviction as a basis for the imposition or enhancement of a prison sentence is its lack of reliability." (emphasis supplied)), overruled on other grounds, State v. Veikoso, 102 Hawai'i 219, 74 P.3d 575, 583 n. 8 (2003); State v. Deville, 879 So.2d 689, 690-91 (La.2004); State v. Anderson, 185 Ariz. 454, 916 P.2d 1170, 1171-72 (Ct.App.1996).

19. The dissent's statement that "[t]he result of the majority's complex analysis is that the State cannot prosecute this defendant for his fourth DUI [offense] . [, and] [t]his result is not in accord with the legislative scheme for removing repeat DUI offenders from Florida roads," is doubly mistaken. Dissenting op. at 1054. First, as stated above, the State is free to prosecute Kelly, and similarly situated repeat DUI offenders, for their subsequent DUI offenses; it simply cannot use prior uncounseled misdemeanor convictions to increase the current offense's length of incarceration. Second, there is nothing preventing the State from permanently removing Kelly, and similarly situated repeat DUI offenders, from Florida's roads by permanently revoking their driver's licenses. In relevant part, section 322.28(2)(e), Florida Statutes (2003), provides:The court shall permanently revoke the driver's license or driving privilege of a person who has been convicted four times for violation of s. 316.193 or former s. 316.1931 or a combination of such sections. The court shall permanently revoke the driver's license or driving privilege of any person who has been convicted of DUI manslaughter in violation of s. 316.193. If the court has not permanently revoked such driver's license or driving privilege within 30 days after imposing sentence, the department shall permanently revoke the driver's license or driving privilege pursuant to this paragraph. No driver's license or driving privilege may be issued or granted to any such person.(Emphasis supplied.); see also State v. Walters, 567 So.2d 49, 50 (Fla. 2d DCA 1990) ("[R]evocation is an administrative remedy for the purpose of protecting the public and . the judge has no judicial discretion. Therefore, the uncounseled nature of the prior conviction can have no bearing on the court's duty to permanently revoke [the repeat DUI offender's] driving privileges." (citation omitted)).

20. If during the underlying misdemeanor proceedings, the trial judge(s) avoided the need for appointing counsel by certifying pursuant to Florida Rule of Criminal Procedure 3.111(b)(1) that the defendant would not be imprisoned as a result of the misdemeanor conviction(s), this certification would necessarily extend to the State's later attempt to use these misdemeanors as statutory enhancers. Cf. Case, 865 So.2d at 558 ("A defendant who is charged with a misdemeanor punishable by possible imprisonment is entitled to counsel unless the judge timely issues a written order guaranteeing that the defendant will never be incarcerated as a result of the conviction." (emphasis supplied)).

21. The first prong of the Hall/Beach framework formerly read: "(1) that the offense involved was punishable by more than six months of imprisonment or that the defendant was actually subjected to a term of imprisonment[.]" Id. This prior version is incompatible with (i) Florida's prospective-imprisonment scheme, and (ii) our recognition that any felony-DUI imprisonment imposed upon the defendant using uncounseled misdemeanor DUIs results directly from those uncounseled convictions. This is the case because those prior uncounseled convictions constitute an element of the defendant's subsequent felony DUI. See, e.g., Finelli, 780 So.2d at 33 (defendant's prior misdemeanor DUI convictions are an element of felony DUI); § 316.193, Fla. Stat. (2003).

22. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

23. The majority seems to imply that because the prosecutor was asking Kelly the questions, these clear answers should not be given their due weight. I assume that if the questions were objectionable, Kelly's counsel would have objected. There is no indication that Kelly was "uneducated" and did not understand these questions or his right to counsel.

24. Kelly obviously had a reasonable basis to conclude that the pleas with no jail time were in his best interest since, in the 1993 arrest, his blood alcohol level was 0.132 on the first test and 0.161 on the second test, and in the 1997 arrest, his blood alcohol level was 0.179 on the first test and 0.182 on the second test. Section 316.193, Florida Statutes, sets the maximum limit at 0.08, so both times Kelly was over twice the legal limit.

25. I accept this analysis in answer to the majority's footnote 7.

LEWIS, J.

QUINCE, C.J., and ANSTEAD and PARIENTE, JJ., concur. WELLS, J., dissents. CANADY and PERLSTON, JJ., did not participate.

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY JUDGE ADAMS for DISDAIN OF THE FEDERAL AND STATE CONSTITUTIONS AND FL LAW

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Judge Adams has an absolute disdain for the Sicth Amendment right to counsel, Judge Adams disdain also applies to the Florida Constitution under Article I, section 16 Judge Adams also complete disrespects Fla. R.Crim. P. 3.111(b)(1) ("In the discretion of the court, counsel does not have to be provided to an indigent person in a prosecution for a misdemeanor or violation of a municipal ordinance if the judge, at least 15 days prior to trial, files in the cause a written order of no incarceration certifying that the defendant will not be incarcerated ." (emphasis supplied) (the current version of this rule permits the defendant or defense counsel to waive the fifteen-day requirement)). Attached is the FL Supreme Court case of State v. Kelley forbidding the stripping of Huminski of counsel.

If this were North Korea or nazi Germany one could understand the conduct of Judge Adams. In this country we have something called the Rule of Law. A factor that has played no part in this litigation and a precept rejected by Judge Adams.

There is no possible reason to explain this judicial misconduct other than an ex parte influence, improper bias or animus or some other improper factor that has caused Judge Adams to violate the Federal and State Constitutions and Florida statutory law. Huminski does not know the exact judicial motivation to wholesale violate the rule of law, he does know improper factors are at work here.

Dated at Bonita Springs, Florida this 11th day of February, 2018.

-/S/- Scott Huminski

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Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 11th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE STRIPPING HUMINSKI OF COUNSEL and TO CONDUCT A FARETTA INQUIRY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above and sets forth the below captions including (LISTING THE PUBLIC DEFENDER) that the court relied upon to strip Huminski of counsel this court. These cases did not strip the various defendants as clearly set forth the public defender continued to represent the defendants or in a few cases private counsel. This is more proof of an improper judicial motive related to this case. Attached hereto are the motions for recusal of counsel citing a conflict of interest. Noteworthy is the fact that the defendants had gone through from 3 to 5 defense attorneys. Huminski's attorneys recused properly because of a conflict of interest

718 So.2d 253 (1998)

Ronald WATSON, a/k/a Ronald Washington, Appellant,
v.
STATE of Florida, Appellee.

No. 96-03386.

District Court of Appeal of Florida, Second District.

August 28, 1998.
Rehearing Denied September 28, 1998.

James Marion Moorman, Public Defender, and Richard P. Albertine, Jr., Assistant Public Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Angela D. McCravy, Assistant Attorney General, Tampa, for Appellee.

PARKER, Chief Judge.

911 So.2d 226 (2005)

Dennis Wayne WALLER, Appellant,
v.
STATE of Florida, Appellee.

No. 2D03-4029.

District Court of Appeal of Florida, Second District.

September 28, 2005.

227*227 James Marion Moorman, Public Defender, and Pamela H. Izakowitz, Assistant Public Defender, Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Helene S. Parnes, Assistant Attorney General, Tampa, for Appellee.

685 So.2d 942 (1996)

Margaret E. BOWEN, Appellant,
v.
STATE of Florida, Appellee.

No. 96-540.

District Court of Appeal of Florida, Fifth District.

December 20, 1996.

943*943 James B. Gibson, Public Defender, and Nancy Ryan, Assistant Public Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Allison Leigh Morris, Assistant Attorney General, Daytona Beach, for Appellee.

W. SHARP, Judge.

576 So.2d 1310 (1991)

Marcus PERKINS, et al., Petitioners,
v.
STATE of Florida, Respondent.

No. 75990.

Supreme Court of Florida.

March 14, 1991.

1311*1311 Bennett H. Brummer, Public Defender, and Marti Rothenberg and Harvey J. Sepler, Asst. Public Defenders, Eleventh Judicial Circuit, Miami, for petitioners.

Robert A. Butterworth, Atty. Gen., Janet Reno, State Atty., and Richard L. Shiffrin, Asst. State Atty., Miami, for respondent.

PER CURIAM.

687 So.2d 823 (1996)

James HEUSS, Petitioner,
v.
STATE of Florida, Respondent.

No. 86544.

Supreme Court of Florida.

December 19, 1996.
Rehearing Denied February 11, 1997.

Richard L. Jorandby, Public Defender and Ian Seldin, Assistant Public Defender, Fifteenth Judicial Circuit, West Palm Beach, for Petitioner.

Robert A. Butterworth, Attorney General; and Georgina Jimenez-Orosa, Bureau Chief, Senior Assistant Attorney General, and Sarah B. Mayer, Assistant Attorney General, West Palm Beach, for Respondent.

GRIMES, Justice.

626 So.2d 655 (1993)

STATE of Florida, Petitioner,
v.
Charles YOUNG, Respondent.

No. 80533.

Supreme Court of Florida.

October 28, 1993.

Robert A. Butterworth, Atty. Gen. and Joan Fowler, Senior Asst. Atty. Gen., Bureau Chief, West Palm Beach, for petitioner.

Peter Grable of Peter Grable, P.A., West Palm Beach, for respondent.

OVERTON, Judge.

The State petitions for review of *Young v. State*, 609 So.2d 633 (Fla. 4th DCA 1992), in which the Fourth District Court of Appeal reversed Young's conviction because the trial 656*656 judge required Young to represent himself without first conducting an inquiry as required by *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), and

Florida Rule of Criminal Procedure 3.111(d). The district court then certified the following as a question of great public importance:

WHETHER A *FARETTA*-TYPE INQUIRY IS REALLY REQUIRED WHERE THE DEFENDANT DELIBERATELY USES HIS RIGHT TO COUNSEL TO FRUSTRATE AND DELAY THE TRIAL.

Young, 609 So.2d at 634. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. While it is likely that Young was attempting to frustrate and delay his trial through an abuse of the right to assistance of counsel, we conclude that the certified question must be answered in the affirmative and, consequently, we approve the decision of the district court. In our previous decisions, we have consistently held that a trial judge is required to conduct a *Faretta* inquiry before allowing a defendant in a criminal trial to proceed without counsel. Because there was no discernible *Farettai*nquiry in this case, we find that the trial judge committed reversible error.

The facts in this case were succinctly stated in the opinion rendered by the district court:

In understandable frustration with the defendant's refusal to accept the services of his third appointed counsel to represent defendant at his first-degree murder trial, the trial judge refused a new appointment of counsel and also refused an eleventhhour continuance of the already much delayed trial, thereby requiring defendant to represent himself with only a "stand-by" lawyer to advise him. Unfortunately, and despite the prosecution's suggestion to do so, the judge failed to conduct a *Faretta* hearing.

Id. at 633.

Although Young argues that each of his requests for removal of his appointed counsel was warranted, for the purposes of this decision, we accept the State's characterization of Young's actions as being a deliberate abuse of the right to assistance of counsel.

The Law — Self-Representation by a Defendant

The United States Supreme Court has determined that a defendant in a state criminal trial has the constitutional right of self-representation and may forego the right of assistance of counsel. *Faretta*, 422 U.S. at 836, 95 S.Ct. at 2541. In so holding, the United States Supreme Court clearly stated that it is incumbent on the trial judge to examine the defendant to determine whether the waiver of this important right is made knowingly and intelligently before allowing the defendant to proceed without the assistance of counsel.

To implement the United States Supreme Court decision in *Faretta*, we adopted Rule of Criminal Procedure 3.111(d), which states, in pertinent part:

(2) A defendant shall not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry has been made into both the accused's comprehension of that offer and the accused's capacity to make an intelligent and understanding waiver.
(3) No waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of a mental condition, age, education, experience, the nature or complexity of the case, or other factors.

In *Jones v. State*, 449 So.2d 253 (Fla.), *cert. denied*, 469 U.S. 893, 105 S.Ct. 269, 83 L.Ed.2d 205 (1984), this Court affirmed the convictions of a criminal defendant who had represented himself at trial. In that case, we described the defendant as "obstreperous" and given to "contumacious behavior." *Id.* at 257-58. We determined that the defendant "burdened and delayed the court by his vacillation in not unequivocally choosing between

court-appointed counsel, proceeding pro se, or obtaining his own counsel of choice." *Id.* at 258. While we found that the defendant's actions amounted to a waiver of his right to appointed counsel, we noted that the trial judge did conduct an appropriate *Faretta*-type inquiry. In that decision, we emphasized that a defendant who, without 657*657 good cause, refused appointed counsel is presumed to be exercising the right to self-representation and that the "trial court should *forthwith proceed to a Faretta inquiry.*" *Id.* at 258 (emphasis added).

Similarly, in *Hardwick v. State*, 521 So.2d 1071 (Fla.), *cert. denied*, 488 U.S. 871, 109 S.Ct. 185, 102 L.Ed.2d 154 (1988), we recognized that

when one such as appellant attempts to dismiss his court-appointed counsel, it is presumed that he is exercising his right to self-representation. *However, it nevertheless is incumbent upon the court to determine whether the accused is knowingly and intelligently waiving his right to court-appointed counsel, and the court commits reversible error if it fails to do so.* This particularly is true where, as here, the accused indicates that his actual desire is to obtain *different*court-appointed counsel... .

Id. at 1074 (citations omitted) (first emphasis added). Because the trial judge in *Hardwick* had conducted an appropriate inquiry, we found no error. Finally, in *Amos v. State*, 618 So.2d 157 (Fla. 1993), we explained that a *Faretta* inquiry is necessary even when the defendant is very familiar with the criminal justice system. *See also* *Taylor v. State*, 610 So.2d 576 (Fla. 1st DCA 1993) (surveying similar Florida cases); *Burton v. State*, 596 So.2d 1184 (Fla. 1st DCA 1992).

The Instant Case

At trial, the State acknowledged the importance of a *Faretta* inquiry when the prosecutor attempted to have the trial judge conduct such an inquiry. However, the State is now placed in the position of arguing that a *Faretta* inquiry was not required in these circumstances because this defendant abused the right to assistance of counsel by conduct which unreasonably delayed his trial. The State essentially contends that the trial judge need not have expressly determined that Young made a knowing and intelligent waiver of the right to assistance of counsel because these factors can be inferred from Young's abuse of his right to counsel. The State then suggests that, assuming an inquiry was required under these circumstances, a *Faretta*-type inquiry can be discerned if we would only piece together the various colloquies between the defendant and the trial court. Finally, the State asserts that any error on the part of the trial judge in omitting a *Faretta*inquiry is harmless, contending that there was no alternative to Young's self-representation because Young refused to cooperate with any of his attorneys.

We reject these arguments. While a trial judge may presume that an abuse of the right to assistance of counsel can be interpreted as a request by a defendant to exercise the right of self-representation, a defendant may not be presumed to have waived the separate right to assistance of counsel absent a *Faretta* inquiry. *Hardwick; Jones.* This Court is mindful of the frustration of trial judges who are burdened with belligerent defendants who attempt to thwart the system any way they can. Our cases make clear that a trial judge is not compelled to allow a defendant to delay and continually frustrate his trial. As in *Jones,* the trial judge may presume that the defendant's actions constitute a request to proceed pro se and may then confirm the waiver of assistance of counsel through a *Faretta*inquiry. Furthermore, we must reject the assertion by the State that the record in this case establishes a sufficient *Faretta* inquiry. While Young's responses to the judge's questions, together with Young's apparent proclivity with producing his own pleadings, may suggest a competent defendant, they do not establish that Young had definitively waived his right to counsel. Finally, we find that the harmless error rule does not apply.

We conclude that the United States Supreme Court decision in *Faretta* and our rule 3.111(d) require a reversal when there is not a proper *Faretta* inquiry. Accordingly, for the reasons expressed, we answer the certified question in the affirmative, approve the decision of the district court, and remand this case for further proceedings consistent with this decision.

It is so ordered.

658*658 BARKETT, C.J., and McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

449 So.2d 253 (1984)

Ronnie Lee JONES, Appellant,
v.
STATE of Florida, Appellee.

No. 62424.

Supreme Court of Florida.

March 29, 1984.
Rehearing Denied May 23, 1984.

255*255 Theodore Klein and Joseph H. Serota of Fine, Jacobson, Block, Klein, Colan & Simon, Miami, for appellant.

Jim Smith, Atty. Gen. and Paul Mendelson, Asst. Atty. Gen., Miami, for appellee.

SHAW, Justice.

407 So.2d 1005 (1981)

Edward James MITCHELL, Appellant,
v.
STATE of Florida, Appellee.

No. 81-311.

District Court of Appeal of Florida, Fifth District.

December 23, 1981.

James B. Gibson, Public Defender, and Christopher S. Quarles, Asst. Public Defender, Daytona Beach, for appellant.

Jim Smith, Atty. Gen., Tallahassee, and C. Michael Barnette, Asst. Atty. Gen., Daytona Beach, for appellee.

COBB, Judge.

481 So.2d 1231 (1985)

Oceanus McCALL, Appellant,
v.

STATE of Florida, Appellee.

No. BA-147.

District Court of Appeal of Florida, First District.

December 18, 1985.
Rehearing Denied February 14, 1986.

Michael E. Allen, Public Defender, and Paula S. Saunders, Asst. Public Defender, for appellant.

Jim Smith, Atty. Gen., and Wallace E. Allbritton, Asst. Atty. Gen., for appellee.

WILLIS, BEN C. (Ret.), Associate Judge

Dated at Bonita Springs, Florida this 11th day of February, 2018.

-/S/- Scott Huminski

_____

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Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 11th day of February, 2018.

-/s/- Scott Huminski

_____

Scott Huminski

KS/ZV

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA CASE NO. 17-MM-000815 (JRA)

vs.

SCOTT ALAN HUMINSKI

_____/

CERTIFICATION OF CONFLICT

COMES NOW, Kathleen A. Smith, Public Defender, and pursuant to Valle v. State, 763 So.2d 1175 (Fla. 4th DCA 2000) and certifies to this Honorable Court the following:

The Public Defender has been appointed to represent the Defendant, Scott Alan Huminski.

After a careful investigation and weighing of the facts of this case, the Public Defender has conclusively determined that the interests of Scott Alan Huminski are so adverse and hostile to those of another client and/or an attorney within the Office of the Public Defender that a conflict of interest exists.

As a result of this conflict of interest, the Public Defender cannot adequately or ethically continue to represent the Defendant.

WHEREFORE, the Public Defender certifies to this Honorable Court that the Office of the Public Defender can no longer represent the Defendant due to this conflict of interest and requests that a Regional Counsel be appointed pursuant to 27.53(3), Florida Statutes (1995) and Babb v. Edwards, 412 So.2d 859 (Fla. 1982).

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; this 27th day of September, 2017.

KATHLEEN A. SMITH
Public Defender
2000 Main Street
Fort Myers, FL 33902-1980
(239) 533-2911

By: _____
Of Counsel - Kevin John Sarlo
Florida Bar No. 0126369

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA

v. **CASE NO: 36-2017-MM-000815**

SCOTT ALAN HUMINSKI

REGIONAL COUNSEL'S AMENDED MOTION TO WITHDRAW AND REQUEST FOR THE APPOINTMENT OF PRIVATE ATTORNEY

Comes the undersigned attorney on behalf of defendant who moves the court to withdraw as counsel for defendant on account of a conflict of interest. The basis of the conflict is as follows:

1. Undersigned attorney has called the Florida Bar Attorney Ethics hotline, and has been instructed by the Florida Bar (verification #467221) that this attorney should move to withdraw from this case, pursuant to the Florida Rules of Professional Conduct 4.17. Any further divulgence of information regarding the reason for this motion would involve impermissably divulging information protected by lawyer-client confidentiality.

2. "... Under current law, section 27.5303(1)(a) allows for a limited inquiry into a withdrawal motion caused by representation of multiple defendants whose interests are adverse. **But section 27.5303(1)(a) expressly limits the inquiry to those matters that are not 'confidential'** (Emphasis added). The assistant public defender laid out the legal basis of the conflict in the certification, provided proof that he had contacted the Florida Bar's conflict hotline, and established that he had been diligent in certifying conflict. There is no suggestion on this record that the trial court disbelieved, or had reason to disbelieve, any of these representations." *Young v. State*, 189 So. 3d 956 (Fla. 2d DCA 2016)

"The trial court departed from the essential requirements of the law by inquiring as to attorney-client privileged information as to the nature of the conflict. It was required to grant the motion to withdraw so that Mr. Young would not be forced to proceed to trial with an attorney who is 'ethically conflicted.'" *Young v. State, Id.*

3. The undersigned hereby certifies that there is no viable alternative to withdrawal from representation.

eFiled Lee County Clerk of Courts Page 1 of 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by e-mail to the Office of the State Attorney ServiceSAO-Lee@sao.cjis20.org on January 1, 2018.

/s/ Zachary Miller
By: Zachary Miller
Assistant Regional Counsel
Fla. Bar No. 118339
2101 McGregor Blvd Ste 101
Fort Myers, FL 33901
Tel. (239) 208-6925
Fax (207) 554-1128

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MEMORANDUM OF LAW IN SUPPORT OF HUMINSKI'S RIGHT TO COUNSETL AND TO COMPULSORY PROCESS

NOW COMES, Scott Huminski ("Huminski"), and, moves as above and sets forth the attached in support of Huminski's right to counsel and compulsory process.

Dated at Bonita Springs, Florida this 11th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 11th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

166 So.2d 892 (1964)

STATE of Florida, Petitioner,

v.

John Matthew WEEKS, Respondent.

No. 32875.

Supreme Court of Florida.

March 4, 1964.

Opinion Clarified on Denial of Rehearing September 9, 1964.

892 *893 James W. Kynes, Atty. Gen., and Reeves Bowen, Asst. Atty. Gen., for petitione

John Matthew Weeks, in pro. per.

894 *894 THORNAL, Justice.

We have for review a decision of the District Court of Appeal, Third District, regardi the respondent's entitlement to the assistance of counsel on appeal.

We must decide whether an indigent prisoner is entitled to the assistance of counse *a matter of right* upon an appeal from an adverse ruling in a collateral assault on his conviction and sentence.

The decision under review is Weeks v. State, Fla.App., 156 So.2d 36. The state has appealed and simultaneously petitioned for certiorari. The District Court has sua sponte certified its decision to us as one which "passes upon a question * * * of grea public interest." We take jurisdiction of the petition for certiorari with the accompany certificate of the District Court. Article V, Section 4(b), Constitution of Florida, F.S.A.

Susco Car Rental System of Fla. v. Leonard, Fla. 112 So.2d 832. Our disposition of cause makes it unnecessary to consider the appeal.

Weeks moved in the trial court under Criminal Procedure Rule 1, F.S.A. ch. 924 Appendix, to obtain collateral relief against his conviction and sentence for the crime armed robbery. He was adjudicated insolvent. The trial judge denied the collateral r sought. Weeks appealed the adverse ruling to the District Court. He requested the appointment of counsel to assist him in the appeal. By the decision under review the District Court held that Weeks had an absolute organic right to the assistance of counsel in his appeal. The state now seeks a reversal of that decision.

It should be noted with emphasis at the outset, that this was not a direct appellate assault upon the judgment of conviction. If it were, Weeks would have an organic rig to the aid of counsel. Douglas et al. v. People of the State of California, 372 U.S. 35 83 S.Ct. 814, 9 L.Ed.2d 811; Donald v. State of Florida, Fla.App., 154 So.2d 357. In these cases a direct appeal was regarded as a critical step in a criminal prosecution such situations an indigent appellant is entitled to the assistance of counsel by virtu the provisions of the Sixth and Fourteenth Amendments, United States Constitution. similar process of constitutional interpretation was applied to the right of an accused felon to have the assistance of counsel at the trial level. Gideon v. Wainwright, 372 335, 83 S.Ct. 792, 9 L.Ed.2d 799. The District Court in the instant matter was confronted with an appeal to review an adverse ruling in a proceeding entirely collat to the original trial and conviction.

To meet the impact of Gideon this Court on April 1, 1963, promulgated its Criminal Procedure Rule 1. The rule was formulated as an effective, expeditious, post-convic remedy to accomplish collateral assaults on judgments of conviction. Rule 1 is simpl Florida adaptation of Title 28, Section 2255, U.S.C.A. It provides a remedy co-equal with, but actually more expeditious than post-conviction habeas corpus. Roy v. Wainwright, Fla., 151 So.2d 825; Gideon v. Wainwright, Fla., 153 So.2d 299. Florida had anticipated the Gideon development and moved with dispatch to adapt its procedural facilities to the indicated increased demands for post-conviction relief against previously entered felony judgments. Roy v. Wainwright, supra. It is to the credit of the judges of Florida that they have forthrightly and realistically proceeded meet their judicial responsibilities in the face of the demands which did materialize.

Returning, with more specific relevancy, to the issue at hand, we find that all three Florida District Courts of Appeal have held that an indigent is entitled, as a matter o right, to the assistance of counsel in obstaining a review of an adverse order entere under Rule 1, supra. They have reached this conclusion with some admitted reluctance. Weeks v. State, supra; Mullins v. State, Fla.App., 157 So.2d 701; Dias v State, Fla.App., 155 So.2d 662; King v. State, Fla.App., 157 So.2d 440; Keur v. Sta
885 Fla.App., 160 So.2d 546. Similarly, *885 it has been held that an indigent is entitled the assistance of counsel as a matter of right on a Rule 1 motion in the trial courts. Turner v. State, Fla.App., 161 So.2d 11; Hall v. State, Fla.App., 160 So.2d 527.

Understandably, the District Courts have rendered these decisions without the bene of guideline precedents from this Court. They have done so by drawing an analogy the right to counsel in original criminal proceedings under the rules of Gideon and Douglas, supra. Weeks v. State, supra, now under review, is typical. The fact remai however, that there has been a failure to differentiate the organic entitlement to counsel in direct criminal prosecutions from the claimed right of assistance in collate proceedings.

In administering relief in post-conviction habeas corpus, as well as under Title 28, Section 2255, supra, the federal courts have consistently drawn a distinction betwe the original criminal proceeding and the post-conviction collateral remedy. The Supreme Court of the United States held in Gideon that the right to counsel in the original proceeding derives from the absolute guaranty of the Sixth Amendment, Un States Constitution "to have the assistance of counsel" in all criminal prosecutions. federal courts have held that post-conviction habeas corpus and proceedings unde Section 2255, supra, are not steps in a criminal prosecution. On the contrary, they a in the nature of independent, collateral civil actions which are not clothed with the aspects of a "criminal prosecution" under the Sixth Amendment. In view of the admit similarity between our Rule 1 and Section 2255, we feel justified in applying the fede precedents to the situation at hand. This is so even though our Rule is designated f convenience as Criminal Procedure Rule # 1. The designation was adopted to alert interested parties to its availability as a new procedural method for post-conviction relief. While it provides a process for assaulting a criminal judgment it is no more a s in a criminal prosecution than is post-conviction habeas corpus or a Section 2255 motion. The Florida rule provides for an independent, civil, collateral attack on a

criminal court judgment. Its federal statutory ancestor, Section 2255, supra, has bee construed to have the same effect.

Anderson v. Heinze, C.A. 9, 258 F.2d 479, is informative. It was there held that a federal habeas corpus proceeding to review a state conviction is civil, rather than criminal in nature. It does not require the appointment of counsel as a matter of righ either the trial or appellate level. It was held that counsel *may* be required to accomplish Fifth Amendment due process but is not an absolute right under the Sixt Amendment. The Court elaborated that Fifth Amendment due process would sugge the appointment of counsel if the papers filed by the indigent prisoner "reveal a reasonable probability that an issue which is not plainly frivolous may be presented. the absence of a showing of such a probability, neither Fifth Amendment due proce nor a sound judicial discretion requires such appointment. It is initially the responsib of the trial court to examine the papers. If the judge finds that the application is total lacking in merit or would be denied without a hearing in the event of a non-indigent applicant, then counsel is not necessary.

In numerous federal decisions it has been held that there is no organic entitlement t have the assistance of counsel as a matter of right in a post-conviction collateral proceeding under Section 2255. In these cases the proceeding was considered to b civil in nature, even though it involved an attack upon a criminal conviction. In such collateral proceedings the applicant has the burden of making a prima facie case by the allegations of his application. Of course, if a hearing is found necessary the applicant would similarly have the burden of proving his allegations. Davis v. United States, C.A. 7, 214 F.2d 594; United States v. Caufield, C.A. 7, 207 F.2d 278; Unite States v. Williamson, C.A. 5, 255 F.2d 512, cert. den., 358 U.S. 941, 79 S.Ct. 348, 3 L.Ed.2d 349; Estep v. United States, C.A. 5, 251 F.2d 579; Taylor v. United Sta C.A. 8, 229 F.2d 826, cert. den., 351 U.S. 986, 76 S.Ct. 1055, 100 L.Ed. 1500. The Supreme Court of the United States has itself announced that post-conviction habe corpus and motions under Section 2255, are independent original civil proceedings Heflin v. United States, 358 U.S. 415, 79 S.Ct. 451, 3 L.E.2d 407; Townsend v. Sain 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770.

Of further persuasion was the action of the Judicial Conference of the United States which classified in forma pauperis motions under Section 2255, as being civil in natu for purposes of docketing on the civil dockets of the federal courts. Proceedings of

Judicial Conference of the United States, 1962 p. 76. See also, Right to Counsel in Criminal Post Conviction Review Proceedings, Cal.Law Review, December 1963, Vo 51, p. 970, pp. 978-984; Boskey, The Right to Counsel in Appellate Proceedings, Minn.Law Review, Vol. 45, p. 783.

The sum of the authorities is that post-conviction remedies of the type under consideration are civil in nature and do not constitute steps in a criminal prosecution within the contemplation of the Sixth Amendment, supra. They do not require the application of the standard of absolutism announced by that amendment. Such remedies are subject to the more flexible standards of due process announced in th Fifth Amendment, Constitution of the United States. This means that in these collate proceedings there is no absolute right to assistance of a lawyer. Nevertheless, Fifth Amendment due process would require such assistance if the post-conviction motio presents apparently substantial meritorious claims for relief and if the allowed hearir is potentially so complex as to suggest the need.

In the instant case, the District Court declined to give persuasive weight to the prior federal decisions on the subject, in view of the fact that they preceded Gideon v. Wainwright, supra, and Douglas v. California, supra. That court had the view that th right to counsel announced in those decisions modified the holdings of the prior fed cases governing Section 2255, post-conviction remedies. We think this distinction is valid in view of the fact that when the prior federal decisions announced the federal post-conviction rule there was a constitutional entitlement to counsel in all *criminal prosecutions in the federal courts.* In other words, Gideon and Douglas changed the rule for state courts in regard to direct criminal prosecutions only.

Furthermore, on the very day that Gideon and Douglas were announced, March 18 1963, the Supreme Court of the United States also announced its decision in Sande v. United States, 373 U.S. 1, 83 S.Ct. 1068, 10 L.Ed.2d 148. Sanders involved a rev of a Section 2255 proceeding. The decision is important because of a number of guidelines announced with reference to the nature of such a proceeding and the applicant's entitlement to a hearing. More appropriate to our present problem, howe was the holding regarding the function of the federal trial court in deciding whether a hearing is necessary and the need for counsel at such hearing. Sanders states:

"However, we think it clear that the sentencing court has discretion to

> ascertain whether the claim is substantial before granting a full evidentiary hearing. In this connection, the sentencing court might *find it useful to appoint counsel* to represent the applicant."

It is therefore apparent from this decision, announced simultaneously with Gideon a Douglas, that a movant under Section 2255, is not entitled to the assistance of cour as a matter of absolute right. Whether counsel should be appointed will turn on the decision of the trial court regarding the presence of substance in the movant's claim and the need for legal assistance in view of the complexities that might arise in the course of a hearing, if a hearing is found necessary.

857 *857 Admittedly, there are those who seem to advocate a form of socialization of the legal profession that would provide government supplied legal services "from the cr to the jail." Fortunately, up to this point, such a process of "judicare" has not attract general judicial endorsement. Until mandated otherwise, we have no intention of relegating existing precedents to the limbo of a jurisprudential graveyard. Our analy of the precedents, therefore, leads us to the following conclusions:

1. A proceeding under Rule 1, is civil in nature and analogous to post-conviction habeas corpus.

2. The due process requirements applicable to a Rule 1 proceeding are those suggested by Section 12, Declaration of Rights, Florida Constitution and the Fifth Amendment, United States Constitution, rather than the provisions of Section 11, Florida Declaration of Rights and the Sixth Amendment, United States Constitution.

3. A movant under Rule 1, must allege factual elements sufficient to constitute a bas for the collateral relief sought. If insufficient the motion may be denied. Alternatively, Court would have discretion to permit appropriate amendments.

4. If the motion on its face states a case for relief the trial court must then look to the record to ascertain whether it "conclusively" reveals no entitlement to relief.

5. The trial judge has a sound judicial discretion to decide initially whether the claim presented are substantial. In doing so he must assume that the factual allegations o the motion are true unless the trial records conclusively reflect the contrary.

6. If the claims of the movant are judicially determined to be without substance or th

record "conclusively" shows no entitlement to relief, then a Rule 1 motion may be denied without a hearing.

7. If the motion reflects substance and there is nothing conclusively in the record to contrary, a hearing should be granted. The trial court would again have the judicial discretion to determine whether the presence of the prisoner at the hearing is esse or would be helpful. In general, this decision would be influenced by a consideration whether the testimony of the prisoner on factual conflicts is required to produce a correct result.

8. There is no absolute organic right to the assistance of counsel at a hearing on a Rule 1 motion or on appeal from an adverse ruling thereon. Each case must be decided in the light of Fifth Amendment due process requirements which generally would involve a decision as to whether under the circumstances the assistance of counsel is essential to accomplish a fair and thorough presentation of the prisoner's claims. To this end, the court may find that the issues in the post-conviction proceedings have been simplified and are clearly drawn so that a fair hearing could achieved without counsel. In all of these considerations, however, the proper course would be to resolve doubts in favor of the indigent prisoner when a question of the need for counsel is presented.

Inasmuch as the District Court here held that there is an absolute organic right to th assistance of counsel in the proceeding under review, its decision will have to be quashed. However, upon remand the District Court may review its own actions in the light of what we have said and determine whether under the circumstances the respondent should have the assistance of counsel in the case at bar. The decision quashed and the cause is remanded for further proceedings consistent herewith.

It is so ordered.

DREW, C.J., and THOMAS, ROBERTS, O'CONNELL and HOBSON (Ret.), JJ., concu

938 *938 CALDWELL, J., concurs with opinion.

CALDWELL, Justice (concurring).

I concur with the opinion. I do so with the reminder that Gideon v. Wainwright, supra

announced new law in holding the Sixth Amendment guaranteed *publicly* paid couns to those accused in criminal felony prosecutions. State courts should not indulge in fabrication of any extension of that enlargement.

CLARIFICATION OF OPINION

PER CURIAM.

By our original opinion we drew an analogy between Florida Criminal Procedure Rul F.S.A. ch. 924 Appendix, and Title 28, section 2255, U.S. Code. In the process it wa pointed out that the federal courts have likened Section 2255 motions to a collatera civil action. Inasmuch as Florida Criminal Procedure Rule 1 motions are cognizable criminal courts of record as well as circuit courts, we should point out that such moti are actually hybrid in character. Martin v. United States, C.A. 10, 273 F.2d 775. A motion under the Florida Rule is strictly a collateral assault upon a criminal convictio To this extent it is an appropriate process in the criminal courts. However, it does no constitute a step in a criminal prosecution. Therefore, such a motion is not a component of the prosecution process subject to the guarantees of Section 11, Flo Declaration of Rights, F.S.A., or the Sixth Amendment to the Constitution of the Unit States.

In order to clarify our position, Paragraph 1 of the enumerated conclusions of our original opinion is revised to read as follows:

> "1. The proceeding under Rule 1 is analogous to post-conviction habeas corpus but constitutes an independent collateral attack upon a criminal court conviction."

As above clarified we adhere to our original opinion filed March 4, 1964, and the petition for rehearing is denied.

It is so ordered.

DREW, C.J., and THOMAS, ROBERTS, THORNAL, O'CONNELL, CALDWELL and HOBSON (Retired), JJ., concur.

674 So.2d 86 (1996)

KINNEY SYSTEM, INC., Petitioner,

v.

The CONTINENTAL INSURANCE COMPANY, Respondent.

No. 84329.

Supreme Court of Florida.

January 25, 1996.
Rehearing Denied May 16, 1996.

Arthur J. England, Jr. and Charles M. Auslander, of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for petitioner.

Raoul G. Cantero, III and Jared Gelles of Adorno & Zeder, P.A., Miami, for responde

87 *87 Joel S. Perwin of Podhurst, Orseck, Josefsberg, Eaton, Meadow, Olin & Perwin, P.A., Miami, for amicus curiae Academy of Florida Trial Lawyers.

Wendy F. Lumish of Popham, Haik, Schnobrich & Kaufman, Ltd., Miami, for amicus curiae Product Liability Advisory Council, Inc.

Mitchell W. Berger and Leonard K. Samuels of Berger, Shapiro & Davis, P.A., Fort Lauderdale, for amicus curiae Florida Chamber of Commerce.

Mark A. Cohen and Fred O. Goldberg of Mark A. Cohen & Associates, P.A., Miami, amici curiae AT & T Corp., Amoco Corporation, The Dow Chemical Company, North Telecom (CALA) Corporation, Phelps Dodge International Corporation, Shell Oil Company, Texaco, Inc. and Motorola, Inc.

Robin C. Nystrom, Tallahassee, for amicus curiae State of Florida, Department of Commerce.

Jeffrey B. Crockett of Aragon, Martin, Burlington & Crockett, P.A., Miami, for amici curiae Carnival Corporation, Harris Corporation, Home Shopping Network, Inc. and I Corporation.

KOGAN, Justice.

We have for review the following question certified to be of great public importance:

> Is a trial court precluded from dismissing an action on the basis of forum non conveniens where one of the parties is a foreign corporation that:
>
> (a) is doing business in Florida?
>
> (b) is registered to do business in Florida?
>
> (c) has its principal place of business in Florida?

Continental Ins. Co. v. Kinney System, Inc., 641 So.2d 195, 197 (Fla. 4th DCA 1994 The opinion below also expressly and directly conflicts with the opinion of the Third District in *National Rifle Association of America v. Linotype Co.*, 591 So.2d 1021 (Fl 3d DCA 1991), and with other opinions of the district courts. We have accepted jurisdiction pursuant to article V, section 3(b)(3) and (4), Florida Constitution, to res the conflict and address this important question affecting private international law.

Continental Insurance Company became embroiled in a dispute with Kinney System Inc., about workers compensation insurance premiums. The underlying contract wit Continental was negotiated in the New York area to cover Kinney's employees in a variety of different states, including Florida. Continental is a New Hampshire corporation with central operations located in New Jersey. Kinney is a Delaware corporation with headquarters in New York. Continental, moreover, is registered to business in Florida and operates a Fort Lauderdale claims office. Kinney has a regional office and operates parking garages in Dade County. Based on these Flori connections, Continental sued Kinney in Florida circuit court. However, the trial judg dismissed based on the doctrine of forum non conveniens.

On appeal, the Fourth District reversed. It cited its own precedent in National Aircra Service, Inc. v. New York Airlines, Inc., 489 So.2d 38, 39 (Fla. 4th DCA 1986), for th proposition that forum non conveniens does not apply where one of the corporate parties to the action is "licensed to do business in Florida, with a place of business i Florida." Addressing a similar problem, however, the Third District has held that, for purposes of Florida's forum non conveniens doctrine, corporate residency is determined by the corporation's principal place of business. *National Rifle Ass'n.*

Forum non conveniens[1] is a common law doctrine addressing the problem that aris when a local court technically has jurisdiction over a suit but the cause of action ma fairly and more conveniently litigated elsewhere. Forum non conveniens also serves a brake on the tendency of some plaintiffs to shop for the "best" jurisdiction in which bring suit—a concern of special importance in the international context. Commentat generally have noted a growing trend in private international law of attempting to file suit in an American state even for injuries or breaches that occurred on foreign soil.[2] There already is evidence the practice is growing to abusive levels in Florida Michael J. Higer & Harris C. Siskind, *Florida Provides Safe Haven for Forum Shoppe* Fla.B.J., Oct. 1995, at 20, 24-26 (documenting instances of abuse in Florida courts) Linda L. Silberman, *Developments in Jurisdiction and Forum Non Conveniens in International Litigation: Thoughts on Reform and a Proposal for a Uniform Standard* Tex. Int'l L.J. 501 (1993) (Florida favored by international plaintiffs); Jacques E. Soir *The Foreign Defendant: Overview of Principles Governing Jurisdiction, Venue, Extraterritorial Service of Process and Extraterritorial Discovery in U.S. Courts,* 28 T & Ins. L.J. 533 (1993) (same).

The attractiveness of Florida has arisen from the general belief that our opinion in Houston v. Caldwell, 359 So.2d 858 (Fla. 1978), announced a forum non convenien doctrine less vigorous than the federal doctrine first outlined in Gulf Oil Corp. v. Gilb 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1946), as the latter has been refined through the years. The commentators cited above, for example, expressly conclude that lawsuits filed in Florida courts can survive a forum non conveniens challenge th would result in dismissal at the federal-court level. This has led to disturbing results.

Under federal law governing diversity jurisdiction, *see* Erie R.R. Co. v. Tompkins, 30 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), a Florida lawsuit filed against a non-

Florida defendant sometimes can be mandatorily removed to federal court and ther dismissed based on the federal doctrine of forum non conveniens, as happened in *Sibaja v. Dow Chemical Co.*, 757 F.2d 1215 (11th Cir.), *cert. denied*, 474 U.S. 948, S.Ct. 347, 88 L.Ed.2d 294 (1985). However, when a defendant is a Florida resident, removal may not be permitted. Thus, if Florida applies a less vigorous doctrine of fo non conveniens, the state actually is disadvantaging some of its own residents—a result clearly not intended by *Houston.*

Of greater concern, however, is the fact that the *Houston* doctrine is resulting in additional burdens imposed upon Florida's trial courts over and above those caused disputes with substantial connections to state interests. We ourselves must continua ask the legislature for an expansion of judicial funding to meet the ever-increasing crush of litigation now coming into our courthouses. In light of the scarce tax-funded resources available for judicial activities, we must be mindful when doctrines adopte as common law now are leading to counterproductive results. This is a proper conce for us to address pursuant to our inherent authority to modify the common law[3] wh demanded by fundamental right or public necessity. *Waite v. Waite*, 618 So.2d 136 1362 (Fla.1993). Today we find a strong public necessity requiring us to revisit our decision in *Houston.*

The problem clearly has been worsened by other developments in the law. For example, 1984 legislative reforms to Florida's personal jurisdiction statutes substant expanded the trial courts' ability to hear cases arising on foreign soil. This was achieved by a lessening of traditional connexity requirements. *See* Ch. 84-2, § 3, La of Fla.; *see* § 48.193, Fla.Stat. (1995). *Houston,* in other words, was written at a tim when significant jurisdictional hurdles to such actions existed that now have been eliminated; and thus, *Houston* did not contemplate and could not have foreseen the ease with which out-of-state or foreign plaintiffs may now access Florida's trial court Nothing in our law establishes a policy that Florida must be a courthouse for the wor nor that the taxpayers of the state must pay to resolve disputes utterly unconnected with this state's interests.

We are aware of arguments raised both for and against the doctrine Florida has followed to date. Some commentators have suggested that states using approaches similar to Florida's actually are impeding their own economic interests. general rule, these commentators focus on a perceived need for uniformity in

transnational business regulation: Uniformity increases certainty and thereby makes interstate and transnational business easier and less expensive. Proponents of this position generally favor a uniform application of the *Gilbert* standard or something similar to it. Marc C. Mayfield, *Dow Chemical Company v. Alfaro: Aiding the Decline the Alternative Forum,* 14 Hous. J. Int'l L. 213 (1991); Adrian G. Duplantier, *Louisian A Forum, Conveniens Vel Non,* 48 La.L.Rev. 761 (1988).

Others have raised concerns about American multinational corporations going unpunished for the marketing of dangerous products or services abroad. One commentator, for example, has urged a complete abolition of the doctrine at the fed and state level as the best solution for holding American multinational corporations responsible for dangerous products and services sold abroad. Hilmy Ismail, *Forum Conveniens, United States Multinational Corporations, and Personal Injuries in the Third World: Your Place or Mine?,* 11 B.C. Third World L.J. 249 (1991).

While these arguments deserve consideration, we do not agree with the assumption made by some that the federal doctrine of forum non conveniens necessarily favors business interests or necessarily deprives plaintiffs of adequate fora. Nor are we convinced that any individual state has an absolute obligation to police the foreign actions of American multinational corporations. We certainly do not imply that Florid courts will never serve such a role, but we do believe that the general regulation of foreign activities of multinational corporations more properly is a concern of the fede government, at least where the corporation's connections to Florida are tenuous or nonexistent. Under our federal system, the regulation of international commerce generally rests with Congress, U.S. Const., art. I, § 8, cl. 3, and the supervision of th nation's foreign affairs is forbidden to the states without consent of Congress. U.S. Const., art. I, § 10, cl. 3.

In any event, we do not find that the federal doctrine of forum non conveniens blinds itself to the need for achieving justice, even for foreign plaintiffs. Indeed, the *Gilbert* standard as elaborated by the federal courts clearly places great emphasis on fairn to the "private interests" of the parties—while also recognizing that these interests a not the only ones at stake. *See* Pain v. United Technologies Corp., 637 F.2d 775 (D.C.Cir.1980), *cert. denied,* 454 U.S. 1128, 102 S.Ct. 980, 71 L.Ed.2d 116 (1981).

The United States Supreme Court has described the "private interests" addressed b

the federal doctrine in the following terms:

> important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions to the enforcibility [sic] of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, "vex," "harass," or "oppress" the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

Gilbert, 330 U.S. at 508, 67 S.Ct. at 843 (footnote omitted).

However, the private interests of individuals are not the only concerns to factor into equation. There also are public interests that we, like the United States Supreme Co must address. While Florida courts sometimes may properly concern themselves wi suit essentially arising out-of-state, they nevertheless must take into account the im such practices will have if not properly policed—an impact with substantial effect on taxpayers of this state and on the appropriation of public monies at both the state and local level to pay for the costs of judicial operations.

We must rightly question expenditures of this type where the underlying lawsuit has genuine connection to the state. Florida's judicial interests are at their zenith, and th expenditure of tax-funded judicial resources most clearly justified, when the issues involve matters with a strong nexus to Florida's interests. But that interest and justification wane to the degree such a nexus is lacking. This is a concern also addressed by the *Gilbert* rule in its listing of the "factors of public interest" that shou weigh in the equation:

> Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of

> many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.

Id.

The federal doctrine also provides a well-defined method of balancing the often competing interests described above. Under *Gilbert* and its refinements, the courts reviewing a forum non conveniens motion must engage in a four-step analysis, succinctly described by the United States Court of Appeals for the District of Columb Circuit:

> [1] As a prerequisite, the court must establish whether an adequate alternative forum exists which possesses jurisdiction over the whole case. [2] Next, the trial judge must consider all relevant factors of *private* interest, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice. [3] If the trial judge finds this balance of private interests in equipoise or near equipoise, he must then determine whether or not factors of *public* interest tip the balance in favor of a trial in [another] forum. [4] If he decides that the balance favors such a... forum, the trial judge must finally ensure that plaintiffs can reinstate their suit in the alternative forum without undue inconvenience or prejudice.

Pain, 637 F.2d at 784-85 (cited with approval in *C.A. La Seguridad v. Transytur Line* 707 F.2d 1304 (11th Cir.1983)).

As to the first step, the United States Supreme Court has explained it in the following terms:

> Ordinarily, this requirement will be satisfied when the defendant is "amenable to process" in the other jurisdiction. *Gilbert*, 330 U.S., at 506-507, 67 S.Ct., at 842. In rare circumstances, however, where the remedy offered by the other forum is clearly unsatisfactory, the other forum may

not be an adequate alternative, and the initial requirement may not be satisfied. Thus, for example, dismissal would not be appropriate where the alternative forum does not permit litigation of the subject matter of the dispute. *Cf. Phoenix Canada Oil Co. Ltd. v. Texaco, Inc.*, 78 F.R.D. 445 (Del.1978) (court refuses to dismiss, where alternative forum is Ecuador, it is unclear whether Ecuadorean tribunal will hear the case, and there is no generally codified Ecuadorean legal remedy for the unjust enrichment and tort claims asserted).

Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254 n. 22, 102 S.Ct. 252, 265 n. 22, 70 L.Ed.2d 419 (1981).

It is important to note that the chief concern of the first level of analysis is the ability perfect service of process. If the "alternative" forum in theory offers a remedy for the wrong in question but lacks any meaningful mechanism for perfecting process, then not truly "alternative" within the meaning of *Gilbert*. Moreover, the Supreme Court ha emphasized that alternative fora are not "clearly unsatisfactory" merely because the available legal theories or potential recovery there are less generous than those available where suit was brought. Rather, the alternative fora are inadequate un the doctrine only if the remedy available there clearly amounts to no remedy at all. at 254, 102 S.Ct. at 265.

The second step of the analysis focuses on how the parties' "private interests" will b affected if the motion is granted or denied— something the federal courts have term the "balance of private conveniences." However, the phrase "private interests" (or it equivalent, "private conveniences") is by no means expansive. As suggested by *Gilbert*, the term encompasses four broad "practical" concerns: adequate access to evidence and relevant sites, adequate access to witnesses, adequate enforcement judgments, and the practicalities and expenses associated with the litigation. "Privat interests" do *not* involve consideration of the availability or unavailability of advantageous legal theories, a history of generous or stingy damage awards, or procedural nuances that may affect outcomes but that do not effectively deprive the plaintiff of any remedy. Indeed, it is entirely irrelevant that the alternative forum does not duplicate or approximate the American jury system, so long as a fair mechanism trial exists in a broad and basic sense.

However, the reviewing court always should remember that a strong presumption fa the plaintiff's choice of forum. Thus, the presumption can be defeated only if the relative disadvantages to the defendant's private interests are of sufficient weight to overcome the presumption. The various factors enumerated in *Gilbert* should be weighed together with other relevant concerns falling within the general definition of "private interests." For example, one court refused to apply the doctrine where doin would require translating thousands of pages of documents written in English into o languages, among other reasons. *Friends for All Children, Inc. v. Lockheed Aircraft Corp.*, 717 F.2d 602, 608 (D.C.Cir.1983). This was an issue of practicality and expe associated with access to evidence—which falls within the category of "private interests."

The third step of the analysis comes into play only if, in weighing the opposing parti private interest factors, the trial court finds them to be at or near equipoise, after tak into account the presumption favoring the plaintiff's choice of forum. "Equipoise" me simply that the advantages and disadvantages of the alternative forum will not significantly undermine or favor the "private interests" of any particular party, as compared with the forum in which suit was filed. In sum, the competing private intere are substantially in balance in either forum.

In this vein, the trial court should not require strict equivalence of "private interests" the different fora. Instead, it should keep in mind that the loss of a significant advantage may in fact be canceled out by some other significant gain—a result that sometimes can be achieved by stipulation of the parties. In *Pain,* for example, the defendant moved for dismissal and also (a) stipulated to personal jurisdiction in the alternative forum, (b) waived a possible objection based on a statute of limitations, a (c) agreed to proceed on the issue of damages without contesting liability. *Pain*, 637 F.2d at 780. The trial court accepted the stipulation, and the Circuit Court agreed th this procedure was permissible. Specifically, the Circuit Court concluded that the stipulation promoted the purposes underlying *Gilbert* because the parties no longer would encounter the expense of litigating the jurisdictional, statute of limitations, and liability issues. Of special note, the *Pain* Court found it irrelevant that the moving pa apparently was motivated by a belief that the final award in the alternative forum wa likely to be less costly. *Id.* at 794-95.

Where substantial equipoise exists, the trial court then proceeds to weigh the "publi

interest factors" outlined in *Gilbert*—a process the federal courts have termed the "balance of public conveniences." In broad terms, the inquiry focuses on "wheth the case has a general nexus with the forum sufficient to justify the forum's commitm of judicial time and resources to it." *Pain*, 637 F.2d at 791. The Court of Appeals for District of Columbia Circuit summarized the underlying rationale of this inquiry in the following terms:

> Three principles may be derived from the list of public interest factors enunciated in *Gilbert:* first, that courts may validly protect their dockets from cases which arise within their jurisdiction, but which lack significant connection to it; second, that courts may legitimately encourage trial of controversies in the localities in which they arise; and third, that a court may validly consider its familiarity with governing law when deciding whether or not to retain jurisdiction over a case. Thus, even when the private conveniences of the litigants are nearly in balance, a trial court has discretion to grant *forum non conveniens* dismissal upon finding that retention of jurisdiction would be unduly burdensome to the community, that there is little or no public interest in the dispute, or that foreign law will predominate if jurisdiction is retained.

Id. at 791-92 (footnotes omitted). As a corollary, if the public interest factors themselves are at or near equipoise, then the third step of the inquiry will provide ne basis for defeating the presumption favoring plaintiff's choice of forum. *See Friends All Children*, 717 F.2d at 610.

The fourth and final level of analysis is designed to ensure that when a forum non conveniens dismissal is granted, the remedy potentially available in the alternative forum does not become illusory. There are at least three ways the courts have soug to guarantee the potential remedy.[5] As the *Pain* court suggested, one is to make s that suit can be initiated in the alternative forum "without undue inconvenience or prejudice." *Pain*, 637 F.2d at 785. In other words, the courts in the alternative forum must genuinely be open and available to potentially provide a convenient remedy fo the injury or breach complained of, assuming the injury or breach is proved and otherwise meets the applicable legal requirements.

Second, *Pain* also indicated that when the parties have stipulated to conditions upo

which the forum non conveniens dismissal is premised, the dismissing court may "expressly provid[e] that the suits could be reopened [in the dismissing court] withou prejudice should any of the stipulated conditions fail to materialize." *Id.* In a similar v we hold that every motion for forum non conveniens dismissal filed in Florida shall automatically be deemed to include two stipulated conditions: (1) that the moving pa stipulates that the action will be treated in the new forum as though it had been filed that forum on the date it was filed in Florida, with service of process accepted as of date; and (2) that the plaintiff will lose the benefit of *all* stipulations made by the defendant if it fails to file the action in the new forum within 120 days after the date t Florida dismissal becomes final.

Third, the dismissing court's order also may retain jurisdiction over assets located within Florida where those assets are at issue in the dismissed case. This may inclu situations in which the assets may be necessary to satisfy any judgment in the alternative forum. However, the dismissing court must make a finding that the assets question are properly the subject of such orders by a Florida court. For this purpos we commend Judge Schwartz's persuasive analysis in *Mendes v. Dowelanco Indust LTDA*, 651 So.2d 776, 778-79 (Fla. 3d DCA 1995).

We are mindful that the doctrine outlined above will limit the ability of some persons take advantage of Florida's judicial system. While it is true that the Florida Constitut guarantees every person access to our courts for redress of injuries, art. I, § 21, Fla Const., that right has never been understood as a limitless warrant to bring the worl litigation here. Even *Houston* is premised on the assumption that reasonable lim must be imposed where the litigation's connection to Florida interests is tenuous at best. Moreover, the obvious purpose underlying article I, section 21 is to guarantee access to a potential remedy for wrongs, not to provide a forum to the world at large Thus, the right of access will not bar dismissal to the degree that such Florida intere are weak *and* to the degree that remedies are available in convenient alternative fo with better connections to the events complained of. *Id.* Put another way, if a potent remedy exists in the alternative forum, then the "remedy requirement" of article I, section 21 actually is being honored. *Id.*

Based on the foregoing discussion, we are persuaded that the time has come for Florida to adopt the federal doctrine of forum non conveniens. The use of Florida courts to police activities even in the remotest parts of the globe is not a purpose fo

which our judiciary was created. Florida courts exist to judge matters with significant impact upon Florida's interests, especially in light of the fact that the taxpayers of th state pay for the operation of its judiciary. Nothing in our Constitution compels the taxpayers to spend their money even for the rankest forum shopping by out-of-state interests.

The rule in *Houston* has led to this unintended result and is likely to lead to even further abuse of judicial resources in the future. Accordingly, we recede from *Houst* to the extent it conflicts with the views expressed here, and we hereby adopt the fed rule of forum non conveniens as outlined above.[6] All decisions of the district courts relying upon the pertinent holdings of *Houston* should be considered disapproved, including the decision of the court below, to the extent they are inconsistent with our views here. We further recede from all other case law issued by this Court to the ex it expressly relies on the overruled portions of *Houston*. For purposes of Florida's forum non conveniens doctrine, opinions of the federal courts that harmonize with th views expressed above should be considered persuasive, though not necessarily binding.

We address two final points relevant to this case. First, under our holding today it n is immaterial how "corporate residency" is determined, because a corporation's vari connections with Florida—if any— will only be factors to be weighed in the balance conveniences, as outlined above.[7] Therefore we answer all three parts of the certi question in the negative as qualified in this opinion. Even the fact that a corporation has its principal place of business in Florida does not necessarily preclude applicati of the doctrine of forum non conveniens. Instead, the trial court should gauge the situation using the "balance of conveniences" approach.

Second, we further recognize that an improper application of the instant opinion cou have a detrimental impact on some cases presently pending in the lower courts. Wh new or renewed motions for forum non conveniens dismissal are prompted in such cases by this opinion, we direct that the lower courts shall not order dismissal if doing so would actually undermine the interests that forum non conveniens seeks to preserve. These include avoiding a waste of resources (including resources already expended), avoiding forcing a plaintiff into a forum where a statute of limitation may have expired, or other similar problems. For example, we believe it would be contrar the doctrine to order dismissal where the parties—relying on *Houston*—have

substantially completed discovery or are now ready for a Florida trial or where they have completed trial and are seeking a Florida appeal, unless all parties consent to application of the doctrine outlined here. Otherwise our holding today shall apply to actions not yet final at the trial level and, of course, to all future actions filed.

This cause is remanded to the district court for further proceedings consistent with views here. On remand, the district court shall determine whether the trial court properly applied the federal doctrine as outlined here. If not, the district court shall vacate the trial court's order of dismissal and remand for proceedings consistent wi this opinion.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, HARDING, WELLS and ANSTEAD, JJ., concu

APPENDIX

RULE 1.061 FORUM NON CONVENIENS

(a) Grounds for Dismissal. An action may be dismissed on grounds a satisfactory remedy may be more conveniently sought in a jurisdiction other than Florida where:

(1) The trial court finds that an adequate alternate forum exists which possesses jurisdiction over the whole case;

(2) The trial court finds that all relevant factors of private interest favor the alternate forum, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice;

(3) If the balance of private interests is at or near equipoise, the court further finds that factors of public interest tip the balance in favor of trial in the alternate forum; and

(4) The trial judge ensures that plaintiffs can reinstate their suit in the alternate forum without undue inconvenience or prejudice.

The decision to grant or deny the motion for dismissal rests in the sound discretion of the trial court, subject to review for abuse of discretion.

(b) Stipulations in General. The parties to any action for which a satisfactory remedy may be more conveniently sought in a jurisdiction other than Florida may stipulate to conditions upon which a forum non conveniens dismissal shall be based, subject to approval by the trial court. The decision to accept or reject the stipulation rests in the sound discretion of the trial court, subject to review for abuse of discretion.

(c) Statutes of Limitation. In moving for forum non conveniens dismissal, defendants shall be deemed to automatically stipulate that the action will be treated in the new forum as though it had been filed in that forum on the date it was filed in Florida, with service of process accepted as of that date.

(d) Failure to Refile Promptly. When an action is dismissed in Florida for forum non conveniens, plaintiffs shall automatically be deemed to stipulate that they will lose the benefit of all stipulations made by the defendant, including the stipulation provided in subdivision (c) of this Rule, if plaintiffs fail to file the action in the new forum within 120 days after the date the Florida dismissal becomes final.

(e) Waiver of Automatic Stipulations. Upon unanimous agreement, the parties may waive the conditions provided in subdivisions (c) or (d), or both, only where they demonstrate and the trial court finds a compelling reason for the waiver. The decision to accept or reject the waiver shall not be disturbed on review if supported by competent substantial evidence.

95 (f) Reduction to Writing. The parties shall reduce their stipulation to a writing signed by them, which shall include all stipulations provided by this rule, and which shall be deemed incorporated by reference in any subsequent order of dismissal.

Court Commentary

This section was added to elaborate on Florida's adoption of the federal doctrine of forum non conveniens in *Kinney System, Inc. v. Continental Insurance Co.*, 674 So. 86 (Fla.1996), and it should be interpreted in light of that opinion.

Subdivision (a) codifies the federal standard for reviewing motions filed under the forum-non-conveniens doctrine. Orders granting or denying dismissal for forum non conveniens are subject to appellate review under an abuse-of-discretion standard.

As stated in *Kinney*, the phrase "private interests" means adequate access to evide and relevant sites, adequate access to witnesses, adequate enforcement of judgme and the practicalities and expenses associated with the litigation. Private interests d not involve consideration of the availability or unavailability of advantageous legal theories, a history of generous or stingy damage awards, or procedural nuances tha may affect outcomes but that do not effectively deprive the plaintiff of any remedy.

"Equipoise" means that the advantages and disadvantages of the alternative forum not significantly undermine or favor the "private interests" of any particular party, as compared with the forum in which suit was filed.

"Public interests" are the ability of courts to protect their dockets from causes that la significant connection to the jurisdiction; the ability of courts to encourage trial of controversies in the localities in which they arise; and the ability of courts to conside their familiarity with governing law when deciding whether or not to retain jurisdiction over a case. Even when the private conveniences of the litigants are nearly in balan a trial court has discretion to grant a forum non conveniens dismissal upon finding t retention of jurisdiction would be unduly burdensome to the community, that there is little or no public interest in the dispute, or that foreign law will predominate if jurisdiction is retained.

Subdivision (b) provides that the parties can stipulate to conditions of a forum non conveniens dismissal, subject to the trial court's approval. The trial court's acceptan or rejection of the stipulation is subject to appellate review under an abuse-of-discretion standard.

Subdivisions (c) and (d) provide automatic conditions that shall be deemed included every forum-non-conveniens dismissal. The purpose underlying subdivision (c) is to ensure that any statute of limitation in the new forum is applied as though the action

had been filed in that forum on the date it was filed in Florida. The purpose underlyi subdivision (d) is to ensure that the action is promptly refiled in the new forum. Both these stipulations are deemed to be a part of every stipulation that does not expres state otherwise, subject to the qualification provided in subdivision (e).

Subdivision (e) recognizes that there may be extraordinary conditions associated wi the new forum that would require the waiver of the conditions provided in subdivisio (c) and (d). Waivers should be granted sparingly. Thus, the parties by unanimous consent may stipulate to waive those conditions only upon showing a compelling reason to the trial court. The trial court's acceptance or rejection of the waiver may be reversed on appeal where supported by competent substantial evidence.

Subdivision (f) requires the parties to reduce their stipulation to written form, which t parties must sign. When and if the trial court accepts the stipulation, the parties' agreement then is treated as though it were incorporated by reference in the trial court's order of dismissal. To avoid confusion, the parties shall include the automati stipulations provided by sections (c) and (d) of this rule, unless the latter are proper waived under subdivision (e). However, the failure to include these automatic condit in the [illegible] stipulation does not waive them unless the dismissing court has expressly ruled.

[1] The Latin phrase "forum non conveniens" translates as "inconvenient forum."

[2] American states are attractive compared to some foreign nations because of more liberal discovery rules, perception of more generous juries, and the ability to obtain lawyers on a contingent-fee basis.

[3] The legislature has not attempted to codify any version of the common law doctrine of forum non conveni but has approved only a far more limited set of venue statutes generally governing transfers of actions amon different courts *within Florida*. *See* ch. 47, Fla.Stat. (1993).

[4] At least one jurisdiction has held that the lack of an alternative forum will not bar application of the doctrine where the plaintiff itself is a foreign government that has failed to provide itself with an adequate alternative through its own judiciary. *Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 478 N.Y.S.2d 597, 467 N.E.2d 2 (1984), *cert. denied*, 469 U.S. 1108, 105 S.Ct. 783, 83 L.Ed.2d 778 (1985). This is an admittedly rare situation which equitable concerns require application of the doctrine notwithstanding the lack of an alternative forum.

[5] We do not consider this listing exhaustive of all possible measures the dismissing court may properly take

[6] Recognizing that our holding is a significant departure in existing court procedure, we believe it is necessa codify our holding today in the Florida Rules of Civil Procedure. Accordingly, we adopt emergency Rule of Civ Procedure 1.061, which is attached to this opinion as an appendix. The emergency rule is effective immediate The Clerk shall publish the rule as soon as practicable, and we will receive commentary from the public for a

period of 90 days after the date this opinion is issued. At the expiration of the 90-day period, we will take any further action regarding the new rule that we deem necessary in light of the public comment we receive. We further refer the emergency rule to the Civil Procedure Rules Committee of The Florida Bar for its study and recommendations regarding a permanent rule.

[7] Likewise, the fact one of the parties is a Florida "resident" (however that term is defined) is but one factor be considered in the balance of conveniences. As noted in the federal cases, there will be instances where forum non conveniens dismissal would be appropriate notwithstanding one of the parties' Florida residency. example, the trial court may have discretion to dismiss under the doctrine where a plaintiff has named a "straw man" Florida defendant who is merely the employee of the actual target of the dispute, an out-of-state corporation. In that situation, residency is that of the real party in interest, not the straw man. A good overview the role played by residency in balancing the conveniences is provided in *Pain v. United Technologies Corp.*, F.2d 775, 795-98 (D.C.Cir. 1980).

377 So.2d 193 (1979)

Adelita Quejado GREEN, Appellant,

v.

The STATE of Florida, Appellee.

No. 78-894.

District Court of Appeal of Florida, Third District.

July 17, 1979.

195 *195 Black & Denaro and Roy E. Black, Miami, for appellant.

Jim Smith, Atty. Gen., and James H. Greason, Asst. Atty. Gen., for appellee.

Before PEARSON, BARKDULL and HUBBART, JJ.

HUBBART, Judge.

This is a criminal prosecution for grand larceny against an attorney arising out of certain financial transactions which involve two of the attorney's former clients. The testimony is in conflict as to whether the attorney invested certain of the clients' mor according to the client's instructions or whether, on the contrary, the attorney misappropriated the funds in question. The jury believed the latter and convicted th defendant as charged. After a prison term was imposed, the defendant appeals.

I

The first issue involved in this appeal is whether there are any circumstances under

which a trial court is constitutionally required to deny the electronic media[1] access
the courtroom to cover and report judicial proceedings in the courts of this state. W
hold that upon a demonstration of prejudice to the defendant in a criminal case, whi
inter alia includes a showing that such electronic media coverage of court proceedi
in the cause would render an otherwise competent defendant incompetent to stand
1316 trial, the trial court is constitutionally 1316 required to prohibit electronic media cover
of such court proceedings under the due process clause of the Fourteenth Amendm
to the United States Constitution and Article I, Section 9 of the Florida Constitution.
the trial court herein summarily denied a defense motion to prohibit electronic media
coverage of the trial based on the above ground without holding an evidentiary hea
to determine whether such motion was well-founded, we reverse and remand for a n
trial.

A

On December 27, 1976, the defendant Adelita Quejado Green was charged in a thr
count information, one count of which was eventually nolle prossed, with grand larce
by embezzlement or misappropriation in the Circuit Court for the Eleventh Judicial
Circuit of Florida. On February 7, 1977, based on the defendant's recent mental
breakdown caused in part by the circumstances giving rise to this prosecution, the t
court pursuant to the state's motion appointed three psychiatrists to conduct an
examination of the defendant as to her sanity and thereafter to file a written report w
the court setting forth: (a) a general report on the defendant's mental condition, (b)
opinion as to the capacity of the defendant presently to properly answer the charge
against her and aid in her own defense and stand trial, (c) an opinion as to whether
the time of the alleged offense the defendant knew right from wrong and the nature
consequences of her acts, and (d) an opinion as to whether the defendant should b
given psychiatric treatment, and, if so, recommendations as to the type of such
treatment.

The court-appointed psychiatrists subsequently conducted extensive mental
examinations of the defendant on more than one occasion reviewed her past menta
history and filed extensive written reports with the court. These reports all concluded
that the defendant was mentally incompetent to stand trial, that she was suffering fr

a severe depression of psychotic proportions, and was extremely suicidal.[2] These
reports indicated that the defendant had previously attempted suicide in
September, 1976, that she was placed in a mental hospital at the Institute for Living
Hartford, Connecticut from November 3, 1976 to December 30, 1976, that she was
subsequently placed in Cedars of Lebanon Hospital in Miami Beach, January 3, 197
— February 4, 1977, under the psychiatric care of Dr. Arthur Stillman, and that she
since been receiving outpatient psychiatric care from Dr. Stillman three times weekl
since her discharge from the hospital.

On March 21, 1977, the defendant through counsel filed a written waiver of speedy
attaching thereto an affidavit of defense counsel detailing the prior and continuing
severe mental history of the defendant and the virtual impossibility of communicatin
with the defendant concerning the case. Also attached is a mental status report of t
defendant by her treating psychiatrist, Dr. Stillman, confirming in detail the psychoti
state of the defendant. Accordingly, the trial of the cause was postponed while the
defendant continued to receive out-patient psychiatric care.

On July 13, 1977, the trial court entered a second order appointing the same above
three psychiatrists to re-examine the defendant and file written reports on the same
questions as stated in the first such order. This time the psychiatrists all agreed tha
the defendant's mental condition had improved although she was still mentally
disturbed, and that, at present, the defendant was mentally competent to stand trial
These reports, like the prior psychiatric reports previously filed in this case, did not
determine whether television coverage of the defendant's trial would adversely affe
the defendant's competency to stand trial as such a determination was not call
for in either of the orders appointing the psychiatrists in this cause.

The trial court held an evidentiary hearing to determine the defendant's competency
stand trial and reviewed the above psychiatric reports. On September 27, 1977, the
trial court entered an order adjudging the defendant competent to stand trial but, s
as the record reveals, made no inquiry into what impact, if any, electronic media
coverage would have on the defendant's competency to stand trial.

On October 6, 1977, the defendant filed a motion to prohibit the electronic media fr
televising or photographing any of the court proceedings in this cause on the groun
that her fragile mental condition was such that any electronic media coverage of the

court proceedings herein would have an adverse effect on her mental competency t stand trial, to properly assist counsel and to mount an effective defense. The defendant prayed that the motion be set for an evidentiary hearing to determine the truth of this claim. In addition to setting forth the history of the defendant's mental illness as detailed above, the defendant attached an affidavit by defense counsel stating that he had talked to one of the court-appointed psychiatrists in this cause a that this psychiatrist (Dr. Sanford Jacobson) had concluded:

> "... that appearance of the electronic media in this case would adversely affect the defendant. Her anxiety and depression will be heightened and actively interfere with her ability to defend herself and to communicate with counsel."

Defense counsel's affidavit further states:

> "That based upon his extensive contact with the defendant over a ten month period he has concluded that extensive media coverage of the trial will severely lessen defendant's ability to properly defend herself. Up to a month ago this defendant was unable to actively assist in the preparation of her defense: she was totally apathetic, had no interest in discussing the details of the transactions involved, and continually expressed extreme depression concerning the future. Her condition is still very fragile; articles in newspapers, radio and television affect her greatly. The intrusion of cameras into the courtroom would paralyze her with apprehension and consequently prevent her from defending herself."

Also attached to the defendant's motion to prohibit electronic media coverage is a report by Dr. Stillman, the defendant's treating psychiatrist, which concludes that the presence of the electronic media at the trial of this cause would have an adverse impact on the defendant's competency to stand trial.[4]

[1365] On October 18, 1977, the trial court heard argument on the above motion, but declined to take any testimony thereon. On November 16, 1977, the trial court enter a written order denying the motion.

On January 30, 1978 — February 3, 1978, the defendant was brought to trial and th court proceedings thereon were fully covered by the electronic media, portions of w

were shown daily on television news broadcasts. At the outset of the trial, the defendant renewed her pre-trial motion to prohibit electronic media coverage of cou proceedings in this cause, which motion was summarily denied without conducting a evidentiary hearing. Throughout the trial, the defendant through counsel objected t the electronic media coverage of this trial stating that such coverage was adversely affecting the defendant's ability to confer with counsel during the trial. The trial cour overruled all such objections without making any inquiry as to the truth of the defendant's claims.

The defendant was convicted of two counts of grand larceny and was sentenced to term of years in the state penitentiary. This appeal follows.

B

The Florida Supreme Court in *Petition of Post-Newsweek Stations, Florida, Inc.*, 347 So.2d 402 (Fla. 1977), 347 So.2d 404 (Fla. 1977), established a one year pilot proj in this state whereby the electronic media, including still photography, could at their discretion televise and photograph judicial proceedings, civil, criminal and appellate all courts in the state of Florida subject to a detailed set of standards regulating the types of equipment, lighting, noise levels, audio pickup, etc., employed by the electronic media. The consent of any or all of the participants in the trials was not m a requirement for this pilot project which began at 12:01 a.m. on July 5, 1977 and ended at 11:59 p.m. on June 30, 1978. The trial in the instant case was held during one year pilot project pursuant to the above standards.

Subsequent thereto, the Florida Supreme Court in *In Re Petition of Post-Newsweek Stations, Florida, Inc.*, 370 So.2d 764 (Fla. 1979), decided to make the pilot project permanent program in Florida courts pursuant to revised standards very similar to t prior standards. The Court did so pursuant to its supervisory authority over the cou of this state under Article V of the Florida Constitution rejecting any argument by the electronic media that the First and Sixth Amendments to the United States Constitut mandated entry of such media into judicial proceedings.

In what must be considered a leading decision on this subject in the country, the Co speaking through Mr. Justice Sundberg, addressed directly the constitutional object

based on *Estes v. Texas*, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965), whic had been raised against authorizing electronic media coverage of criminal trials. Aft thoughtfully analyzing both the *Estes* plurality opinion and the decisive concurring opinion of Mr. Justice Harlan, the Court concluded that there was no absolute federa constitutional bar to televise trials in criminal cases. Specifically, the Court held that "without demonstration of prejudice, there is no per se proscription against electron media coverage of judicial proceedings imposed by the fourteenth amendment to th United States Constitution nor by article I, section 9, Florida Constitution." 370 So.2 774.

Although the Court did not discuss what might constitute a demonstration of prejudi by the defendant which would trigger a due process violation and thus bar electroni media coverage of a criminal trial, it seems clear from the decision that prejudice wo 200 exist if the case, like *Estes*, was a *200 heavily publicized and highly sensational affa tried in a carnival-like proceeding incessantly interrupted by reporters, cameras, an cameramen. Beyond that, the Court quite properly left for future decisions a more complete definition of the parameters of prejudice.

In this connection, however, it seems elementary that the advent of electronic media coverage of judicial proceedings as approved by the Court did not change the long established law that it is a violation of due process, as well as our basic statutory an procedural law, to try a defendant for a crime (a) when he is mentally incompetent t stand trial, *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975); *Horace v. Culver*, 111 So.2d 670 (Fla. 1959); *Perkins v. Mayo*, 92 So.2d 641 (Fla. 1957); § 918.15(1), Fla. Stat. (1977); Fla.R.Crim.P. 3.210(a)(1); or (b) when the evidence in the case raises a reasonable doubt as to his competency to stand trial no evidentiary hearing is thereafter held by the trial court to resolve the competency issue. *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975); *Pate v Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966); *State ex rel. Deeb v. Fabisinski*, 111 Fla. 454, 152 So. 207, 156 So. 261 (1933); § 918.15(2), Fla. Stat. (1977); Fla.R.Crim.P. 3.210(a)(2). In this state "[a] person . . is incompetent to stand trial ... if he does not have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding or if he has no rational as well as factu understanding of the proceedings against him." § 918.15(1), Fla. Stat. (1977); Fla.R.Crim.P. 3.210(a)(1).

It also seems clear that the advent of electronic media coverage of a criminal trial carries with it, at times, the risk of rendering a borderline competent defendant incompetent to stand trial and that a case involving such a defendant must be hand with special care by the trial court. A mentally disturbed, but technically competent defendant, like any other defendant, must face a much greater public exposure if hi trial is televised. As a result, he is almost certain to suffer a greater level of anxiety t he would if his trial were not televised. This increased anxiety may impair his ability t consult with counsel during trial with a reasonable degree of rational understanding it may impair his rational as well as factual understanding of the proceedings agains him. If either event be the case, the defendant has, in our view, demonstrated preju under *Post-Newsweek*, supra, so as to exclude electronic media coverage of the judicial proceedings in the case. To rule otherwise would be to sanction the trial of a competent defendant rendered incompetent by electronic media coverage, a result which our law does not and cannot permit.

C

In the instant case, we must reject any contention that the defendant had an absolu constitutional right at her option to exclude electronic media coverage of the judicial proceedings in this cause. We have no problem, however, in determining that the defendant sufficiently alleged prejudice of constitutional due process proportions in motion to prohibit electronic media coverage of the cause so as to require an evidentiary hearing thereon. The motion, together with the supporting documents a record, in the case, raise grave doubts, in our view, as to whether the impending electronic media coverage of this trial would have such an adverse psychological impact on this borderline competent defendant so as to render her incompetent to stand trial. Although the trial court adjudged the defendant competent to stand trial, determination or inquiry was ever made by the trial court as to whether such competency would exist in the event the trial were televised. When that issue was properly raised for the first time in the defendant's above-stated electronic media motion, it was incumbent upon the trial court to conduct a full evidentiary hearing thereon which, at a minimum, should have included testimony or reports by the cou appointed psychiatrists as to the impact which electronic media coverage of this tria would have on the defendant's competency to stand trial. Such was not

accomplished in this case.

We further find nothing in the trial record of this cause which dispels the reasonable doubt that the defendant may not have been competent to stand trial given the electronic media coverage of the trial herein. To the contrary, the record is replete w objections by defense counsel that the televising of his conferences with the defenc in court was so upsetting to the defendant as to effectively prevent any meaningful communication between lawyer and client during the progress of the trial. Consisten with its prior ruling, the trial court did not inquire into any of these claims and summa overruled the objections. As such, we must conclude that the trial court committed reversible error in denying the defendant's motion to prohibit electronic media coverage of this cause without first conducting an evidentiary hearing thereon.

II

The second issue involved in this appeal is whether the trial court committed revers error in denying without a hearing the production at trial of certain evidence request of a witness under a subpoena duces tecum issued by the defendant, and in exclud from evidence at trial the testimony of certain defense witnesses. For the reasons which follow, we conclude that individually each of these rulings constitute reversible error. We, accordingly, reverse and remand for a new trial.

A

The defendant Adelita Quejado Green was at all times material to this cause a mem of the Florida Bar and a practicing lawyer in Miami, Florida, from 1971-1976. As a fi generation American of Chinese-Philippine extraction, the major part of her law prac consisted of representing foreigners, primarily overseas Chinese, in various busines matters. Among such clients were a group of Chinese businessmen in Jamaica, including George Chin and Vincent Chuck. The defendant represented Mr. Chin an Mr. Chuck in their efforts to obtain resident visas in the United States and also inves certain of their monies, some of it abroad, in their behalf from established trust fund The clients lost all of the monies in these trust accounts due to bad investments abr by the defendant and these alleged defalcations formed the basis for the two grand

larceny charges herein. The jury, based on the circumstances of these complex transactions, believed that the investments in question were never authorized by the clients from the trust funds and that the defendant had misappropriated the monies question. The defendant claimed, and the jury did not believe, that the investments which were lost had been authorized by the clients.

The conflict in the trial testimony of Mr. Chin and the defendant was particularly at odds. Mr. Chin testified that the money was given to the defendant to set up a routin trust fund for his son because Mr. Chin was about to undergo a serious operation fo lung ailment and was afraid he might die. Contrary to the defendant's testimony, he denied that the defendant was authorized to clandestinely invest these monies in his behalf in order to protect his assets from possible expropriation by the Jamaican government. The defendant so testified and stated that she had been authorized to make the clandestine investments in question for Mr. Chin, and that he had never mentioned anything about an operation for a lung ailment or that he was afraid of dy or that the trust fund was to be set up for his son.

To substantiate the defendant's testimony and discredit Mr. Chin's testimony as stat above, the defendant did two things: (a) she issued a subpoena duces tecum for tri Mr. Chin directing him to bring certain of his business and financial records and pap to trial;[5] and (b) she called Dr. Raymond Cohen, Mr. Chin's physician, to establish through medical records that on the date in question Mr. Chin had no seri medical problems, that he was not going to undergo a lung operation, and that he w in no danger of dying; she also called and attempted to elicit similar testimony from Ethlyn Wong, an acquaintance of Mr. Chin. The trial court denied, without conductin hearing, the production of the exhibits sought by the defendant at trial on the subpo duces tecum. In particular, the trial court sustained the state's objection when the defendant asked Mr. Chin on cross-examination to produce the documents request by the subpoena duces tecum without examining such documents. The trial court further ruled that the above testimony of Dr. Cohen and Ethlyn Wong was inadmissi at trial as being testimony on a collateral matter.

B

The law is well-settled that the defendant in a criminal case is constitutionally entitle

compulsory process to have brought into the trial court any material evidence show
be available and capable of being used by him in aid of his defense, including the
beneficial enjoyment of the compulsory process of a subpoena duces tecum for tha
purpose. The constitutional right to compulsory process means not only the issuanc
and service of a subpoena by which a defense witness is made to appear, but inclu
the judicial enforcement of that process and the essential benefits of it by the trial
court. With reference to the latter, a trial court has no more authority to refuse to
enforce for a defendant's benefit the production of the evidence available to be
procured and for which compulsory process has been issued than to deny the proc
itself in the first instance. *State ex rel. Brown v. Dewell*, 123 Fla. 785, 167 So. 687
(1936). Whenever the state objects, as here, to the production of documents under
subpoena duces tecum, the proper practice is for the trial court to examine the
subpoenaed documents to determine their relevancy resolving any doubts in favor
their production. *Vann v. State*, 85 So.2d 133, 136 (Fla. 1956). The defendant also
a constitutional right to compulsory process of witnesses to produce testimony which
admissible in the cause for which he is on trial. *Washington v. Texas*, 388 U.S. 14, 8
S.Ct. 1920, 18 L.Ed.2d 1019 (1967).

C

In the instant case, it is clear beyond any hope of successful contradiction that the t
court, contrary to established law, refused to enforce the subpoena duces tecum in
case without conducting a hearing to determine the relevancy of the subpoenaed
documents. On its face, it cannot be said that such documents were totally irrelevan
the cause and, accordingly, a hearing was in order after the state objected to the
production of such documents at trial. We emphasize that the trial court should have
conducted a hearing to determine the relevancy of such documents, not their
admissibility, and to thereafter turn over any such relevant documents to defense
counsel. We express no opinion on, and the trial court at the hearing would not be
required to determine, the admissibility of such evidence. We are concerned only as
the production of such evidence for the inspection of defense counsel pursuant to t
subpoena duces tecum.

293 We are also persuaded that the trial court was in error in ruling that Dr. 293 Cohen'
testimony and Ethlyn Wong's testimony was not relevant to the case at hand. It is cl

that these witnesses would have given testimony directly contrary to that of Mr. Chin concerning the motive for setting up the trust funds in question. Such testimony refu Mr. Chin's claim that he set the trust funds up for his son because he was afraid of dying in an upcoming lung operation. Both Dr. Cohen and Ethlyn Wong were prepa to testify that Mr. Chin had no such lung operation, that he was in good health, and he was in no danger of dying. We think this directly touches the relevant issues involved in this case and that it was reversible error for the trial court to exclude suc testimony at the trial of this cause.

III

We have examined the other contentions made by the defendant upon this appeal a find them to be without merit. The judgments of conviction and sentences herein are accordingly reversed and the cause remanded to the trial court with directions to or a new trial in conformance with the views expressed in this opinion.

Reversed and remanded.

[1] Unless the context otherwise requires, "electronic media" shall be used as a generic term which encompa television, film and video tape cameras, still photography cameras, tape recording devices and radio broadca equipment.

[2] "It is my opinion that this individual is suffering from a severe depression which causes diminished mental capacity to properly aid counsel in the preparation of her defense and stand trial. I feel that she knows right f wrong and understands the nature and consequences of her acts. I believe the same was true at the time of alleged offense. Despite the outcome of her case, she will need close supervision on a psychiatric basis, because she is potentially dangerous to herself. She is presently receiving intensive psychotherapy and sho continue same. I would also suspect that other members of her family should receive counseling or treatment well. If left unattended, she will most probably destroy herself. Further hospitalization should be considered." Report of Dr. Charles B. Mutter, dated February 28, 1977.

"At present it is felt that her depression is of psychotic proportions. At present I feel that her illness significan impairs her ability to aid and assist counsel in her defense and to understand the nature of the charges again her. When specifically asked about her ability to confer with her attorney, she described herself as being una to concentrate and be attentive. While stating that she did not understand the charges, I felt that in spite of he depression, she has a factual understanding of them, although not a rational understanding.

It is very difficult to determine the client's mental status at the time of the alleged offense. Since these events occurred over a period of three years, one cannot conclude that her mental state was necessarily the same throughout that period of time. I therefore cannot offer any conclusive statement about her ability to meet the for criminal responsibility without additional information regarding her behavior at specific points in time. Finall

is my opinion that the defendant is in need of further treatment and that hospitalization could be considered." Report of Dr. Sanford Jacobson, dated March 11, 1977.

"I believe that she has suffered from a manic-depressive illness, and that she presently shows mixtures of symptoms including both depression as well as pressure of speech, increased mental activity, circumstantial and I consider her to be potentially suicidal. Paranoid ideation persists. There is an underlying personality disc of many years standing manifested by obsessive compulsive features, hysterical symptoms and some passi aggressive patterns. It is my opinion that she is presently incapable of properly answering the charges again her and aid in her own defense and stand trial. It is also my opinion that at the time of the alleged offense wit which she is charged she technically knew the difference between right and wrong and the nature and consequences of her acts. However, her developing mental illness appears to have interfered with the prope use of judgment and her ability to handle her affairs in an appropriate manner. As noted I believe that she is s sick and continues to be suicidal. She should remain in treatment and should be watched carefully, especially should her depression increase with its potential for suicide. Since the pressures that have existed at home continue it may be to her advantage to be hospitalized to remove her from the psychologically traumatic situations." Report of Dr. William Corwin, dated March 15, 1977.

[3] "Diagnostic impression is agitated depression.

It is my opinion that this individual has shown marked improvement since my last examination, despite the presence of her anxiety and depression. I feel she has a rational and factual understanding of the proceedin against her and has capacity to properly aid counsel in the preparation of her defense to stand trial. Despite t outcome of the case, she will need continuing psychiatric care. Such care can be rendered on an outpatient basis." Report of Dr. Charles B. Mutter, dated August 22, 1977.

"Mrs. Green still shows evidence of significant depressive thinking. The depressive ideation does not seem t as broad in terms of its effects on the total functioning of her personality. However, at times the depth of her depression may be just as great as previously. Her ideation is still somewhat morbid and there are numerous statements relating to matters of death. Nevertheless, her depression does not presently seem to be of psyc proportions and it is my opinion that the client is presently able to assist counsel in her defense and understa the nature of the charges against her. It is felt that she presently possesses a rational and factual understan of the charges and based upon the quality of her communication with me, it is my opinion that she can communicate with counsel with a reasonable degree of rational understanding. There is, of course, the poss that her condition may continue to improve over subsequent months and she may be even better able to assi counsel in the future." Report of Dr. Sanford Jacobson, dated September 20, 1977.

"I believe she shows some improvement from her previous condition as noted in the first examination. The medication she is taking now is a milder type and may indeed be indicative of her improvement. She continues show some symptoms of anxiety and concern, some related to her realistic problems both in terms of her marriage as well as her legal situation. I believe she is presently capable of properly answering the charges against her and aid in her own defense and stand trial. As noted in my previous examination I felt that she w able to distinguish between right and wrong and to know the nature and consequences of her acts, but that developing mental illness had interfered with her ability to use proper judgment. I feel she should continue to b under psychiatric care, especially in view of her current domestic problems." Report of Dr. William Corwin, da September 30, 1977.

[4] "The question has been raised whether Mrs. Adelita Green in her trial should be exposed to television coverage. This television coverage being the mode of the court recently might well occur in Mrs. Adelita Gree

case and I would strongly urge and recommend that it be avoided at all costs.

As you know, Mrs. Green is of Oriental background and the whole situation of saving face and of not being ashamed or belittled before her friends and family has been a serious problem in her life and in the managem her condition. Part of this, of course, is the fact that Mrs. Green has just recently recovered from a psychotic state and, although she is much better, inordinate stresses should be avoided at all costs in order to prevent possible breakdown into the psychotic depression that she has just recently been liberated from.

When we consider these two factors alone, there certainly is enough indication that exposure to the televisi cameras, let alone exposure to the community, would indeed be a cruel and inhuman treatment and would, in probabilities, create a rather difficult situation that would lead to a psychotic breakdown which we are desperately trying to avoid at all costs.

In addition to all these factors, Mrs. Green has been instructed not to appear in court whenever possible in th recent past since she has not been able to tolerate anxiety too well and we have avoided, as you know, any anxiety provoking situations. It will be difficult enough in the ordinary trial situation for her to be able to withst the anxieties that are attendant to her appearance so that additional burdens such as having to be concerne about her television situation will only complicate an already difficult situation. At any rate, in conclusion I mus seriously object to any factors that will produce unnecessary stress in Mrs. Green's case since maintaining a stabilized level is difficult at best and, should additional stresses be added, it can only undo much of the w that we have been able to accomplish in these past eight months. I would like to advise you that to have brou her from the purely psychotic state she was in to the more stabilized state she now represents in eight mont has been a rather heroic task and I would not like to see it undone by factors which are extraneous and whi are unnecessary." Report of Dr. Arthur Stillman, dated October 3, 1977.

[5] The subpoena duces tecum called on Mr. Chin to produce at trial the following documents:

"1. U.S. income tax returns for 1974, 1975 and 1976.

2. United States Customs Declarations for importation of cash.

3. All records of bank accounts held in England, the United States, Jamaica, and any other country.

4. All correspondence between you and ADELITA GREEN.

5. All agreements prepared for you by ADELITA GREEN.

6. Evidence of ownership of all property you own either legally or equitably including but not limited to the U.S Jamaica.

7. Your passport.

8. All papers filed by you or on your behalf with the Immigration and Naturalization Service of the United State

9. All documents showing income taxes paid by you in Jamaica.

10. All documents showing permission to export American dollars from Jamaica.

11. Records of all indebtedness owed to you; i.e., Certificates of Deposit, loans, investments, mortgages, etc

12. All your business records relating to your present business."

361 So.2d 135 (1978)

William Lamar ROSE, Etc., Petitioner,

v.

PALM BEACH COUNTY, Etc., Respondent.

No. 52124.

Supreme Court of Florida.

July 13, 1978.

David H. Bludworth, State's Atty., and Stephen R. Koons and Joel M. Weissman, Ass State's Attys., West Palm Beach, for petitioner.

135 1136 R. William Rutter, Jr., County Atty., and Charles P. Vitunac, Asst. County Atty., West Palm Beach, for respondent.

Robert L. Shevin, Atty. Gen., and Basil S. Diamond, Asst. Atty. Gen., West Palm Bea for amicus curiae.

BOYD, Justice.

In the course of a criminal prosecution in Palm Beach County Circuit Court, the indig defendant's appointed counsel moved successfully for a change of venue. This cha made it necessary for the state and defense witnesses, numbering more than sever five, to travel from Palm Beach County to Duval County, a distance of some three hundred miles. Many of these witnesses were indigent. The prosecution asked the t court for an order compelling the Palm Beach County Commission to make payment for the benefit of state and defense witnesses in excess of the amounts provided for witness compensation and travel expenses in Section 90.14, Florida Statutes (1975

This section provides that witnesses are to receive $5.00 per day and six cents per mile. The court granted the petition and directed that the witnesses be paid $9.25 p day and 10 cents per mile. The county sought review of the order by certiorari in the District Court of Appeal, Fourth District. The district court quashed the order, holdin that the circuit court judge was without authority to issue it.[2] The judge who ordere the payments now seeks a writ of certiorari to the district court. Our jurisdiction has been properly invoked in light of the fact that, pursuant to Article V, Section 3(b)(3) the Florida Constitution, the district court has certified to this Court as a matter of gr public interest the following question:

> Does a trial court have inherent power to order prepayment of traveling and lodging expenses to ensure a fair trial to a criminal defendant and the state in excess of the statutory maximum of $5 a day and $.06 a mile when the witnesses are indigent?

Petitioner contends that he should have the power to go beyond the statutory amou for witness fees and expenses since it is necessary to the performance of the speci judicial function of ensuring to both the state and the accused a fair trial of the case asserts that this case calls into play the rights of equality before the law, due proces and compulsory process against witnesses guaranteed by sections 2, 9 and 16 respectively, of the Declaration of Rights of the Florida Constitution. Petitioner argu that the protection of these rights, in the last analysis, is the function of courts and t the power to issue the order under consideration is necessary to the performance o this function. Not only is the protection of the rights of the accused at stake, but also the interests of the state in securing a conviction of a guilty party which will not be overturned for failure of a fair trial. Frequently, the ultimate result of a clear denial o due process is freedom for the accused, who may be guilty. Therefore, argues petitioner, it is essential to the judicial function that courts have the inherent power t protect against such a denial, in the interest of both the state and the accused.[3]

137 *137 The respondent county commission points out that at common law there was no right in an accused to compulsory process against witnesses. It argues that the development of the right of compulsory process against witnesses has not given rise any right in witnesses to be compensated or in those accused of crime to have their witnesses appear at public expense. The rights of witnesses to compensation and to

reimbursement for expenses are purely creatures of statute.

Furthermore, argues respondent, the doctrine of inherent judicial power invoked by petitioner is a derivative of the concepts of separation of powers and judicial independence. As such, it is a very narrow doctrine positing only that courts have authority to do things that are absolutely essential to the performance of their judici functions. Since the asserted judicial problem of ensuring for the state a fair opportunity to gain a conviction of the accused can be remedied by appropriate legislation and since the judicial function of effectuating the right of compulsory proc can be performed through use of the contempt power against the subpoenaed, nonresponding witness, it is not necessary for courts to have the power to order the payment of fees and expenses of witnesses. Fees, concludes respondent, are strict legislative matter.

We agree with respondent that the responsibility for the adequate and efficient prosecution of violations of law is a matter lying with the policy-making branches of government. But where the fundamental rights of individuals are concerned, the judiciary may not abdicate its responsibility and defer to legislative or administrative arrangements. We agree with petitioner that this situation involves the right of an accused to compulsory process against witnesses.[4]

Every court has inherent power to do all things that are reasonably necessary for th administration of justice within the scope of its jurisdiction, subject to valid existing la and constitutional provisions.[5] The doctrine of inherent judicial power as it relates t the practice of compelling the expenditure of funds by the executive and legislative branches of government has developed as a way of responding to inaction or inadequate action that amounts to a threat to the courts' ability to make effective the jurisdiction.[6] The doctrine exists because it is crucial to the survival of the judiciary an independent, functioning and co-equal branch of government. The invocation of doctrine is most compelling when the judicial function at issue is the safe-guarding o fundamental rights.[7]

But the courts find themselves in the position of one who must play the dual rol being both a referee and a partisan participant in an athletic contest. Like the other branches, the judiciary is interested in preserving its prerogatives and may sometim be in an adversary position, vis-a-vis the other branches, with regard to the ongoing

contest over governmental power.[8] Yet it is the judiciary that must decide upon the ultimate delineation of power. The doctrine of inherent power should be invoked onl situations of clear necessity. The courts' zeal in the protection of their prerogatives must not lead them to invade areas of responsibility confided to the other two branches. Accordingly, it is with extreme caution that this Court approaches the issu the power of trial courts to order payments by local governments for expenditures deemed essential to the fair administration of justice. The same extreme caution sho be used by trial courts in seeking solutions to practical administrative problems that have not been resolved or provided for by the Legislature.[9]

The district court reasoned that the use of the contempt power to enforce subpoena a workable method of effectuating the rights of the state and the accused to compulsory process against witnesses. Every citizen has a duty to respond to a subpoena regardless of statutory provisions for compensation or expenses. But this solution raises the possibility of serious practical problems. Contempt is an after-the fact judicial tool that does not avoid disruption and delay of the trial proceedings. Th costs of apprehension, incarceration, and transportation of the nonresponding witne will generally be borne by the public in any event. Moreover, to imprison an indigent person for not responding to to a subpoena ordering him to appear in court three hundred miles away would be akin to imprisonment for debt.[10] It would deprive him liberty without due process of law as surely as would using the contempt power to compel an indigent person to make monetary payments.[11]

The amounts provided by the Legislature for witness compensation and travel expenses are probably quite adequate for the vast majority of proceedings. Ordinar witnesses stay in their own homes and may even work part of the day on which they 1396 testifying. Their travel expenses are minor. Even without compensation giving 1397 testimony will not be a major sacrifice. When venue is changed, the fees of witnesse are paid "in like manner as if the trial had not been removed."[12] Usually the witness will only have to travel a few miles to a neighboring county, and will neither lose muc working time nor require lodging for an overnight stay. It appears to us that the Legislature in making provision as it has expressed the public will with regard to trial held under normal circumstances.

If the statute is deemed to establish an absolute maximum in all situations, then it m

be said to improperly infringe the prerogative of the court in effectuating the constitutional right to compulsory process.[13] If, on the other hand, the statute on witness fees is deemed merely declaratory of a guideline pertaining to a matter with the competence of the court to determine,[14] then it need not be declared an infringement. In this most unusual situation where a group of indigent witnesses had travel three hundred miles and back and be lodged in a large metropolitan area, we construe the statute not to preclude the order entered by petitioner. Expenditure of public funds was required to protect the rights of the defendant. The order requiring payments did not conflict with the Legislature's intention to grant constitutionally sufficient criminal court trials. In this exercise of inherent judicial power we find no conflict between legislative and judicial goals in the administration of justice.

Actions taken by trial courts and purporting to be based strictly on inherent judicial authority are subject to judicial review and the burden must be on the issuing court to show that the action is necessary to enable the court to perform one of its essential judicial functions.

The decision of the district court is quashed and, subject to the qualifications set out this opinion, the certified question is answered in the affirmative.

It is so ordered.

ADKINS, OVERTON and HATCHETT, JJ., concur.

ENGLAND, C.J., dissents with an opinion, with which SUNDBERG, J., concurs.

ENGLAND, Chief Justice, dissenting.

I respectfully dissent. The Court's decision today is wholly inconsistent with *Macken v. Hillsborough County*, 288 So.2d 200 (Fla. 1973), in which the Court refused to increase by judicial fiat a statutory limitation on attorney's fees, saying that "if a chan in the [statutory level of] compensation be called for, it is within the province of the Legislature, not the courts, to make such change." 288 So.2d at 201. This case, moreover, is particularly inappropriate for an application of the inherency doctrine. N only has the legislature spoken directly to the subject matter of these expenses, but apparently contemplated within the prescribed expense limitation precisely the type occurrence (change of venue) for which the Court has now supplanted that legislati

judgment. See Section 142.16, Florida Statutes (1975).

SUNDBERG, J., concurs.

[1] *Witnesses; pay.* — Witnesses in all cases, civil and criminal, in all courts, now or hereafter created, and witnesses summoned before any arbitrator or master in chancery shall receive for each day's actual attenda five dollars and also six cents per mile for actual distance traveled to and from the courts.

In general, these amounts are paid by the party calling the witness. But in criminal cases when the defendan indigent, § 914.11, Fla. Stat. (1977), provides that the costs of witnesses necessary to the defense be paid b the county. A nonindigent criminal defendant would have to pay the prescribed fees in order to subpoena witnesses, but where the defendant is not convicted, "the fees of witnesses and officers" are to be paid by county, § 142.09, Fla. Stat. (1977).

[2] *Palm Beach County v. Rose*, 347 So.2d 127 (Fla. 4th DCA 1977).

[3] "Inherent powers" of courts have been described as "all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawf actions effective. These powers are inherent in the sense that they exist because the court exists; the court therefore it has the powers reasonably required to act as an efficient court." Carrigan, Inherent Powers of th Courts 2 (1973). With regard to inherent power to ensure fair criminal trials, see *Sheppard v. Maxwell*, 384 U. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966).

[4] The right of one accused of crime to compulsory process for obtaining witnesses in his favor "stands on lesser footing than the other Sixth Amendment rights that [the United States Supreme Court has] held applicab the States." *Washington v. Texas*, 388 U.S. 14, 18, 87 S.Ct. 1920, 1923, 18 L.Ed.2d 1019, 1022 (1967).

[5] 8 Fla.Jur. *Courts* § 74 (1956). Some previous decisions of this Court indicate generally that the will of the Legislature is to prevail on the matter of compensation for court-appointed public prosecutors and defenders *Mackenzie v. Hillsborough County*, 288 So.2d 200 (Fla. 1973); *Strauss v. Dade County*, 253 So.2d 864 (Fla. 1971); *Carr v. Dade County*, 250 So.2d 865 (Fla. 1971).

[6] "If the separation of powers is to be maintained, it is essential that the judicial branch of government not be throttled by either the legislative or administrative branches, and that the courts be empowered to mandate w is reasonably necessary to discharge their duties." *McAfee v. State ex rel. Stodola*, 258 Ind. 677, 681, 284 N. 778, 782 (Ind. 1972).

"... [T]he Judiciary *must possess* the inherent power to determine and compel payment of those sums of mon which are reasonable and necessary to carry out its mandated responsibilities, and its powers and duties to administer Justice, if it is to be in reality a co-equal, independent branch of our Government." *Commonwealth rel. Carroll v. Tate*, 442 Pa. 45, 52, 274 A.2d 193, 197 (1971).

[7] "It is axiomatic that the courts must be independent and must not be subject to the whim of either the exec or legislative departments. The security of human rights and the safety of free institutions require freedom of action on the part of the court. Courts from time immemorial have been the refuge of those who have been aggrieved and oppressed by official and arbitrary actions under the guise of governmental authority. It is the protector of those oppressed by unwarranted official acts under the assumption of authority. Our sense of justice tells us that a court is not free if it is under financial pressure, whether it be from a city council or othe

legislative body, in the consideration of the rights of some individual who is affected by some alleged autocra unauthorized official action of such a body. One who controls the purse strings can control how tightly those purse strings are drawn, and the very existence of a dependent. Justice, as well as the security of human ri and the safety of free institutions requires freedom of action of courts in hearing cases of those aggrieved b official actions, to their injury. *Carlson, et al. v. State ex rel. Stodola*, 247 Ind. 631, 633-634, 220 N.E.2d 532, 5 534 (Ind. 1966).

[8] "It is incumbent upon each department to assert and exercise all its power whenever public necessity req it to do so; otherwise, it is recreant to the trust reposed in it by the people." *State ex rel. Schneider v. Cunningham*, 39 Mont. 165, 168, 101 P. 962, 963 (Mont. 1909).

[9] Inherent power should be exercised only after established methods have failed or an emergency has aris *In re Salary of Juvenile Director*, 87 Wash.2d 232, 250, 552 P.2d 163, 173 (Wash. 1976). "Judges should constantly be aware that their constitutional responsibility to maintain the judicial system carries with it the corresponding responsibility to limit their requests to those things reasonably necessary in the operation of th courts and to refrain from any extravagant, arbitrary, or unwarranted expenditures." *McAfee v. State ex rel. Stodola*, see note 6, above.

[10] Art. 1, § 11 of the Constitution of the State of Florida provides: "No person shall be imprisoned for debt, except in cases of fraud."

[11] See, e.g., *Naster v. Naster*, 163 So.2d 264 (Fla. 1964).

[12] § 142.16, Fla. Stat. (1977).

[13] See *Simmons v. State*, 160 Fla. 626, 36 So.2d 207 (1948).

[14] "A statute which attempts to restrict the inherent powers will be broadly interpreted as laying down reasonable guidelines within which the power operates rather than as a sole or actual source of the power. e.g., *Smith v. Miller*, 153 Colo. 35, 384 P.2d 738 (1963); *State ex rel. Bailey v. Webb*, 215 Ind. 609, 21 N.E.2d (1939); *Bass v. County of Saline*, 171 Neb. 538, 106 N.W.2d 860 (1960)." *Carrigan*, note 3, above, at 8.

155 So.2d 10 (1963)

STATE of Florida, Petitioner,

v.

Edward R. LAMPP and Honorable John U. Bird, as Circuit Judge in a for Pinellas County, Respondents.

No. 3678.

District Court of Appeal of Florida. Second District.

June 21, 1963.
Rehearing Denied July 22, 1963.

Richard W. Ervin, Atty. Gen., and Reeves Bowen, Asst. Atty. Gen., Tallahassee, for petitioner.

Mark R. Hawes, St. Petersburg, for respondents.

BARNS, PAUL D., Associate Judge.

Upon petition for common law certiorari the petitioner seeks review of an order of th Honorable John U. Bird as Circuit Judge ordering the clerk of the circuit to issue subpoenas ad testificandum to certain persons requiring them to appear before the court's Court Reporter and confer with defense counsel and under oath to fully disc to defense counsel their knowledge concerning facts in the case of State of Florida Edward R. Lampp wherein the defendant is charged with grand larceny. We find err that the remedy by appeal would be inadequate, grant certiorari and quash the orde

The respondent Lampp by his sworn motion for the order entered by Judge Bird repesented that the proposed deponents had declined to confer with his counsel ar

that the defendant and his counsel are rendered helpless and impotent to prepare defendant's defense without the assistance of compulsory process of the court. The petition made a showing that the prospective deponents had knowledge of facts material to the case.

The position taken by the State, the petitioner, is as follows:

It clearly appears from the application of the defendant, Edward R. Lampp, for the challenged order that his purpose was to interrogate witnesses before the court reporter prior to trial, for the purpose of discovery as to what they knew about the ca Said application made no pretense of making a showing which would justify the propounding of interrogatories to absent witnesses for trial purposes under Section 916.06, Florida Statutes F.S.A. (the only Florida statute authorizing the taking of depositions by a defendant in a criminal case).

However, the order here involved in effect gave the said Edward R. Lampp the right take the depositions of witnesses (the State's witnesses, at that) for discovery purpo in order to assist him in preparing his defense, rather than for use as evidence at th trial; it not only required the issuance of subpoenas for said witnesses to appear be the court reporter but it also commanded said witnesses to confer with defense cou before the court reporter, under oath, and fully disclose their knowledge of the facts the case; it is, of course, to be assumed that the defendant would request the court reporter to take down the sworn testimony thus given by the witnesses, otherwise, th would be no point in having them appear before the court reporter.

Such a procedure is completely contrary to the criminal procedure which has grown in the State of Florida and which has been in effect for generations past. It is in contravention of the common law, which is in force in this state.

The position taken by the repondent-defendant is as follows:

It was and is the position of Respondents that the following provisions of the Federa and Florida Constitution taken singly and/or as a whole, in light of the showing made required the trial Judge to grant Respondent the relief set forth in the Order of September 11th.

1. The Equal Protection and Due Process of law clauses of Section 1 of the Fourtee

Amendment to the Federal Constitution, and the corresponding clauses of the Flori
Constitution, Section 1 and 12 of the Declaration of Rights, Florida Constitution, F.S

2. The Right To Counsel, The Right to Compulsory Process for the Attendance of Witnesses in his favor, and The Right To Demand The Nature and Cause of the Accusation against him; all embraced in Section 11 of the Delaration of Rights to the Florida Constitution and guaranteed and protected by the Fourteenth Amendment t the Federal Constitution.

It is the Respondent's position that he and the State of Florida occupy similar positio
12 in that they are merely two parties to the same cause. Important substantive and procedural rights cannot be extended to one party in a cause and withheld from another without colliding with any civilized conception of Equal Protection, Equal Application and Due Process of law.

The subpoena power exercised by the State to compel witnesses purporting to have knowledge material to criminal cases to appear before the State Attorney and make full disclosure to him of their knowledge of the facts in controversy before a Court Reporter in aid of his preparation for trial is that of the Court and not that of the Sta Attorney's office. When a Defendant in a criminal case demonstrates he is unable to prepare his case on the facts and desires to do so and properly invokes the compulsory assistance of the Court in this manner, he is entitled as a matter of right the Court's assistance.

The Defendant's organic right to counsel means something more than the appearan of counsel in the defendant's behalf. It includes the right to the beneficial enjoyment informed, prepared, and conscientious counsel. This right extends not only to the tr itself but to the careful and conscientious preparation of defendant's case for trial, a well. The Florida Supreme Court has, on several occasions, recognized the invaluab assistance to a defendant of counsel in the careful investigation and preparation of both the law and the facts of the case in preparation of trial.

Where defense counsel cannot otherwise inform himself of the facts of the case, an where he properly invokes the assistance of the Court to this end, the denial of such assistance impinges upon the defendant's right to counsel in two particulars:

1. It denies defendant the beneficial enjoyment of his right to the assistance of coun

in preparation of the facts of the case for trial.

2. It denies the defendant the right to the assistance of counsel in intelligently invok his Constitutional right to compulsory process for obtaining witnesses to testify in his behalf at the trial itself. This, because counsel and the defendant cannot intelligentl invoke compulsory process for witnesses at the trial unless they have some knowled of which witnesses have possession of material facts and what their testimony will be

Additionally, it is Respondents' position that to give counsel the right and obligation ascertain what the testimony of witnesses will be and to deny him the necessary authority to discharge that right and obligation, reduces the right to counsel to a hol mockery.

It is further, Respondents' position that to extend to defendant compulsory process the attendance of witnesses in his favor at the trial and to withhold from him and his counsel the means of intelligently invoking said process, which cannot be done with knowledge of the facts within the witnesses' possession, impinges upon his right to compulsory process for witnesses at the trial. The inevitable result is to strip defend of the beneficial enjoyment of his right to compulsory process.

Conclusion

Unless introduced by appropriate legislation, the doctrine of discovery is a complete and utter stranger to criminal proceedings. To this effect, we quote from 23 C.J.S. (1961 Edition) Criminal Law § 955 (1), page 787, as follows:

> "* * * No broad right of discovery exists, however, in criminal cases; the common law recognized no right of discovery in such cases, and it has been held that unless introduced by appropriate legislation, the doctrine of discovery is a complete and utter stranger to criminal procedure."

Nor does a Florida defendant have the right to take discovery depositions, or th depositions of any but absent witnesses for use at the trial, because no statute or c rule provides for such to be done. The right to take depositions in other than equity cases does not exist unless conferred by statute or court rule. The right to take depositions did not exist at the common law. We quote to that effect from Reed v. Al

121 Vt. 202, 153 A.2d 74, 76, 77 (a case in which the Supreme Court of Vermont issued a writ of prohibition to restrain the taking of depositions in a criminal case wh they were not authorized by statute) to-wit:

> "At the outset it is essential to have in mind that no right to take depositions existed at common law. Pingry v. Washburn, 1 Aikens 264, 268. Later in the case of Clark's Adm'r v. Wilmington Savings Bank, 1915, 89 Vt. 6, 8, 93 A. 265, 266, the Court stated it to be `well-established doctrine that the authority to take testimony by way of deposition is in derogation of the rules of the common law, and has always been strictly construed.' In re Petition of Central Vt. Public Service Corp., 115 Vt. 204, 207, 55 A.2d 201, and In re Peters' Estate, 116 Vt. 32, 35, 69 A.2d 281, are to the same effect."

It appears that the proposed deponents had been approached by the respondent, l full interviews have been refused. The State's witnesses were under no legal obliga to talk to the defendant's counsel before trial, State v. Gilliam, Mo., 351 S.W.2d 723 and it has been held that it is not error to deny a defendant's request to the court to compel named witnesses to talk with defendant's counsel before he put them on the stand. Dicks v. United States, 5 Cir., 253 F.2d 713. In People v. Mitchell, 16 Ill. App. 189, 147 N.E.2d 883 the court held:

> "Another point raised on appeal is that the Trial Court refused to order witnesses for the prosecution to submit to an interview with the defendant or his counsel. * * * The evidence shows that the witnesses refused to discuss the facts or the evidence which would be presented by such witnesses with attorney for the defendant other than in the presence of the prosecuting attorney. While it is not consistent with our standards of procedure for a prosecuting attorney to direct witnesses not to talk with defense counsel, it is clear that these witnesses were not required to discuss their testimony with counsel, nor would a Court be required to enter an order directing that such witnesses be produced in court so that counsel could interview the witnesses (People v. Duncan, 261 Ill. 339, 103 N.E. 1043). As the Court in the Duncan case indicated, a defendant is entitled under the law to be served with notice that the witnesses would be called to testify on behalf of The People on the trial. Such witnesses,

however, are under no obligation to grant an interview to defendant or to counsel for defendant, or discuss with such defendant or defendant's counsel, what the testimony would be, unless the witnesses chose to do so."

In United States v. Garsson, 2 Cir., 291 F. 646, 649, Judge Learned Hand in his opi for the court stated:

"Under our criminal procedure the accused has every advantage. While the prosecution is held rigidly to the charge, he need not disclose the barest outline of his defense. He is immune from question or comment on his silence; he cannot be convicted when there is the least fair doubt in the minds of any one of the twelve. Why in addition he should in advance have the whole evidence against him to pick over at his leisure, and make his defense, fairly or foully, I have never been able to see. No doubt grand juries err and indictments are calamities to honest men, but we must work with human beings and we can correct such errors only at too large a price. Our dangers do not lie in too little tenderness to the accused. Our procedure has been always haunted by the ghost of the innocent man convicted. It is an unreal dream. What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime."

State ex rel. Regan v. Superior Court, 102 N.H. 224, 153 A.2d 403, related to an or requiring in advance of trial that certain police officers produce for inspection certai reports and records in their possession and in the course of their depositions "answ all questions which would not call for opinions or hearsay evidence * * *." The depositions seem to have been authorized by statute but not the inspection of the records and reports, and concerning the latter the opinion states:

"Under the law of New York even though the trial may have commenced, the right to inspection does not necessarily accrue at once. `Justice will sometimes be promoted if disclosure of the contents is withheld till the fabric of the proof shall be more fully and closely woven. The rights of a defendant, will generally be sufficiently protected if inspection is permitted before the case is closed.' Cardozo, Ch. J., in People v. Miller, 257 N.Y.

54, 59, 177 N.E. 306, 308.

"The reasons behind the reluctance of legislatures to modify the common law are not far to seek. `In criminal proceedings long experience has taught the courts that often discovery will lead not to honest fact-finding, but on the contrary to perjury and suppression of evidence * * *. To permit unqualified disclosure * * * would defeat the very ends of justice.' Vanderbilt, C.J., in State v. Tune, 13 N.J. 203, 210, [219], 211, 98 A.2d 881, 884."

Basically, the purpose of taking the depositions of the State's witness was to obtain pre-trial discovery as in civil actions. The order in question departs so far from the established practice and the public policy of the State that certiorari is granted and subject order is quashed.

KANNER, Acting C.J., and ALLEN, J., concur.

709 So.2d 1364 (1998)

David HARRELL, Petitioner,

v.

STATE of Florida, Respondent.

No. 90114.

Supreme Court of Florida.

April 23, 1998.

1365 *1366 Bennett H. Brummer, Public Defender, and Donald Tunnage, Assistant Public Defender, Eleventh Judicial Circuit, Miami, for Petitioner.

Robert A. Butterworth, Attorney General, and Richard L. Polin, Assistant Attorney General, Miami, for Respondent.

David Henson of Kirkconnell, Lindsey, Snure and Henson, P.A., Winter Park, and El H. Scherker of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, f Florida Association of Criminal Defense Lawyers, Amicus Curiae.

HARDING, Justice.

We have for review *Harrell v. State*, 689 So.2d 400 (Fla. 3d DCA 1997), in which the Third District Court of Appeal certified the following question as being one of great public importance:

> DOES THE ADMISSION OF TRIAL TESTIMONY THROUGH THE USE OF A LIVE SATELLITE TRANSMISSION VIOLATE THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION, OR ARTICLE I, SECTION 16 OF

THE FLORIDA CONSTITUTION, WHERE A WITNESS RESIDES IN A FOREIGN COUNTRY AND IS UNABLE TO APPEAR IN COURT?

Id. at 406. We have jurisdiction pursuant to article V, section 3(b)(4) of the Florida Constitution. We answer the question in the negative.

David Harrell was charged with robbery and burglary of a conveyance. The facts of case are as follows. Pedro Mielniczuk and Perla Scandrojlio, a married couple from
1367 1367 Argentina, were on vacation in Florida. The couple was robbed near the Miam Airport while attempting to return their rental car. The couple was lost and stopped t ask a man for directions. After being handed a map, the man reached into the car a grabbed the couple's belongings. Before returning to Argentina, Scandrojlio identifie Harrell in a photographic line-up. Harrell's fingerprints also matched the prints lifted from the couple's map. Harrell was subsequently arrested and tried for the crime.

Before the trial, the State requested to introduce the testimony of the two victims via satellite transmission. The State argued that satellite transmission was necessary because the victims were unable to be physically present in the courtroom, both because of the distance between the United States and Argentina and because of health problems that Scandrojlio was experiencing. Over Harrell's objection, the trial judge agreed to allow the testimony via satellite.

The following procedure was used at trial. There were two cameras in the courtroom Miami. One camera filmed the jury and another filmed the attorneys and the defend The judge was not filmed. There was also a screen in the courtroom which allowed t people in the courtroom to see the witness in Argentina. In Argentina, there was a camera which filmed the witness and a screen which allowed the witness to see the courtroom in Miami. The system permitted the defendant in Miami and the witness in Argentina to observe each other. The oath was administered to each witness by a deputy clerk in Miami, in the presence of the jury and the judge. Because the witnes did not speak English, an interpreter was used.

Some problems occurred during the satellite transmission. The visual transmission the victims' testimony was not simultaneous with the audio, causing a split-second d between what was said and what was seen. Further, while Scandrojlio was testifying she repeatedly looked at an individual off the screen. The individual off the screen Maria Alvarez, who was the manager of the broadcast studio in Argentina. Initially, th

cameras focused only on Scandrojlio and not on Alvarez. This problem was correcte and the camera focused on both individuals.

Harrell was subsequently found guilty and he appealed his conviction to the Third District Court of Appeal. The district court upheld the conviction in *Harrell v. State*, 6 So.2d 400 (Fla. 3d DCA 1997). The district court concluded that the procedure did violate the Confrontation Clause and certified the question to this Court.

The issues for this Court on appeal are whether or not testimony via satellite in a criminal case violates the Confrontation Clause and, if so, whether the satellite procedure constitutes a permissible exception. This question is one of first impressi for our Court. However, we are guided by other cases dealing with the Confrontatio Clause in analogous situations (i.e., closed-circuit television) that were decided by t Court and the United States Supreme Court.

The Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with witnesses against him...." Similarly, article I, section 16(a) of the Florida Constitution states: "In criminal prosecutions the accused ... shall have the right ... to confront at trial adver witnesses...." This concept of confrontation has been a cornerstone of Western soc for a number of centuries. The Bible quotes the Roman Governor Festus as saying, is not the manner of the Romans to deliver any man up to die before the accused h met his accuser face to face, and has been given a chance to defend himself again the charges." *Coy v. Iowa*, 487 U.S. 1012, 1015-16, 108 S.Ct. 2798, 2800, 101 L.Ed 857 (1988) (quoting Acts 25:16 and a statement made while the Apostle Paul was a prisoner). Many argue [1] that the founders of this country wanted to include th Confrontation Clause in the Bill of Rights to prevent against *ex parte* affidavits, whic allowed individuals to be convicted without ever laying eyes on their accusers. *See California v. Green*, 399 U.S. 149, 156, 90 S.Ct. 1930, 1934, 26 L.Ed.2d 489 (1970) Providing criminal defendants the opportunity to confront their accusers imparts a component of reliability on the judicial process.

In addition to allowing for face-to-face confrontation, the Confrontation Clause serve other important interests. As the United States Supreme Court stated in *Mattox v. United States:*

> The primary object of the [Confrontation Clause] was to prevent depositions or *ex parte* affidavits, such as were sometimes admitted in civil cases, being used against the prisoner in lieu of a personal examination and cross-examination of the witness in which the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.

156 U.S. 237, 242-43, 15 S.Ct. 337, 339-40, 39 L.Ed. 409 (1895). Thus, the Confrontation Clause also ensures (1) that the witness will give the testimony under oath, impressing upon the witness the seriousness of the matter and protecting aga a lie by the possibility of penalty of perjury, (2) that the witness will be subject to cro examination, and (3) that the jury will have the chance to observe the demeanor of t witness, which aids the jury in assessing credibility. *See* Maryland v. Craig, 497 U.S. 836, 851, 110 S.Ct. 3157, 3166, 111 L.Ed.2d 666 (1990).

Although the Confrontation Clause guarantees a criminal defendant the right to physically confront accusers, this right is not absolute. *See id.* at 849-51, 110 S.Ct. 3165-66. There are certain exceptions where a defendant's right of face-to-face confrontation will give way to "considerations of public policy and the necessities of case." *Id.* at 849, 110 S.Ct. at 3165 (quoting *Mattox*, 156 U.S. at 243, 15 S.Ct. at 34 However, such exceptions are only permitted when the reliability of the testimony is otherwise assured. *See* Craig, 497 U.S. at 850, 110 S.Ct. at 3166. Reliability can be exhibited through the other three elements of confrontation—oath, cross-examinatio and observation of the witness's demeanor. *Id.* at 851, 110 S.Ct. at 3166.

The State is urging this Court to conclude that the satellite procedure used in this ca is the equivalent of physical, face-to-face confrontation. We decline to make such a finding. *But see* United States v. Gigante, 971 F.Supp. 755, 759 (E.D.N.Y. 1997) (" [T]he [two-way closed circuit television procedure] proposed by the government in t case satisf[ies] fully the requirements of the Constitution...."). At its essence, a trial i 1791, the year the Sixth Amendment was ratified, involved attorneys and parties, witnesses, a jury, and a judge, all of whom physically appeared in a courtroom. The same holds true for a trial today. We are unwilling to develop a per se rule that woul

allow the vital fabric of physical presence in the trial process to be replaced at any t
by an image on a screen. Perhaps the "virtual courtroom" will someday be the
norm in the coming millennium; for now, we do not conclude that virtual presence is
equivalent of physical presence for the purposes of the Confrontation Clause.

Therefore, the satellite procedure can only be approved as an exception to the Confrontation Clause. In order to qualify as an exception, the procedure must (1) be justified, on a case-specific finding, based on important state interests, public policie or necessities of the case and (2) must satisfy the other three elements of confrontation—oath, cross-examination, and observation of the witness's demeanor *See* Craig, 497 U.S. at 849-51, 110 S.Ct. at 3165-66.

The first part of our analysis begins with the public policy considerations and necessities of this case and whether these circumstances were enough to justify an exception to the Confrontation Clause. In making this determination, we look to the analogous case of Glendening v. State, 536 So.2d 212 (Fla. 1988). In *Glendening*, Court held that it was not a violation of the Confrontation Clause to allow the introduction of an allegedly abused child's videotaped testimony. We recognized the important State interest and public policy consideration of "sparing child victims of sexual crimes the further trauma of in-court testimony." *Id.* at 217 (quoting Chamber State, 504 So.2d 476, 477-78 (Fla. 1st DCA 1987)).

Similarly, we find that public policy reasons exist in the present case which would als justify an exception to face-to-face confrontation. First, the witnesses in this case liv beyond the subpoena power of the court. *See, e.g.*, § 27.04, Fla. Stat. (1995);[3] § 27.53, Fla. Stat (1995);[4] Green v. State, 377 So.2d 193, 202 (Fla. 3d DCA 1979) ("The law is well-settled that the defendant in a criminal case is constitutionally entitl to compulsory process to have brought into the trial court any material evidence sh to be available and capable of being used by him in aid of his defense.... The constitutional right to compulsory process means not only the issuance and service subpoena by which a defense witness is made to appear, but includes the judicial enforcement of that process and the essential benefits of it by the trial court."), *approved*, 395 So.2d 532 (Fla. 1981). Thus, there was no way to compel these witnesses to appear in court. *See* United States v. Zabaneh, 837 F.2d 1249, 1259-6 (5th Cir.1988) (stating that "the United States courts lack power to subpoena witnes (other than American citizens) from foreign countries"); United States v. Best, 76

F.Supp. 138, 139 (D.Mass.1948).[5] We find this to be a very important consideratio
1370 for it is clearly in our state's interest to expeditiously and justly resolve crimina matters that are pending in the state court system.

Second, there was evidence in this case that one of the witnesses was in poor healt and could not make the trip to this country. This is also a important consideration.

Finally, the two Argentinean witnesses were absolutely essential to this case. As sta earlier, there is an important state interest in resolving criminal matters in a manner which is both expeditious and just. In order to do that in this case, the testimony of these two witnesses was a necessity.

These three concerns, taken together, amount to the type of public policy considerations that justify an exception to the Confrontation Clause. Thus, the first prong of our analysis is satisfied.

We are mindful of the possible difficulty in determining when the satellite procedure should be employed. We are also aware of the possibility that such a procedure car abused. Therefore, we are establishing the following guidelines to aid in making this decision. The determination is not simply a mathematical calculation, based on the number of alleged public policy interests or state interests. Rather, the proper approach for determining when the satellite procedure is appropriate involves a finc similar to that of rule 3.190(j) of the Florida Rules of Criminal Procedure. Rule 3.190 provides the circumstances under which and the procedure by which a party can tal deposition to perpetuate testimony for those witnesses that are found to be unavailable. The rule states in relevant part:

> (j) Motion to Take Deposition to Perpetuate Testimony.
>
> (1) After an indictment or information on which a defendant is to be tried is filed, the defendant or the state may apply for an order to perpetuate testimony. The application shall be verified or supported by the affidavits of credible persons that a prospective witness resides beyond the territorial jurisdiction of the court or may be unable to attend or be prevented from attending a trial or hearing, that the witness's testimony is material, and that it is necessary to take the deposition to prevent a failure of justice. The court shall order a commission to be issued to take the

> deposition of the witnesses to be used in the trial and that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place. If the application is made within 10 days before the trial date, the court may deny the application.

Fla. R.Crim. P. 3.190(j). We find that depositions to perpetuate testimony are analogous to the satellite procedure used in this case. In fact, the satellite procedur provides the defendant with more guarantees under the Confrontation Clause than deposition, for the defendant is afforded a live, contemporaneous opportunity to cro examine the witness and the jury can observe the witness's demeanor during this exchange.[7]

1371 *1371 Thus, in all future criminal cases where one of the parties makes a motion to present testimony via satellite transmission, it is incumbent upon the party bringing t motion to (1) verify or support by the affidavits of credible persons that a prospectiv witness resides beyond the territorial jurisdiction of the court or may be unable to attend or be prevented from attending a trial or hearing and (2) establish that the witness's testimony is material and necessary to prevent a failure of justice. Upon su a showing, the trial judge shall allow for the satellite procedure.[8]

The second part of our analysis concerns whether the procedure in this case satisfi the additional safeguards of the Confrontation Clause—oath, cross-examination, an observation of the witness's demeanor. We conclude that it did. Both of the witnesse were placed under oath by a court clerk in Miami. Further, the defense had an opportunity to cross-examine the witnesses. Finally, the procedure allowed the jury t observe the witnesses as they testified, and it also allowed the witnesses to see the jury. Because each of these additional safeguards was present in the satellite procedure, we are convinced that the witnesses' testimony was sufficiently reliable. Thus, the second prong of our analysis is satisfied.

However, some important caveats exist in regards to the oath, cross-examination, an observation of the witness's demeanor. First, an oath is only effective if the witness be subjected to prosecution for perjury upon making a knowingly false statement. *Craig*, 497 U.S. at 845-46, 110 S.Ct. at 3163-64 (stating that the Confrontation Clau provides for a witness to testify under oath, and thus "guard[s] against [a] lie by the possibility of a penalty for perjury"). To ensure that the possibility of perjury is not a

empty threat for those witnesses that testify via satellite from outside the United Stat it must be established that there exists an extradition treaty between the witness's country and the United States, and that such a treaty permits extradition for the crim of perjury. In the present case, an extradition treaty does exist between the United States and Argentina. *See* Extradition, Sept. 15, 1972, U.S.-Arg., 23 U.S.T. 3501. Th treaty permits extradition for all of the offenses listed in Article 2, "provided that thes offenses are punishable by the laws of both Contracting Parties by deprivation of lib for a maximum period exceeding one year." *Id.* Item 21 of Article 2 includes "[f]alse statements, accusations or testimony effected before a government agency or offici *Id.* In Florida, section 837.02, Florida Statutes (1995), states that the offense of per in an official proceeding is a third-degree felony and is punishable by up to five yea prison. Similarly, chapter 12, article 275 of the Argentine Penal Code punishes witnesses who give false testimony in criminal actions by up to ten years in prison, if such testimony prejudices the defendant. Ch. 12, art. 275, CÓD. PEN. (1991). Thus the witnesses in this case *were* subject to a possible penalty for perjury, and the oat component of the Confrontation Clause was satisfied.

1372 1372 We also acknowledge that possible audio and visual problems can develop wi satellite transmission. It is incumbent upon the trial judge to monitor such problems a to halt the procedure if these problems threaten the reliability of the cross-examinat or the observation of the witness's demeanor.

Our Court is mindful of the importance of today's decision. Yet, we are also mindful t our society, and indeed the world, is in the midst of the Information Age. Computers the norm in American households and businesses; an infinite amount of information available at our fingertips through the Internet; and satellite technology allows us to travel the world without ever leaving our living rooms.

The legal profession has also benefitted from these technological innovations. Lega research that once took hours or days is now available in seconds through compute and Internet databases. Clients can reach their attorneys anywhere in the world through the use of cellular and video innovations. The list goes on and on.

Indeed, our very own Court takes pride in the recent technological advancements th have been made. Oral arguments before the Court are broadcast live via satellite throughout the state. These same arguments can be viewed online, along with the

parties' briefs. The Florida Supreme Court Website has received worldwide acclaim opening up the courthouse doors to the general public. All of these steps provide greater access to the judicial system, which in turn increases public trust and awareness.

That being said, it becomes quite clear that the courtrooms of this state cannot sit id by, in a cocoon of yesteryear, while society and technology race towards the next millennium. Fortunately, the courtrooms of this state have not been idle, nor are the speeding at a reckless pace. Recent changes in the courtroom have included the u of audiotape stenographers as well as video transmission of first appearances, arraignments, and appellate oral arguments, just to name a few.

We recognize that there are generally costs associated with change. Nevertheless, technological changes in the courtroom cannot come at the expense of the basic individual rights and freedoms secured by our constitutions. We are confident that t procedure approved today, when properly administered, will advance both the acce to and the efficiency of the justice system, without compromising the expectation of t safeguards that are secured to criminal defendants.

Our nation's Constitution is a living document that has stood the test of time and change. This point is exemplified by the fact that our Constitution is still viable today some two hundred-plus years after our country's birth. There was no way the found of this nation could have foreseen the innovations that would take place throughout country's lifetime—changes that, up to this point, have included advances in communication, electricity, train, airplane, and automobile transportation, and even space exploration. Nor can we predict today the changes yet to come. But we can sa with certainty that our Constitution, as well as this great nation, can endure any futu changes while at the same time ensuring that individual rights and liberties will be upheld.

Accordingly, for the reasons stated above, we answer the certified question in the negative and approve the result that was reached by the Third District Court of App

It is so ordered.

KOGAN, C.J., and OVERTON, SHAW, WELLS and ANSTEAD, JJ., and GRIMES, Se Justice, concur.

[1] There has been a recent debate among scholars as to the origins of the Confrontation Clause and exactly what its purpose was. This conflict culminated in the recent United States Supreme Court case of White v. Illinois, 502 U.S. 346, 112 S.Ct. 736, 116 L.Ed.2d 848 (1992). In *White*, the United States as amicus curiae ar that the limited purpose of the Confrontation Clause was to prevent *ex parte* affidavits. *See id.* at 352, 112 S. 740-41. However, the majority opinion rejected this limited interpretation of the Confrontation Clause, stating t [s]uch a narrow reading of the Confrontation Clause which would virtually eliminate its role in restricting the admission of hearsay testimony, is foreclosed by our prior cases." *Id.*

[2] The Court in *Green* also discussed the notorious trial of Sir Walter Raleigh and the role that trial had in the development of the Confrontation Clause. The Court stated:

A famous example is provided by the trial of Sir Walter Raleigh for treason in 1603. A crucial element of the evidence against him consisted of the statements of one Cobham, implicating Raleigh in a plot to seize the thr Raleigh had since received a written retraction from Cobham, and believed that Cobham would now testify in favor. After a lengthy dispute over Raleigh's right to have Cobham called as a witness, Cobham was not call and Raleigh was convicted. See 1 Stephen, *supra*, at 333-336; 9 Holdsworth, *supra*, at 216-217, 226-228. A least one author traces the Confrontation Clause to the common-law reaction against these abuses of the Ra trial. See F. Heller, The Sixth Amendment 104 (1951).

California v. Green, 399 U.S. 149, 157 n. 10, 90 S.Ct. 1930, 1934 n. 10, 26 L.Ed.2d 489 (1970).

[3] Section 27.04 states:

The state attorney shall have summoned all witnesses required on behalf of the state; and he or she is allow the process of his or her court to summon witnesses from throughout the state to appear before the state attorney in or out of term time at such convenient places in the state attorney's judicial circuit and at such convenient times as may be designated in the summons, to testify before him or her as to any violation of the criminal law upon which they may be interrogated, and he or she is empowered to administer oaths to all witnesses summoned to testify by the process of his or her court or who may voluntarily appear before the attorney to testify as to any violation or violations of the criminal law.

§ 27.04, Fla. Stat. (1995).

[4] Section 27.53(1) states in relevant part:

Each assistant public defender appointed by a public defender under this section shall serve at the pleasure the public defender. Each investigator employed by a public defender shall have full authority to serve any witness subpoena or court order issued, by any court or judge within the judicial circuit served by such publ defender, in a criminal case in which such public defender has been appointed to represent the accused.

§ 27.53(1), Fla. Stat. (1995).

[5] We note that there are procedures whereby this state can subpoena witnesses who reside in other state this country. *See* Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings § 1-9, 11 U.L.A. 1-53 (1995). It appears that every state in the union has adopted this Uniform A some form. *See State v. Breeden*, 333 Md. 212, 634 A.2d 464, 469 (1993); *see e.g.*, §§ 942.01-06, Fla. Stat. (1995); Ala.Code, §§ 12-21-280-285 (1995); Ga.Code Ann. §§ 24-10-90-97 (1995).

Additionally, there are procedures that allow courts in the United States to issue subpoenas for witnesses

outside of the country if those witnesses are citizens of the United States. *See United States v. Best*, 76 F.Su 138, 139 (D.Mass.1948).

[6] Although this is an important consideration, it is not a mandatory prerequisite. In other words, we are not saying today that the satellite procedure can only be used for witnesses who reside outside of this state. We envision situations where a witness in Tallahassee, who is unable to travel due to illness or disability, can tes via satellite in a courtroom in Miami. However, in every criminal case, there is a strong presumption in favor o face-to-face testimony. The burden would be on the moving party to provide substantial justification as to wh person who lives within the reach of the court's subpoena power should not be required to be physically pre to testify.

[7] A defendant in Florida has a right to be present at a deposition to perpetuate testimony. *See* Fla. R.Crim. P. 3.190(j). Similarly, a defendant in federal court also has a right to be present at a deposition to perpetuate testimony. *See* Fed. R.Crim. Proc. 15. Nevertheless, federal courts in this country have permitted deposition testimony of foreign witnesses to be introduced at trial, despite the fact that the defendant was not physicall present at the deposition. *See United States v. McKeeve*, 131 F.3d 1 (1st Cir.1997); *United States v. Kelly*, 89 F.2d 255 (3d Cir. 1989); *United States v. Salim*, 855 F.2d 944 (2d Cir.1988). In *McKeeve*, the First Circuit Cour Appeal pointed out that it is not always possible for a defendant to be physically present at depositions whic take place outside of this country. The U.S. Marshals Service lacks jurisdiction to retain custody of federal detainees on foreign soil. *McKeeve*, 131 F.3d at 7. Therefore, the government of the country where the depo is taking place would have to agree to assume custody of the defendant during the time the defendant was i foreign country attending the deposition. *Id.* In *McKeeve*, the United Kingdom refused to assume temporary custody of the defendant. *Id.*

Harrell argues that a defendant is afforded more rights under the Confrontation Clause through a deposition t perpetuate testimony than by the satellite procedure used in this case. We disagree. The satellite procedure always provides both the defendant and the jury the opportunity to observe the witness, and vice versa. Moreover, in cases involving foreign witnesses, use of the satellite procedure will prevent the problems that occurred in *McKeeve*. For instance, had Harrell requested to be present at a deposition of the witnesses in Argentina, the Argentinean government might have refused to assume custody of Harrell during the depositio thus preventing Harrell from having any face-to-face contact with the witnesses. Assuming this problem wo have occurred, the satellite procedure used in this case certainly afforded Harrell more rights under the Confrontation Clause than he would have received through a deposition to perpetuate testimony.

[8] If the parties are in conflict as to whether the satellite procedure or a deposition to perpetuate testimony is more appropriate, the decision shall be left up to the discretion of the trial judge based on whichever procedu the judge feels will better serve justice. There may be circumstances where both procedures are appropriate

491 So.2d 1109 (1986)

Robert MAKEMSON, et al., Petitioners,

v.

MARTIN COUNTY, Respondent.

No. 66780.

Supreme Court of Florida.

July 17, 1986.

1110 1110 Robert Makemson and Robert G. Udell, in pro. per.

Michael H. Olenick, County Atty., Stuart, for respondent.

Michael Zelman, Miami, for Florida Criminal Defense Attys. Ass'n and Nat. Legal Aid and Defender Ass'n, amicus curiae.

Robert A. Ginsburg, Dade County Atty., and Eric K. Gressman, Asst. County Atty., Miami, for Metropolitan Dade County, amicus curiae.

ADKINS, Justice.

In *Martin County v. Makemson*, 464 So.2d 1281 (Fla. 4th DCA 1985), the Fourth District quashed the trial court's order declaring unconstitutional section 925.036, Florida Statutes (1981), and allowing petitioners to be compensated for their representation of an indigent criminal defendant in amounts exceeding the statutory maximum fees. The district court, while upholding the statute's validity, noted that "a absolute fee cap works an inequity in some cases," 464 So.2d at 1283, and certified this Court four questions as being of great public importance. We have jurisdiction,

article V, section 3(b)(4), Florida Constitution, and find the fee maximums unconstitutional when applied to cases involving extraordinary circumstances and unusual representation.

Prior to setting out the certified questions, we turn to the factual predicate on which they were based. Petitioner Robert Makemson, a resident of Martin County, was appointed by the court pursuant to section 925.036 to represent one of four defendants. The representation spanned a nine-month period, as each defendant h been charged with first-degree murder, kidnapping and armed robbery. Because th victim of the crime was a member of a prominent local family, the entire resources o the prosecutor were brought to bear on the case. Three prosecutors and two specia investigators sat at the counsel table, and over one hundred witnesses and fifty depositions were involved in the trial.

After the four cases were severed, each defendant sought and ultimately obtained a change of venue. Petitioner therefore spent his sixty-four hours in court on the case the Lake County courthouse, some one hundred and fifty miles from his home. Upo completion of the representation, petitioner asked for compensation for the total 24 hours spent on the case in an amount based upon a calculation using an hourly rat established by the chief judge of the circuit. While expert testimony established the value of his services at a minimum of $25,000, he asked for and obtained $9,500. S thousand dollars has been placed in escrow pending disposition of this appeal, as t statute would allow only $3,500 as compensation for the representation. § 925.036((d), Fla. Stat. (1985).

The trial court additionally found it necessary to accept petitioner Robert Udell's low of $4,500 as compensation for the representation of the defendant upon appeal although the statute would allow only $2,000. § 925.036(2)(e), Fla. Stat. (1985). Th court also set the funds aside prior to the representation, in spite of the statute's ter providing for payment "at the conclusion of the representation." § 925.036(1), Fla. S (1985).

The trial court expressed the dilemma it faced:

> [T]his court is confronted with conflicting laws, one of which requires competent counsel for a defendant who has been sentenced to death and the other stating that defense counsel can be paid only $2,000 for his

services. The lowest bid for these services was $4,500, which is more than twice what the Legislature has allowed. One of these laws must yield to the other. There is no doubt in the court's mind that the Legislature, if confronted with the problem, would admit that the law requiring competent counsel was paramount and superior to the law allowing a mere $2,000 fee for the dreadful responsibility involved in trying to save a man from electrocution. Therefore this court finds that F.S. 925.036 in setting rigid maximum fees without regard to the circumstances in each case is arbitrary and capricious and violates the due process clause of the United States and Florida Constitutions. See *Aldana v. Holub*, 381 So.2d 231 (Fla. 1980). In simpler language, the Statute is impractical and won't work.

The trial court additionally found the statute unconstitutional as an impermissible legislative intrusion upon an inherent judicial function. Art. V, § 2; art. III, § 2, Fla. Const. The statute then in force, identical to the present statute, provided as follows

(1) An attorney appointed pursuant to s. 925.035 or s. 27.53 shall, at the conclusion of the representation, be compensated at an hourly rate fixed by the chief judge or senior judge of the circuit in an amount not to exceed the prevailing hourly rate for similar representation rendered in the circuit; however, such compensation shall not exceed the maximum fee limits established by this section. In addition, such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the court. If the attorney is representing a defendant charged with more than one offense in the same case, the attorney shall be compensated at the rate provided for the most serious offense for which he represented the defendant. This section does not allow stacking of the fee limits established by this section.

(2) The compensation for representation shall not exceed the following:

(a) For misdemeanors and juveniles represented at the trial level: $1,000.

(b) For noncapital, nonlife felonies represented at the trial level: $2,500.

(c) For life felonies represented at the trial level: $3,000.

(d) For capital cases represented at the trial level: $3,500.

(e) For representation on appeal: $2,000.

§ 925.036, Fla. Stat. (1981).

The Fourth District quashed the trial court's declaration of unconstitutionality and certified to this Court the following four questions:

> I. [Is the statute] unconstitutional on its face as an interference with the inherent authority of the court to enter such orders as are necessary to carry out its constitutional authority?
>
> II. If the answer to the first question is negative, could the statute be held unconstitutional as applied to exceptional circumstances or does the trial court have the inherent authority, in the alternative, to award a greater fee for trial and appeal than the statutory maximum in the extraordinary case?
>
> III. If the answer to the second question is affirmative, should the trial court have awarded an attorney's fee above the statutory maximum for proceedings at the trial level, given the facts presented to it by trial counsel by his petition and testimony?
>
> IV. If the answer to the second question is affirmative, should the trial court have awarded an attorney's fee above the statutory maximum for proceedings at the appellate level before the services were rendered and with the facts known to it at the time of the award?

464 So.2d at 1283-86.

We answer the first question in the negative and the remaining questions in the affirmative. While we cannot find the statute facially unconstitutional, as it is ordinari well within the legislature's province to appropriate funds for public purposes and resolve questions of compensation, article III, section 12, Florida Constitution; *State rel. Caldwell v. Lee*, 27 So.2d 84 (Fla. 1946); *State v. Ruiz*, 269 Ark. 331, 602 S.W.2 625 (1980), we find that the statutory maximum fees, as inflexibly imposed in cases involving unusual or extraordinary circumstances, interfere with the defendant's sixt

amendment right "to have the assistance of counsel for his defence." The statute, a applied to many of today's cases, provides for only token compensation. The availability of effective counsel is therefore called into question in those cases when needed most.

Although facially valid, we find the statute unconstitutional when applied in such a manner as to curtail the court's inherent power to ensure the adequate representati of the criminally accused. At that point, the statute loses its usefulness as a guide to trial judges in calculating compensation and becomes an oppressive limitation. As s interpreted, therefore, the statute impermissibly encroaches upon a sensitive area o judicial concern, and therefore violates article V, section 1, and article II, section 3 o the Florida Constitution. As eloquently expressed by Indiana's Supreme Court in *Carlson v. State ex rel. Stodola*, 247 Ind. 631, 633-34, 220 N.E.2d 532, 533-34 (196

> The security of human rights and the safety of free institutions require freedom of action on the part of the court ... Our sense of justice tells us that a court is not free if it is under financial pressure, whether it be from a city council or other legislative body ... One who controls the purse strings can control how tightly those purse strings are drawn, and the very existence of a dependent.

More fundamentally, however, the provision as so construed interferes with the sixth amendment right to counsel. In interpreting applicable precedent and surveying the questions raised in the case, we must not lose sight of the fact that it is the defenda right to effective representation rather than the attorney's right to fair compensation which is our focus. We find the two inextricably interlinked.

1113 *1113 While in our decision of *Metropolitan Dade County v. Bridges*, 402 So.2d 411 (Fla. 1981), the majority found the statute mandatory rather than directory in its fee limits and constitutional, each member of the Court expressed the conviction that su an interpretation, as applied in certain circumstances, would intrude upon sixth amendment rights. Even the majority noted that:

> Unless it is demonstrated that the maximum amounts designated for representation in criminal cases by section 925.036 are so unreasonably insufficient as to make it impossible for the courts to appoint competent counsel to represent indigent defendants, we cannot say that section

925.036 violates the sixth amendment right to counsel.

402 So.2d at 414-45.

In *Rose v. Palm Beach County*, 361 So.2d 135 (Fla. 1978), we invoked the doctrine inherent judicial power in order to declare statutory maximums on witness compensation and travel expenses directory rather than mandatory. While noting th the doctrine should be invoked only in situations of clear necessity, we held that "if t statute is deemed to establish an absolute maximum in all situations, then it must be said to improperly infringe the prerogative of the court in effectuating the constitutio right to compulsory process." 361 So.2d at 135.

Having approached the instant question with due caution, we must once again affirm the proposition that "the courts have authority to do things that are absolutely esser to the performance of their judicial functions," *Id.*, for we must find that the sixth amendment's guarantee of effective assistance of counsel at least equals in fundamentality and importance its sister provision setting forth the right of the accus "to have compulsory process for obtaining witnesses in his favor." U.S. Const. amer VI. We can do no less than to zealously safeguard each.

We find that the trial court has here met its burden of showing that its action in exceeding the statutory maximums was necessary in order to enable it to perform its essential judicial function of ensuring adequate representation by competent couns *Wakulla County v. Davis*, 395 So.2d 540 (Fla. 1981). Thus, we answer the third question certified affirmatively; the facts were sufficiently "extraordinary" to warrant t action taken.

A survey of the repeated attacks on the validity of the statute highlights the strong tension between the counties' treasuries, as protected by the statutory maximum fee and the attorneys seeking compensation more fair than that the legislature would gr As previously pointed out, we must focus upon the criminal defendant whose rights often forgotten in the heat of this bitter dispute. In order to safeguard that individual rights, it is our duty to firmly and unhesitatingly resolve any conflicts between the treasury and fundamental constitutional rights in favor of the latter. As we noted in *of Tallahassee v. Public Employees Relations Commission*, 410 So.2d 487, 490 (Fla 1981), "[t]he unconstitutionality of a statute may not be overlooked or excused for

reasons of inconvenience." This ruling may indeed require some financial adjustmer the counties' budgeting process, and the exploration of some alternatives. We note, however, that the counties' fears may be in part misplaced. Petitioners seek only "reasonable," and not "market value" compensation. Token compensation is no long to be an alternative.

We find that a significant pattern emerges upon examining the caselaw involving the statute's validity. It has long been the trial courts, most intimately aware of the complexity of the case and the effectiveness of counsel, which have time after time found the statute unconstitutional in order to exceed its guidelines and award a fee more nearly approaching fairness. Until this opinion, these courts have been continually reversed upon appeal. *See, e.g.,* Wakulla County v. Davis, 395 So.2d 54 (Fla. 1981); *Broward County v. Wright,* 420 So.2d 401 (Fla. 4th DCA 1982); *Dade County v. Strauss,* 246 So.2d 137 (Fla. 3d DCA 1971), *cert. denied,* 253 So.2 864 (Fla. 1971), *cert. denied,* 406 U.S. 924, 92 S.Ct. 1793, 32 L.Ed.2d 125 (1972). can no longer afford to ignore the message these courts have been attempting to send.

Respondent Martin County refers us to precedent emphasizing the lawyer's common law duty to represent the indigent for no compensation, *In interest of D.B. and D.S.,* 385 So.2d 83 (Fla. 1980); and referring to service at the statutory fee rate as a form pro bono public service to the poor in criminal proceedings. *Broward County v. Wrig* These cases, in our view, fail to address the true concerns in issue. First, we may n allow the guarantee of effective representation in today's courtrooms to be diluted b reference to the state of affairs at the common law.

Second, even if the statute as presently implemented may be viewed as a form of pr bono service, it is an extremely haphazard and unfairly imposed system in practice. When the United States Supreme Court, in *Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), found fundamental the right to effective counsel a established the state's duty to provide representation to the indigent, it by no means intended to place the weight of this duty upon the shoulders of a few individual practitioners appointed by the court. The system as it presently stands forces these individuals, in the most difficult cases, to bear a burden which is properly the state's with only token compensation for their efforts. As noted in the dissent in *MacKenzie Hillsborough County,* 288 So.2d 200, 202 (Fla. 1973):

> No citizen can be expected to perform civilian services for the government when to do so is clearly confiscatory of his time, energy and skills, his public service is inadequately compensated, and his industry is unrewarded ... I do not believe that good public conscience approves such shoddy, tawdry treatment of an attorney called upon by the courts to represent an indigent defendant in a capital case.

We simply cannot on the one hand instruct the bench and bar, as we did in *Wilson v. Wainwright*, 474 So.2d 1162, 1165 (Fla. 1985), that "[a] perfunctory appointment of counsel without consideration of counsel's ability to fully, fairly and zealously advoca the defendant's cause is a denial of meaningful representation which will not be tolerated," and at the same time deny the courts the ability to exceed the fee limits when necessary to do justice.

Certain pressing realities facing practitioners in today's courts can no longer be ignored. First, the increasing complexity of some of today's cases calls for the investment of more time and effort in order to effectively represent one's client. The complexities also raise the spectre of later claims of ineffective assistance of counse which in certain types of cases may be expected to be eventually raised regardless any factual basis for the claim. Practicing attorneys are aware how such claims, eve found meritless, may adversely impact upon one's hard-bought professional reputat

Second, rising costs must be figured into the equation. While the statute allows for t reimbursement of expenses reasonably incurred, section 925.036(1), Florida Statut (1985), the statutory fee will in many instances be insufficient to cover even overhea expenses during the proceeding. The legislature's amendments to the statute in chapter 81-273, Laws of Florida (1981) make clear its compromise addressing the issue of adequate compensation. This amendment deleted the provision allowing "reasonable compensation" in capital cases, section 925.035(1), Florida Statutes (1979), and raised the statutory fee limits. The fee limits presently in force stand too from fair compensation, as applied to certain cases, to be allowed to stand. The link between compensation and the quality of representation remains too clear. *See* the dissent in *Mackenzie*, 288 So.2d at 202 ("The adage that `you get what you pay for applies not infrequently. In our pecuniary culture the calibre of personal services 1115 rendered usually has a corresponding relationship to the compensation 1116 provided."); *Gideon v. Wainwright*, 372 U.S. at 344, 83 S.Ct. at 796 ("[T]here are few

defendants charged with crime, few indeed, who fail to hire the best lawyers they ca get to prepare and present their defense.").

Finally, we answer the fourth question certified. Because the trial judge found it necessary to accept a bid exceeding the statutory limit in order to ensure representation upon appeal, he acted within his authority in doing so. Because the statute does, however, provide for compensation "at the conclusion of the representation," we note that in light of this opinion trial courts should not in the futu need to determine the compensation to be paid prior to the representation in order obtain competent counsel.

In summary, we hold that it is within in the inherent power of Florida's trial courts to allow, in extraordinary and unusual cases, departure from the statute's fee guideline when necessary in order to ensure that an attorney who has served the public by defending the accused is not compensated in an amount which is confiscatory of his her time, energy and talents. More precise delineation, we believe, is not necessary Trial and appellate judges, well aware of the complexity of a given case and the attorney's effectiveness therein, know best those instances in which justice requires departure from the statutory guidelines. We recede from that portion of *Bridges* whi is inconsistent with this opinion, and, in sum, find the statute directory rather than mandatory in nature.

We therefore quash the Fourth District's quashal of the trial court's order granting ju compensation for petitioners' services in this case.

It is so ordered.

BOYD, OVERTON, EHRLICH, SHAW and BARKETT, JJ., concur.

McDONALD, C.J., concurs in result only.

92 So.2d 811 (1957)

Santo TRAFFICANTE, Jr., and Henry Trafficante, Appellants,

v.

STATE of Florida, Appellee.

Supreme Court of Florida, en Banc.

January 23, 1957.
Rehearing Denied March 13, 1957.

812 812 Whitaker Brothers, Mark R. Hawes and John R. Parkhill, Tampa, for appellants.

Richard W. Ervin, Atty. Gen., and Jos. P. Manners, Asst. Atty. Gen., for appellee.

PER CURIAM.

Appellants here seek review of their conviction of violating the bribery laws of the St of Florida.

They first contend that the trial court erred in permitting the State Attorney directly o indirectly to comment upon the fact that appellants failed to take the witness stand a testify in their own behalf. The basis for this contention is found in certain remarks made by the State Attorney in his final argument to the jury, which remarks were in p as follows:

> "* * * All right. The testimony here is uncontradicted, uncontradicted, by these two Trafficantes, this was said in the car. They were both there, is there anyone, is there any statement here in evidence that either one of them contradicted, regardless of who said it? They have their right * * *."

It is urged by appellants that these remarks were in violation of F.S. § 918.09, F.S.A which provides in part as follows:

> "* * * nor shall any prosecuting attorney be permitted before the jury or court to comment on the failure of the accused to testify in his own behalf * * *."

This statute has been on the books for many years, and this court is firmly committe
843 2d 843 to the rule that a violation of it cannot be cured by our harmless error statute. I
Way v. State, Fla., 67 So.2d 321, 323, we stated in part:

> "When it appears that there has been a violation of Section 918.09, supra, our harmless error statute does not come into play because Section 918.09, supra, was designed to protect the defendant in a criminal case from having the jury consider his failure to take the witness stand in his own behalf as even the slightest suggestion of guilt. When such impression has been made on the minds of the jurors it cannot by this Court be said `that the error complained of has [not] resulted in a miscarriage of justice.'"

See also Simmons v. State, 139 Fla. 645, 190 So. 756.

The State urges that the remarks objected to in the instant case should not be construed as a comment upon the failure of the appellants to take the witness stand since they might have been construed as referring to a conversation which took pla between appellants and a State witness before the trial. Upon the whole record, however, we believe that the average juror would have considered the prosecutor's remarks at least as an indirect reference to the fact that appellants did not take the witness stand in their defense. Before making the statement we have quoted, the prosecutor had reviewed the evidence, and the most obvious construction of the quoted remarks would be that appellants had contradicted none of this evidence, although, by testifying, they would have had a right to do so. It is significant that the construction urged by the State is presented here for the first time, and the record i innocent of any similar explanation by the State Attorney in answer to appellants' objections and motions for a mistrial. We conclude that the jury would have adopted construction contended for by appellants.

As for the guarded nature of the remarks, we have hitherto held that a similarly indi statement by the prosecutor constituted a violation of the statute. In Rowe v. State, Fla. 17, 98 So. 613, 617, we said:

> "This statement by the state attorney, to the effect that there were `five eyewitnesses to the homicide; two were dead; two were the defendants; and the fifth, Leonard Wingate, had testified in this trial,' called to the attention of the jury that the two defendants had not testified.
>
> "In this instance the court took no action but merely said he would `instruct the jury at the proper time as to the law of the case.' Even if the trial judge had stopped the state attorney and told the jury not to consider the failure of the defendants to testify, it would not have cured the error."

See also Way v. State, supra, 67 So.2d 321. The law of other states is similar. In the Alabama case of Broadway v. State, 257 Ala. 414, 60 So.2d 701, 703, the court sta

> "It is our opinion that such statements not having direct reference to the failure of the defendant to testify should be interpreted in the light of what has transpired in the case, the nature of the evidence against the defendant, the burden of proof fixed by law, and any other circumstances which may have occurred during the trial having a tendency to show that the solicitor was directing his remarks to the failure of the defendant to testify rather than to a failure to submit the testimony of other witnesses, which may have been peculiarly subject to his call and known to defendant to be available to him."

814 ^814 See also Smith v. State, 87 Miss. 627, 40 So. 229, wherein the same reasoning was applied by the Supreme Court of Mississippi, and 53 Am.Jur., Trial, Section 471 pp. 376-377. In the instant case the witness Dietrich was relating a conversation wh took place between him and the two appellants. No one else was present "in the car during said conversation. Consequently the remarks of the State Attorney could not have been directed "to a failure to submit the testimony of other witnesses."

In summary, our law prohibits any comment to be made, directly or indirectly, upon t failure of the defendant to testify. This is true without regard to the character of the comment, or the motive or intent with which it is made, if such comment is subject to

interpretation which would bring it within the statutory prohibition and regardless of i susceptibility to a different construction. The comment of the State Attorney herein might merely have been lapsus linguae in the heat of argument, but it constituted a violation of F.S. § 918.09, F.S.A., supra.

Next, it appears from the record that the State witness Dietrich had testified before t grand jury of Pinellas County prior to the trial of this case. The appellants made two efforts to secure a transcript of Dietrich's grand jury testimony. Prior to the trial, appellants made a motion in accordance with F.S. § 905.27, F.S.A., for production o the transcript. F.S. § 905.27, F.S.A. prohibits disclosure by certain persons of testimony given before a grand jury "except when required by a court to disclose the testimony of a witness examined before the grand jury for the purpose of ascertainin whether it is consistent with that of the witness given before the court * * *." F.S. § 905.17, F.S.A. provides in part that transcriptions of testimony before a grand jury "shall be opened and released by the clerk upon the order of the trial judge for use pursuant to the provisions of § 905.27, [Florida Statutes] * * *."

Later, at the trial, when the witness Dietrich was tendered to defense counsel for cr examination, appellants presented to the court a sworn application for subpoena du tecum to be directed to the official court reporter. This application set out that the official reporter had reported and transcribed the witness Dietrich's testimony before the grand jury, and that said testimony was material and relevant to, and in conflict the testimony of this witness given on direct examination at the trial. Appellants offer to prove these facts. The application and offer of proof were denied by the trial cou

Appellants contend that they had a right to the issuance of the subpoena duces tec to compel the court reporter to appear as a defense witness and to bring with her th transcript of the witness Dietrich's testimony as given before the grand jury, making same available to defense counsel in order that it might be utilized in cross-examina of the witness Dietrich. In support of their contention, appellants rely upon our opini in Vann v. State, Fla., 85 So.2d 133, and State ex rel. Brown v. Dewell, 123 Fla. 785 167 So. 687, as well as the case of United States v. Aaron Burr, Fed.Cas.No. 14,69 They also contend that they were denied their rights under the 14th Amendment to Federal Constitution and Section 11 of the Declaration of Rights of the Florida Constitution, F.S.A., the latter of which provides that in all criminal prosecutions the accused "shall * * * have compulsory process for the attendance of witnesses in his

favor." The State contends, however, that these authorities do not compel the resul sought by appellants because, in the State's view, the witness Dietrich's testimony before the grand jury was not material to the issues in this case, and the grand jury
815 *815 presentment or findings had not been made public at the time of trial.

We cannot accept the contention of the State herein. Appellants' sworn application the subpoena, as we have stated, sets up the materiality of the evidence sought to reached by the subpoena and must be taken for the purpose of this appeal as prov materiality to the extent necessary to warrant examination of the transcript by the co with a view to making final determination of its materiality. See Vann v. State, supra, So.2d 133, and Coco v. State, Fla., 62 So.2d 892. Moreover, the record abounds w evidence that the grand jury had returned its presentment and made its findings pul prior to the trial of this cause.

The right of an accused in a criminal case to compulsory process for attendance of witnesses on his behalf, as we have seen, stems from the express terms of our constitution. This provision was inserted because of the fundamental unfairness whi results from placing a man on trial on a criminal charge and denying him the means compel the attendance of witnesses, within the jurisdiction of the court, who are in possession of material facts which show or tend to show his innocence of the charg

In State ex rel. Brown v. Dewell, supra, 167 So. 687, we held that an accused on tria entitled to the issuance of a subpoena duces tecum to reach the testimony of a Stat witness given before a grand jury when it is shown that such testimony is or may be material to the issues in the trial. In that case, in seeking to be informed as to the application of the rule, we reached back to the celebrated Aaron Burr case wherein Chief Justice Marshall stated in part:

> "It is believed that such a subpoena, as is asked, ought to issue, if there exists any reason for supposing that the testimony may be material, and ought to be admitted." 25 Fed.Cas. p. 38, No. 14,692d.

Very recently, in Vann v. State, supra, 85 So.2d 133, we had occasion to consider a related problem, and we held that it is the duty of the trial judge, on proper applicati to examine documents sought to be subpoenaed, and to apply tests of relevancy or privilege which we there stated, in order that an enlightened ruling might be made u the application. Such procedure was not followed in the instant case.

Other points are raised, but since the contentions which we have discussed above require a reversal in any event, we shall not consider them. The judgment appealed from must be, and it is hereby, reversed and the cause remanded for a new trial.

TERRELL, C.J., and THOMAS, HOBSON, and DREW, JJ., concur.

THORNAL, and O'CONNELL, JJ., concur specially.

ANDERSON, Associate Justice, dissents.

THORNAL, Justice (concurring specially).

I concur in the judgment of reversal on the basis of the first point covered by the ma opinion. A cautious examination of the record leads to the inescapable conclusion th the remarks of the State Attorney were condemned by F.S. § 918.09, F.S.A. and ou decisions Way v. State, 67 So.2d 321 and Rowe v. State, 87 Fla. 17, 98 So. 613. Th Legislature had made this a rule of law by statute. We are not permitted to change i judicial decree.

I do not agree that denial of access to the grand jury records was reversible error in situation presented by this record.

For the reason above stated I concur only in the judgment of reversal.

816 *816 O'CONNELL, J., concurs.

ANDERSON, Associate Justice (dissenting).

I dissent. To my mind there is no more damning evidence of guilt than the failure of defendant, in a criminal case, to take the stand, face his accusers, the judge, the ju and the prosecuting attorney and say, "I am not guilty." I am thoroughly mindful of th fact that the Constitution gives him that right and that the statute protects him again the prosecuting attorney commenting on his failure to testify in his own behalf. I do n approve judicial legislation. Neither do I approve carrying a privilege of this kind any further than the plain language of the statute. The state attorney did not *directly* comment on the failure of the accused to testify. And the statute does not denounce *indirect* reference to such failure to testify. The harm, if any, thereby done could be

cured by appropriate instructions. The remarks of the state attorney in this case we certainly susceptible of the construction that the statement made in the automobile h not been denied — that is to say, that no person who was in the automobile was ask if Trafficante, or someone else, had denied the statement that is alleged to have be made. Now, it may be that the state attorney was *going* to comment on the defendar failure to testify. But counsel "jumped the gun," objected to what the state attorney h said, and moved for a mistrial. We do not give juries credit for enough enlightenmer was obvious that appellants had not testified. Surely someone on the jury noted tha fact. And surely attention was called to it in the jury's deliberations and would have been called to it if the state attorney had never made the statement objected to. To hold otherwise is to ignore the plain facts of life. As I said above, it is just damning evidence of guilt.

Without intending any play on words, the Court went a long way in the Way case. W v. State, 67 So.2d 321. Now it goes a step farther. What the future holds out I hesita to forecast.

When I consider the overwhelming proof of the appellants' guilt together with the fac that the sufficiency of the evidence to sustain the conviction has not been challenge find myself unable to agree to reversal.

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO CLASSIFY CONTEMPT AS CIVIL per Pugliese v. Puf;oese

NOW COMES, Scott Huminski ("Huminski"), and, moves as above and attaches hereto the Florida Supreme Court case of PUGLIESE v. PUGLIES excerpted below and attached in full hereto.

> "If the purpose of the proceedings is to coerce action or non-action by a party, the order of contempt is characterized as civil. This type contempt proceeding is ordinarily instituted by one of the parties to the litigation who seeks to coerce another party to perform or cease performing an act. The order of contempt is entered by the court for the private benefit of the offended party. Such orders, although imposing a jail sentence, classically provide for termination of the contemnor's sentence upon purging himself of the contempt. The sentence is usually indefinite and not for a fixed term. Consequently, it is said that the contemnor "carries the key to his cell in his own pocket." See *Demetree v. State*,supra; *Faircloth v. Faircloth*, 321 So.2d 87 (Fla.1st DCA 1975); and *In re S.L.T.*,180 So.2d 374 (Fla.2d DCA 1965)." See full case attached.

Dated at Bonita Springs, Florida this 12th day of February, 2018.

-/S/- Scott Huminski

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Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 12th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

347 So.2d 422 (1977)

Rocco PUGLIESE, Petitioner,

v.

Tina PUGLIESE, Respondent.

No. 49908.

Supreme Court of Florida.

June 9, 1977.

423 *423 Steven L. Sommerfield, Venice, for petitioner.

Robert G. Jacobson, Farr, Farr, Haymans, Moseley & Odom, Punta Gorda, for respondent.

SUNDBERG, Justice.

This is a petition for writ of certiorari to review a decision of the District Court of Appeal, Second District, reported at 336 So.2d 614 (Fla.2d DCA 1976), which is alleged to be in conflict with *Demetree v. State*, 89 So.2d 498 (Fla. 1956), and its progeny with respect to the distinction between civil and criminal contempt, direct and indirect criminal contempt, and the procedural requirements for criminal contempt proceedings. Jurisdiction vests in this Court pursuant to Article V, Section 3(b)(3), Florida Constitution.

On November 4, 1975, the Circuit Court for Charlotte County, Florida, entered its final judgment dissolving the marriage of Rocco and Tina Pugliese. That judgment ordered Rocco, the petitioner, to vacate, by November 7, 1975, the portion of the marital duplex residence he had been occupying during the action. Rocco was then a 70-year-old

immigrant from Italy not completely fluent in the English language. Subsequent to entry of the judgment, petitioner was advised by his counsel that motion for new trial, stay of execution, and notice of hearing thereon had been filed, and, consequently, the provisions of the final judgment requiring surrender of the premises were stayed pending final determination of those motions at the assigned hearing. Based on such advice, Rocco declined to evacuate. Tina Pugliese, respondent, filed a motion for contempt order and notice of hearing. The motion and notice of hearing were served upon counsel for petitioner and not petitioner himself.

On November 18, 1975, the contempt hearing was held before the circuit judge. As of that date, the trial court had entered no supersedeas so as to excuse petitioner from compliance with the terms of the final judgment of dissolution of marriage. At the hearing, petitioner was held in contempt of court for willfully refusing to vacate the premises as required by the final judgment and was sentenced to 13 days in the Charlotte County jail. The order did not provide a means by which petitioner could purge his contempt prior to the expiration of the 13-day jail sentence by complying with the acts required by the final judgment.

424 On appeal from the contempt order, the District Court of Appeal, Second District, *424 affirmed the trial court per curiam without opinion, citing *Branzburg v. Hayes*, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972), and *Morgan v. State*, 325 So.2d 40 (Fla.2d DCA 1975).

To review properly the decision of the District Court of Appeal, we must determine the nature of the contempt for which petitioner was found guilty and the proceedings culminating in the entry of the order of contempt. Initially, we must ascertain whether the order is for civil or criminal contempt and, if for criminal contempt, whether it is direct or indirect.

If the purpose of the proceedings is to coerce action or non-action by a party, the order of contempt is characterized as civil. This type contempt proceeding is ordinarily instituted by one of the parties to the litigation who seeks to coerce another party to perform or cease performing an act. The order of contempt is entered by the court for the private benefit of the offended party. Such orders, although imposing a jail sentence, classically provide for termination of the contemnor's sentence upon purging himself of the contempt. The sentence is usually indefinite and not for a fixed term.

Consequently, it is said that the contemnor "carries the key to his cell in his own pocket." See *Demetree v. State*, supra; *Faircloth v. Faircloth*, 321 So.2d 87 (Fla.1st DCA 1975); and *In re S.L.T.*, 180 So.2d 374 (Fla.2d DCA 1965).

On the other hand, a criminal contempt proceeding is maintained solely and simply to vindicate the authority of the court or to punish otherwise for conduct offensive to the public in violation of an order of the court. *Ex Parte Earman*, 85 Fla. 297, 95 So. 755 (1923); *Demetree v. State*, supra. Accordingly, while the conduct in the case at bar could be the subject of civil contempt proceedings at the instance of the wife to coerce the petitioner to vacate the premises, it could also be the basis for criminal contempt proceedings in the event the trial court determined the conduct to be obstinate and sought simply to vindicate the authority of the court by punishing the petitioner. It is apparent then that the nature of the conduct is not determinative of the character of the order. However, a determination of whether an order is civil or criminal must be made. If the purpose of the proceedings was the latter, greater procedural due process safeguards are involved. This principle is recognized in Fla.R.Crim.P. 3.830[1] and
425 3.840.[2] *425 The rule appropriate to the proceedings is determined by whether the contemptuous conduct is direct or indirect.

Where the act constituting the contempt is committed in the immediate presence of the court, this contempt is defined as direct. Where an act is committed out of the presence of the court, the proceeding to punish is for indirect (sometimes called constructive) contempt. A review of the Rules of Criminal Procedure set forth in footnotes 1 and 2, supra, reflects the greater procedural due process safeguards imposed when proceedings are for indirect criminal contempt.

With the foregoing principles in mind, we proceed to review the contempt order entered in the instant case and the proceedings which led to such order. The record of the hearing culminating in the order under review is ambivalent upon the issue of whether it was intended to be for civil or criminal contempt. After pronouncing the sentence he would impose, the trial judge made the following conflicting statements:

> THE COURT: ... But this is directly in violation of the Court's order. And I want him moved off the premises and stay there.
>
> It is a direct violation of the Court order and I think he should learn a little

bit better than that.

* * * * * *

> [COUNSEL FOR RESPONDENTTINA:] This order that the Court is entering is not that type of an order. This is an order of punishment for civil contempt on the part of this Respondent.
>
> THE COURT: It is a clear violation of civil contempt if I ever seen one and that's true. And the order stands so you remain right here.

The former statement by the judge makes it appear that the sentence was intended to punish, not to coerce. The latter statement clearly characterizes the order as being for civil contempt.

Because the record yields no meaningful insight into the problem, we must look next to the face of the contempt order. After reciting the contemptuous conduct of petitioner, the order states simply:

> ORDERED AND ADJUDGED that ROCCO PUGLIESE is in contempt of this Court; that he is hereby sentenced to serve thirteen (13) days in the Charlotte County Jail as punishment for contempt.

The absence of any provision allowing the petitioner to purge himself of the contempt and thereby terminate the sentence makes it appear that the order is for criminal contempt.

On the other hand, the manner in which the proceedings were initiated tends to belie the conclusion that the order sought to punish criminal contempt. Rather than having
426 *426 been initiated by the judge "of his own motion or upon affidavit of any person having knowledge of the facts," the hearing and consequent order were provoked by a motion of the wife for contempt order. This is the classic method for gaining coercive relief by a private party to litigation.

Respondent maintains that the procedure here utilized is of no moment because counsel for the petitioner received the motion for contempt order, and petitioner appeared at the hearing with counsel at which time he admitted to violating the terms of the judgment earlier entered. She relies on a statement from *In re S.L.T.*, supra, to the

effect that formal pleading may become unnecessary even in proceedings for indirect criminal contempt if the person charged is given notice of the charge and a hearing. This position is untenable for two reasons. First, *In re S.L.T.* predates Fla. R.Crim.P. 3.840 [see *Weech v. State*, 309 So.2d 246 (Fla.4th DCA 1975)]. Second, even though petitioner, through counsel, received notice of a hearing for contempt order, he had no reason to believe at the time of the hearing that it was for other than civil contempt. He was not appraised that he would be required to stand ready to answer a charge of criminal contempt. See *Aaron v. State*, 284 So.2d 673 (Fla. 1973). It is questionable that petitioner would have taken the stand and testified unabashedly to his violation of the terms of the final judgment had he known that criminal penalties were involved. Since the procedural requirements of Fla.R.Crim.P. 3.840 had not been observed, petitioner had no means of suspecting the consequences of the hearing.

Respondent further asserts that petitioner misapprehends the rule applicable to the case at bar. She suggests that the order was for punishment of direct criminal contempt and, therefore, the less stringent procedure of Fla.R.Crim.P. 3.830 is applicable. Respondent arrives at this conclusion upon the premise that since petitioner admitted in the presence of the court that he had defied the terms of the judgment, the judge "heard the conduct constituting the contempt committed in the actual presence of the court," and, therefore, the judge could punish him summarily. Were this contention accepted, the distinction between direct and indirect criminal contempt would be obliterated because the judge must always hear some testimony in his presence at a hearing on indirect contempt concerning conduct which took place outside his presence. We reject any such notion that would expunge the distinction between direct and indirect contempt.

In the final analysis, the order under review cannot stand whether it be characterized as criminal or civil contempt. As explained above, the conduct complained of did not take place in the presence of the court, so at most it constituted indirect contempt. This being so it would be error to enter an order of indirect criminal contempt without adhering to the requirements of Fla.R.Crim.P. 3.840 which admittedly were not complied with. Furthermore, the order may not be sustained as being for civil contempt because no opportunity to purge was afforded.

We emphasize that in any instance where the trial court can reasonably anticipate that conduct of such a nature is present as will invoke the criminal contempt powers of the

court to punish the offender, procedural due process of law demands that the proceedings be conducted in conformity with Fla.R.Crim.P. 3.840. If the trial court is of a mind in cases such as here presented to punish rather than coerce, then counsel for an offended party should be so advised when he makes application for an order of contempt so that proper affidavit and order to show cause can be secured to comply with the requirements of the rule. It is possible to convert civil contempt proceedings to criminal contempt proceedings after a hearing is commenced. Such a conversion would mandate the continuation of the hearing to provide for issuance of an order to show cause that complies with the rule with fair opportunity to the respondent to prepare and be heard. However, such practice flirts with procedural due process flaws. Accordingly, 427 better practice suggests that such situations be *427 anticipated in advance wherever possible so that the full due process safeguards required by Fla.R.Crim.P. 3.840 will be afforded.

The petition for writ of certiorari is granted, the decision of the District Court of Appeal, Second District, is quashed, and this cause is remanded to the District Court with instructions to remand to the trial court for proceedings not inconsistent with the views expressed herein.

It is so ordered.

BOYD, ENGLAND and KARL, JJ., concur.

OVERTON, C.J., dissents.

[1] "RULE 3.830. *Direct Criminal Contempt*

"A criminal contempt may be punished summarily if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. The judgment of guilt of contempt shall include a recital of those facts upon which the adjudication of guilt is based. Prior to the adjudication of guilt the judge shall inform the defendant of the accusation against him and inquire as to whether he has any cause to show why he should not be adjudged guilty of contempt by the Court and sentenced therefor. The defendant shall be given the opportunity to present evidence of excusing or mitigating circumstances. The judgment shall be signed by the judge and entered of record. Sentence shall be pronounced in open court."

[2] "RULE 3.840. *Indirect Criminal Contempt*

"(a) Indirect (Constructive) Criminal Contempt. A criminal contempt except as provided in the preceding subsection concerning direct contempts, shall be prosecuted in the following manner:

"(1) *Order to Show Cause*. The judge, of his own motion or upon affidavit of any person having knowledge of the

facts, may issue and sign an order directed to the defendant, stating the essential facts constituting the criminal contempt charged and requiring him to appear before the court to show cause why he should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for preparation of the defense after service of the order on the defendant.

"(2) *Motions; Answer.* The defendant, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars or answer such order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the judge. A defendant's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

"(3) *Order of Arrest; Bail.* The judge may issue an order of arrest of the defendant if the judge has reason to believe the defendant will not appear in response to the order to show cause. The defendant shall be admitted to bail in the manner provided by law in criminal cases.

"(4) *Arraignment; Hearing.* The defendant may be arraigned at the time of the hearing, or prior thereto upon his request. A hearing to determine the guilt or innocence of the defendant shall follow a plea of not guilty. The judge may conduct a hearing without assistance of counsel or may be assisted by the prosecuting attorney or by an attorney appointed for that purpose. The defendant is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and may testify in his own defense.

"All issues of law and fact shall be heard and determined by the judge.

"(5) *Disqualification of Judge.* If the contempt charged involves disrespect to or criticism of a judge he shall disqualify himself from presiding at the hearing. Another judge shall be designated by the chief justice of the Supreme Court.

"(6) *Verdict; Judgment.* At the conclusion of the hearing the judge shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the defendant has been found and adjudicated guilty.

"(7) *The Sentence; Indirect Contempt.* Prior to the pronouncement of sentence, the judge shall inform the defendant of the accusation and judgment against him and inquire as to whether he has any cause to show why sentence should not be pronounced. The defendant shall be afforded the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the defendant."

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF ADA CLAIMS AGAINST JUDGE ADAMS AND JUDGE MCHUGH FOR VIOLATIONS OF THE ADA AND A PATTERN OF DISCRIMINATION AGAINST THE DISABLED

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. See below brief of the United States.

Dated at Bonita Springs, Florida this 12th day of February, 2018.

-/S/- Scott Huminski

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Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 12th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

RAMON BADILLO SANTIAGO, M.D. PRO SE Plaintiff vs. HON. JOSE ANDREU GARCIA, in his official capacity as Administrador del Sistema Judicial, LCDA. MERCEDES M. BAUERMEISTER, in her official capacity as Directora de la Administracion de Tribunales de Puerto Rico, WILFREDO GIRAU TOLEDO, in his official capacity as Director de la Autoridad de Edificios Públicos COMMONWEALTH OF PUERTO RICO, represented by the Secretary of Justice of Puerto Rico, JOSE FUENTES AGOSTINI, included in his official capacity, JUDGE JULIO BERRIOS JIMENEZ, in his official and personal capacity, Defendants	*	**CIVIL NO.** 98-1993 (SEC) Jury Trial Demanded

UNITED STATES' BRIEF AS
AMICUS CURIAE

TO THE HONORABLE COURT:

COMES NOW the United States of America through undersigned counsel, and very respectfully alleges and prays as follows:

I. INTRODUCTION

This action is brought by Mr. Ramón Badillo Santiago against Hon. Jose Andreu Garcia in his official capacity as Administrator of the Judicial System; Ms. Mercedes M. Bauermeister, in her official capacity as Director of the Courts Administration of Puerto Rico; Mr. Wilfredo Girau Toledo, in his official capacity as Director of the Public Buildings Authority; the Commonwealth of Puerto Rico represented by Jose Fuentes Agostini, included in his official capacity as Secretary of Justice of Puerto Rico; and Judge Julio Berrios Jimenez, in his official and personal capacity.

The plaintiff alleges a violation of title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 et seq. Defendants have moved to dismiss on several grounds. The United States as amicus curiae urges the Court to deny the motions as to plaintiff's ADA claim, because contrary to the basis on which the Defendants seek such dismissal:

(1) Plaintiff has pleaded a prima facie case under title II of the ADA.[1]

---

[1] The United States takes no position on defendants' other claims.

(2) Congress has specifically abrogated the States' eleventh amendment immunity for suits brought pursuant to the ADA;

(3) Under title II of the ADA the defendants can be sued in their official capacities; and

(4) Judges do not enjoy absolute immunity for acts that are administrative rather than judicial in nature.

II. FACTS AND PROCEDURAL HISTORY

Plaintiff Ramón Badillo Santiago has a hearing impairment. He was a defendant in a civil case at the Superior Court, First Instance Court, Bayamón Part on September 2, 3, and 8, 1997. At the trial, the plaintiff repeatedly requested an amplification device, in order to hear and participate in the proceedings. The plaintiff also submitted to the state court an audiometric evaluation by an audiologist, demonstrating his need for this auxiliary aid. Instead of granting the request, the judge ordered the Court Officer to instruct the plaintiff to use a wheeled secretary's chair and authorized him to move around the room during the proceedings to get closer to whoever was speaking at the time. After initially complying with the Court's order, the plaintiff discontinued the practice and declined to testify in his own trial.

Plaintiff filed the captioned case pro se. All the defendants have moved for dismissal under various grounds. The United States hereby opposes dismissal on several grounds.

III. ARGUMENT

A. Plaintiff Has Alleged a Prima Facie Case Under Title II of the ADA

Despite Defendants' contentions, there is no question that plaintiff has sufficiently pleaded a prima facie case of discrimination under title II of the ADA. A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that there is no set of facts that plaintiff could prove which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 46, 78 S. Ct. 99, 102 (1957); Fed. R. Civ. P. 12(b)(6). Further, pro se complaints must be liberally construed and should not be held to the same high standard as formal complaints filed by attorneys. Estelle v. Gamble, 429 U.S. 97, 105, 97 S. Ct. 285, 291 (1976); Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 595 (1972); Ferranti v. Moran, 618 F.2d 888, 889 (1st Cir. 1980) . It is under this more lenient standard that plaintiff's complaint should be read.

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be

excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The statute defines the term "qualified individual with a disability" as "an individual with a disability who, with or without ...the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." See 42 U.S.C. § 12131(2). "Auxiliary aids and services" are defined as including a wide range of methods to provide effective communication with people who are deaf or hard of hearing. The ADA lists as examples of auxiliary aids and services, "qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments," 42 U.S.C. § 12102(1)(A); these include "assistive listening devices," such as the device requested by plaintiff. See 28 C.F.R. § 35.104.

The ADA implementing regulation imposes on a public entity the duty to provide appropriate auxiliary aids. 28 C.F.R. § 35.160. This section establishes the following:

> A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity conducted by a public entity.

In the case at bar, plaintiff easily satisfies the prima facie elements for his cause of action under title II of the ADA. Plaintiff has averred that he has a hearing impairment, that he requested an auxiliary aid to participate in his trial, and that the secretary's chair provided by the court was an ineffective aid. Complaint ¶¶ 8, 9. Read liberally, as the complaint must be, plaintiff has sufficiently alleged that he is an "individual with a disability" under title II. See 42 U.S.C. § 12102(2). In addition, plaintiff has clearly alleged that he was "qualified," because he has stated that he was a defendant in a case before Judge Berríos from which it follows that plaintiff met "the essential eligibility requirements for the receipt of services or the participation in" his trial. 28 C.F.R. § 35.104. Finally, plaintiff has alleged that he was discriminated against by defendants. He alleged that he requested and was denied an assistive listening device, and was rendered unable to effectively participate in his own trial.

Complaint ¶¶ 8, 9. Plaintiff has therefore alleged that he was "excluded from participation in or denied the benefits of" defendants' program. 42 U.S.C. § 12132; 28 C.F.R. § 35.160. Thus, plaintiff has pleaded his prima facie case.

B. Congress has expressly abrogated the states' eleventh amendment immunity from private suits brought under the ADA

Defendants Jose Fuentes Agostini, the Commonwealth of Puerto Rico and Judge Julio Berríos Jimenez, all alleged that the captioned case is barred as against them under the eleventh amendment. Based on the language of the ADA, defendants' argument is without merit.

The eleventh amendment,[2] as interpreted by the Supreme Court, embodies a general constitutional principle of state sovereign immunity in federal court actions. The amendment, therefore, generally precludes a federal court from rendering judgment against an unconsenting state in favor of a citizen of the state. Hans v. Louisiana, 134 U.S. 1, 15 (1890). The Commonwealth of Puerto Rico enjoys full benefits of the eleventh

[2] The eleventh amendment provides, "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

amendment. Fernandez v. Chardón, 681 F.2d 42, 59 (1st Cir. 1982); Ezratty v. Commonwealth of P.R., 648 F.2d 770, 776, n.7 (1st Cir. 1981).

However, the eleventh amendment does not bar suits for damages under title II of the ADA. The Supreme Court has held that Congress may abrogate the eleventh amendment without the states' consent when acting pursuant to its plenary powers, so long as it does so explicitly. Seminole Tribe of Florida v. Florida, 166 S. Ct. 1114, 1123 (1996). See e.g., Fitzpatrick v. Bitzer, 427 U.S. 445, 456 (1976) (Congress has the authority to override states' immunity when legislating pursuant to section 5 of the fourteenth amendment); Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 242 (1985) (Congress must make "its intention unmistakably clear in the language of the statute").

In the ADA, Congress expressly abrogated the States' eleventh amendment immunity. Title V, which contains provisions generally applicable to all other titles of the ADA, provides:

> A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against

any public or private entity other than a State.

Section 502 of the ADA, 42 U.S.C. § 12202 (parenthetical remark in the original). See also 28 C.F.R. § 35.178; S. Rep. No. 116, 101st Cong., 1st Sess., at 184 (1989); and House Comm. on Educ. and Labor, 101st Cong., 2d Sess., Americans with Disabilities Act of 1990, at 138 (1990), reprinted in 1990 U.S.C.C.A.N. at 421; Niece v. Fitzner, 941 F.Supp 1497, 1501 (E.D. Michigan 1996); Coolbaugh v. Louisiana, 136 F.3d 430, 438 (5th Cir. 1998); cert. denied, 119 S. Ct. 58 (1998). Thus, the ADA explicitly abrogates eleventh amendment immunity, and defendants' motion on this point must be denied.

C. The Defendants Can Be Sued in Their Official Capacities

Defendants Garcia's and Bauermeister's motion to dismiss argues that they cannot be sued in their individual capacities under the ADA. Their argument is misplaced, because the plaintiff's complaint clearly names them only in their official, not individual, capacities. The plaintiff has named all of the defendants in their official capacities only except Judge Berríos, whom is being sued both in his official and individual capacities.[3]

---

[3] These defendants do not dispute the well-settled premise

Not only have defendants Garcia and Bauermeister misread plaintiff's complaint, they also cite entirely inapplicable case law. All cases these defendants cite involve charges of discrimination in employment, which is governed by different definitions and standards than is discrimination by a public entity against its constituents. See 28 C.F.R. § 35.140.[4] Because all of those cases turn on the definition of "employer" under a different title of the ADA, they have no bearing on the captioned case.

D. Judge Berríos is not Immune from Suit

Given the abrogation of state immunity by the ADA, claims can be brought against a state judge in his/her individual or official capacity under the ADA but for the doctrine of judicial immunity. It has been established that this doctrine generally affords judges immunity from damage suits. See Stump v.

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that they may be named in their official capacities, as an alternative method of suing the entity for which they are representative. See Hafer v. Melo, 502 U.S. 21, 112 S. Ct. 358, 116 L. Ed.2d 301 (1991); Gorman v. Bartch, 152 F.3d 907, 916 (8th Cir. 1998).

[4] Disability-based discrimination in employment is governed by the definitions and regulatory standards of title I of the ADA. 28 C.F.R. § 35.140; 42 U.S.C. § 12101 et seq.; 29 C.F.R. pt. 1630. Requirements governing the activities of public entities other than employment are detailed in the Department of Justice's regulation under title II, 28 C.F.R. pt. 35.

Sparkman, 435 U.S. 349, 356 (1978). However, the Supreme Court has held that judges can be held liable for damages[5] in suits where actions which are administrative in nature are challenged. See Forrester v. White, 484 U.S. 219, 224-225 (1988). The Court in Forrester refused to attach judicial immunity to a judge's decision to fire a court employee, because the act was not judicial in nature. The Court held that truly judicial acts must be distinguished from the administrative, legislative or executive functions that judges may occasionally be assigned to perform. According to the Court, it is the nature of the function performed -- adjudication -- rather than the identity of the actor who performed it -- a judge -- that determines whether absolute immunity attaches to the act.[6] Any time an action taken by a judge is not an adjudication between parties, it is less likely that the act [will be found to be] a judicial one. Cameron v. Seitz, 38 F.3d 264, 271 (6th Cir. 1994).

---

[5] It is undisputed that judicial immunity does not extend to injunctive suits. Pulliam v. Allen, 466 U.S. 522 (1984); Livingston v. Guice, 1995 U.S. App. Lexis 39238 (copy attached.)

[6] Defendant Judge Berríos admits in his motion that "[a] judge loses protection of absolute immunity if his or her acts occur when there is clear absence of jurisdiction or when said act does not constitute a judicial act". (See docket 8- Judge Berríos Motion to Dismiss at page 8)(emphasis added).

In Morrison v. Lipscomb, 877 F.2d 463 (6th Cir. 1989), a Chief Judge's moratorium on writs of restitution during two holiday weeks was challenged by a landlord unable to redeem his property from a tenant for those two weeks. The Court of Appeals for the Sixth Circuit held that the moratorium, though performed by a judge, was not a judicial act entitled to absolute immunity. Id. at 466. The court noted that the act was not judicial in nature, because the legislature could have easily issued the moratorium as well. Id.

The Morrison Court's reasoning has a direct bearing on the captioned case. The processing of auxiliary aid requests can easily be, and often is, a function performed by court administrators rather than judges. The ADA requires that necessary auxiliary aids and services be provided by courts to all participants in the judicial system, including parties, witnesses, jurors, and spectators. 28 C.F.R. § 35.160; [TA manual cite]. In its enforcement of the ADA, the United States has seen that courts establish system-wide administrative policies and leave the task of processing individual requests to system-wide administrators rather than individual judges. This court should not dismiss Judge Berríos from the case before plaintiff has an opportunity to prove that the Judge acted

administratively, not judicially, when refusing plaintiff's auxiliary aids.

Judge Berríos does respond in his official capacity for any injunctive relief the plaintiff is requesting and also responds in his individual capacity to the extent the acts in controversy are administrative in nature and not protected by the absolute immunity doctrine.[7]

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests that this court deny defendants' motions to dismiss on the issues discussed in this memorandum.

I HEREBY CERTIFY that on this date a true copy of the foregoing has been mailed to **Alfredo Fernandez Martinez, Esq.**, Union Plaza Building, Suite 316, 416 Ponce De León Avenue, San Juan, Puerto Rico 00918; **Marie L. Cortés Cortés, Esq.**, Federal Litigation Division, Department of Justice, P.O. Box 9020192, San Juan, Puerto Rico 00902-0192; **Harry R. Segarra Arroyo, Esq.**, Flamingo Professional Building, Ponce De León Avenue, Suite 306, San Juan, Puerto Rico 00907; **José S. Dapena**

---

[7] Of course, Judge Jimenez may still be entitled to raise a "qualified immunity" defense. See Gorman v. Bartch, supra, at page 914-915 (8th Cir. 1998).

Thompson, Esq., #32 Isabel Street, Ponce, Puerto Rico 00733; and **Mr. Ramón Badillo, Santiago** 10918 Waterbury Court, Orlando, Fl. 32821.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 10th day of March, 1999.

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UNITED STATES ATTORNEY

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Attorneys

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR NELSON HEARING RE: EFFECTIVENESS

OF COUNSEL AND STRIPPING THE DEFENDANT OF COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. *Nelson v. State*, 274 So. 2d 256 (Fla. 4th D.C.A. 1973) The Court did not hold the proper inquiry prior to stripping Humnski of counsel endangering Huminski's Due Process rights.

Dated at Bonita Springs, Florida this 12th day of February, 2018.

-/S/- Scott Huminski

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Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 12th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

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MOTION TO DISMISS, NO CONTACT ALLOWED WITH SHERIFF MIKE SCOTT AND HIS STAFF

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The goal of this litigation is to force violation of the Sheriff's protective order which prevents any and all contact or communication with the sheriff and his staff. This is a corrupt motive.

Dated at Bonita Springs, Florida this 12th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

In The

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MOTION TO RE-ASSERT ALL PRO SE MOTIONS IN CIRCUIT COURT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The County Court stripped Huminski of counsel and has given Huminski the right to practice law. As the Circuit Court never was divested of jurisdiction in the criminal matter, Huminski's filings are proper as he has been allowed to practice law and the criminal charges are clearly pending in this case. The Circuit Court was never divested of jurisdiction.

The protective order of Sheriff Scott is properly attacked by Huminski as vague and vastly over-broad as it banishes him from the Lee court complex for life and abolishes his right to access to public safety services.

Instead of arresting Trevor Nelson for the interstate transmission of terrorist death threats, Huminski has had to turn to self-help including the Circuit Court lawsuit attempting to get information to seek a protective order. As the State seems to endorse the crimes of Trevor Nelson, who admitted he blamed Huminski for the suicide of his father to the Glendale AZ police, Huminski is doomed to self-help with

regard to Nelson and his courthouse banishment and denial of access to public safety services for life.

Dated at Bonita Springs, Florida this 12th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

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AND FOR THOSE SIMILARLY SITUATED,	)	
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE TO DISMISS, HUMINSKI IS INCOMPETENT TO CONDUCT HIS OWN DEFENSE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski is uneducated in the law as this court has already recognized. Although, Huminski is competent to stand trial, he is completely incompetent to conduct his own defense in a large part because of his disabilities. Attached is Huminski's ADA report.

Dated at Bonita Springs, Florida this 12th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

Rebecca Potter, LMHC
Certified Disability Advocate
Licensed Mental Health Counselor
Email: tlc211@gmail.com
Phone: (561)267-3831

REPORT AND REQUEST FOR ADAA ACCOMMODATION

NAME:	**SCOTT HUMINSKI**
CASE NO:	**17-ca-421**
	17-mm-815
	17-ca-943
DATE:	**JANUARY 26, 2018**

*******THIS REPORT CONTAINS PRIVATE MEDICAL INFORMATION AND MUST BE KEPT FROM PUBLIC VIEW.**

The REPORT is to request that Mr. Huminski, who suffers from disabilities which prohibit equal access to the Court. Mr. Huminski has asked this writer to prepare this report for the Court. It contains private protected health information and is provided to the Court to ensure the necessity of accommodations for Mr. Huminski, guaranteeing he has equal access to the Court and receives fair due process. The report/accommodation request is protected by the Health Insurance Portability and Accountability Act of 1996 (HIPPA) Pub law 104.191.

The Americans with Disabilities Act, 42 USC Section 12131 requires that states insure that disabled citizens are provided with necessary accommodations to services, programs and agencies. To guarantee equal access, these citizens must be provided with reasonable accommodations to protect the compromised citizen from discrimination. If the accommodations are not provided, the disabled citizen is at an unfair disadvantage.

This report has been compiled from personal, telephonic conferences, email correspondence, review of court records, legal documents, review of medical records, mental status examination, structured interviews and assessments.

The ADAA defines in part....

Section 35.150(b)(2)-- Safe harbor

The "program accessibility" requirement in regulation implementing title II of the Americans with Disabilities Act requires that each service, program, or activity, *when viewed in its entirety,* be readily accessible to and usable by individuals with disabilities. 28CFR 35.150(a)

35.178 State Immunity.

A state shall not be immune under the eleventh amendment to the Constitution of the United State from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

PRESENTING PROBLEM:

Mr. Huminski has been involved in protracted litigation. He suffers from a cognitive disability and has to represent himself in this litigation. He is struggling to communicate to the Court. The physical effects of his disability interfere with his ability to process information and to communicate when he is symptomatic. Mr. Huminski becomes symptomatic when he encounters the stress created by the Court when there is not appropriate accommodations. There is no effective cure to his disability and he must be allowed accommodations to reduce his physical symptom responding in order to have equal access to the Court and due process.

His diagnosis by Dr. Leonard Lado, MD, RPh, ABPN is as follows:

Axis I	**Post Traumatic Stress Disorder** **Generalized Anxiety Disorder** **Social Phobia**
Axis II	**Deferred**
Axis III	**Hip Replacement, both hips**
Axis IV	**legal and social stressors**
Axis V	**Due to complex legal stressors: 60**

The Court has not given Mr. Huminski reasonable accommodations to allow access to the Court and due process. He has struggled to communicate to the Court his needs and the Court has reacted to his inability to clearly communicate.

Due process is a right guaranteed by The US Constitution and a disabled litigant is unable to access the legal system without appropriate accommodations.

He requires the following accommodations:

1. The use of audio and/or videotaping of all proceedings.
a. He will not be able to affectively process information when he becomes symptomatic. The Court has not worked effectively with Mr. Huminski and has now become an additional source of fear which activates his adrenal responses, causing loss of cognition and communication. These services are therefore necessary to review material presented in court proceeding and meetings.

b. Disabled litigants are financially compromised and may not be able to access court transcripts due to the cost. Without a means to review the court proceedings at a later time when he is not symptomatic, he is not able to participate fully in the court process.

2. He must be given extended deadlines to participate in the Court.

a. He becomes symptomatic when he reviews court documents/correspondence and is unable to process the information while he is physically compromised.

b. He is pro se litigant and is not trained in court rules and deadlines. The Court has set deadlines for the attorney profession and not a cognitively disabled litigant. These deadlines must be extended to allow him to cognitively process and fairly engage in litigation.

c. Each time that Mr. Huminski must present to court, prepare for court or review court documents and correspondence, he becomes symptomatic.

d. Mr. Huminski will need additional time to make any decision regarding legal matters to ensure he is not symptomatic and able to cognitively understand the consequences of any decision and to ensure that he has a cognitive capacity to understand his decision.

3. All court correspondence and documents need to be accessible to Mr. Huminski. All Court staff must respond to his questions and requests.

a. Mr. Huminski needs to be provided timely service of court documents.

b. Mr. Huminski must have access to court personnel and receive return phone calls and communication from the court personnel.

c. Many of the court records have not been provided to Mr. Huminski and he is unable to access many of these records within the electronic files. He must be provided with all documents in order to fully engage in the legal process.

d. All court records need to be accurate. If a document is altered, or back dated, it is a violation of FSS 415.101-115. Court personnel need to ensure he is not exploited and the court record is not used as an means to deceive a vulnerable adult.

e. Mr. Huminski reports, the current docket is missing factual documentation, i.e. pleading cycles, motions, opposition to motions. The misrepresentation on a public document leads to confusion/ exploitation to the litigant. The record and docket must be factual to allow equal access to the Court. Non factual records will cause increase in adrenal responding and will affect the disabled litigant's ability to cognitively process and proceed with litigation.

4. Court hearings must be on different days.

a. Mr. Huminski needs time, several days, between any court hearing to heal from the physical symptoms which cause loss of effective cognition and communication.

b. He is unable to recover from the powerful physical nervous system responding that the court process creates. He requires several days between any court meeting or hearing. allowing his nervous system to recover. Without this accommodation, he does not have the cognitive capacity to participate in court proceedings.

5. .Sheriff Scott's staff will not be in attendance at any hearings and/or trials which involve the vulnerable disabled litigant. He requires a safe venue where the staff of Sheriff Scott will not be present and he will not be intimidated by all court personnel.

a. There is a protective order against Mr. Huminski and he is barred (for life) from contact and communication with the Sheriff or his staff (the Lee County Sheriffs and Sheriff Scott-- i.e. court security officers and bailiffs). Mr. Huminski is in fear of violating this protective order and he requires a safe venue to obtain due process.

b. Security personnel and bailiffs are members of the Lee County Sheriff Department. Mr. Huminski has metal hips which set off the security alarms and he would not be able to explain or communicate his medical condition to the personnel in the circuit court.

c. Without safe accommodation and a safe venue to conduct his hearing, he is being denied equal access to the Lee Court complex staffed by Sheriff Scott's deputies. It is not a safe venue and denial of equal access to the court and due process for Mr. Huminski if he is unable to communicate with court personnel.

d. He has been denied access to Lee County Sheriff and reports he is fearful of entering the courtroom without being arrested. He is unable to have equal access to the court and due process under a physical threat from the Sheriff's office.

e. Without this accommodation, Mr. Huminski is under threat of intimidation, direct violation of FSS 415.101(13). If this accommodation is not given, all court personnel are mandatory reporters and need to report this violation to the appropriate authorities.

6. Mr. Huminski requires competent legal representation.

a. Mr. Huminski suffers from a cognitive disorder. He is not able to control the neurological physical responding of his body.

b. He is unable to effectively communicate or process information while he is symptomatic.

c. He requires a legal representative to ensure he has equal access and due process in the court agencies.

d. He has been denied access to Lee County Sheriff and reports he is fearful of entering the courtroom without being arrested. He is unable to have equal access to the court and due process under a physical threat from the Sheriff's office. He requires competent legal representation to assure he has access to the Court and will not lose his freedom while in the legal process.

e. Mr. Huminski reports that he has not received vital court orders and orders have been changed. It is necessary for Mr. Huminski to have competent legal

representation to ensure court compliance to all rules and regulations. This accommodation will ensure equal access and due process to Mr. Huminski and will discourage any appearance of deception. Many pro se litigants do not have access to the internet and do not have the ability to access court records online. The electronic records systems are a "new" science and are not completely reliable.

CONCLUSION"

The following report is respectfully submitted to the Court to provide reasonable accommodations for Mr. Scott Huminski, a disabled citizen who qualifies for these accommodations under the Americans With Disabilities Act.

The State of Florida guarantees additional protection to persons because of disabilities. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. FSS 415.101-115.

The above FSS, defines "deception" as a misrepresentation or concealment of a material fact relating to services rendered.... The requested accommodations are to protect the litigant and the Court from any perception of neglect, abuse, exploitation, intimidation and denial of equal access to the court agencies.

** Please also note that the FSS 415-101-115 requires mandatory reporting from all court representatives/officers of any exploitation, neglect, abuse, or intimidation of a vulnerable adult.

_____

Rebecca Potter,LMHC

Submitted to the Twentieth Judicial Circuit In and For Lee County, Florida -- Civil/Criminal Division on this _____ day of _____ 2018.

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

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AND FOR THOSE SIMILARLY SITUATED,	)	
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MEMO IN SUPPORT OF MOTICE TO DISMISS, HUMINSKI IS INCOMPETENT TO CONDUCT HIS OWN DEFENSE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

Indiana v. Edwards, 128 S. Ct. 2379 (2008) See attached

Dated at Bonita Springs, Florida this 12th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

The Journal of the American Academy of Psychiatry and the Law

Other | ANALYSIS AND COMMENTARY

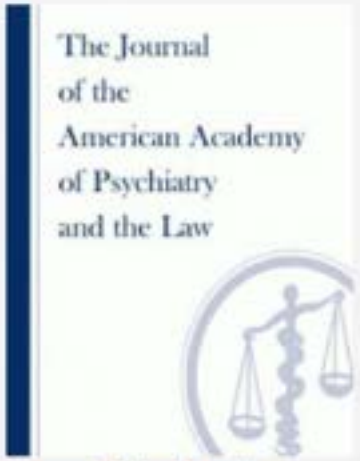
Pro Se Competence in the Aftermath of *Indiana v. Edwards*

Douglas R. Morris and Richard L. Frierson

Journal of the American Academy of Psychiatry and the Law Online December 2008, 36 (4) 551-557;

Abstract

The right to represent oneself at trial is well-established, but not absolute. Recently, in *Indiana v. Edwards*, the United States Supreme Court considered whether states may demand a higher standard of competence for criminal defendants seeking to represent themselves at trial than that necessary for standing trial with attorney representation. Ultimately, the Court ruled that the Constitution allows states to employ a higher competency standard for *pro se* defendants. In this analysis of the Court's decision, the authors describe the facts of this case, the legal precedents framing the issues facing the Court, and the Court's rationale for its opinion. The ruling is considered in light of available research involving *pro se*



Journal of the American Academy of Psychiatry and the Law Online

Vol. 36, Issue 4
December 2008

defendants and whether this ruling is consistent with professional guidelines related to forensic psychiatric practice. Implications of the decision for forensic clinicians and limitations of the decision are discussed.

Among guarantees for the right to a speedy and public trial, an impartial jury in the district of the offense, notice of charges, confrontation of witnesses, and compulsory processes for obtaining witnesses in one's favor, the Sixth Amendment guarantees a criminal defendant the assistance of counsel in making his defense. The United States Supreme Court has further recognized the importance of the assistance of counsel through its subsequent decisions identifying the ability to assist counsel as a necessary component of competence to stand trial[1,2] and ruling that "lawyers in criminal courts are necessities, not luxuries," obligating states to provide attorneys for indigent defendants.[3] However, for a variety of reasons, criminal defendants may seek to forgo the benefits of counsel and represent themselves during their proceedings.

The common adage that one who is his own lawyer has a fool for a client suggests that it is a mistake for a layperson to tread into the legal arena without the assistance of counsel. The Supreme Court has offered such cautions in past decisions[4,5] and noted, "Our experience has taught us that 'a pro se defense is usually a bad defense, particularly compared with a defense provided by an experienced criminal defense attorney' " (Ref. 6, p 161). To what degree does this conventional wisdom hold true?

In 1975, the U.S. Supreme Court recognized in *Faretta v. California*, "a near universal conviction, on the part of our people as well as our courts, that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself" (Ref. 4, p 817). The Court cited federal precedents

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recognizing a constitutional right to self-representation, the wording of the Sixth Amendment referring to the *assistance* of counsel (emphasis added), and common law and colonial traditions protecting a defendant's right to proceed without counsel were he voluntarily and intelligently to elect to do so. Mr. Faretta's technical legal knowledge was ruled to be irrelevant in the assessment of his knowing exercise of his right to defend himself, but courts should assure themselves that the waiver of counsel was knowing and voluntary, and a defendant should be made aware of the dangers and disadvantages of self-representation so that the record will establish that "he knows what he is doing and his choice is made with eyes open" (Ref. 6, citing *Adams v. U.S. ex rel. McCann*, 317 U.S., 269, 279 (1942)).

While Anthony Faretta's wisdom in seeking to proceed *pro se* was questioned, there were no specific concerns that he had an underlying mental illness or cognitive deficit that may have affected his decision or ability to represent himself. The Supreme Court dealt with this question in their 1993 *Godinez v. Moran*[7] decision.

Richard Moran, charged with three counts of murder and believed to be marginally competent to stand trial, sought to discharge his attorneys and plead guilty. The trial court found that he was "knowingly and intelligently" waiving counsel and that his waiver was "freely and voluntarily" given. His guilty plea was accepted, and he was sentenced to death. Later, following Mr. Moran's series of federal *habeas* appeals on the grounds that he was incompetent to represent himself, the Supreme Court ruled that the competency standard for pleading guilty or waiving the right to counsel is the same as that for competency to stand trial.[7] In the majority opinion, Justice Thomas wrote that the decision to plead guilty was no more complicated than the sum of the decisions one must make during a trial. The competence

necessary to waive counsel was specifically noted to be that required to waive the right, not that needed to represent oneself.

While the right to represent oneself at trial is well established, the Supreme Court has recognized limitations to this right. In *McKaskle v. Wiggins*, the Court ruled that judges may appoint standby counsel over a *pro se* defendant's objection.[8] In 2000, the Court unanimously ruled in *Martinez v. Court of Appeals of California* that there was no constitutional right to self-representation during appeal of a criminal conviction.[6] In this opinion, the Court also questioned whether the historical precedents of self-representation underlying the *Faretta* decision were as pertinent in the modern era when attorneys are more available and are standard participants in legal proceedings. Appellate decisions have further denied or limited defendants' requests to proceed *pro se* when defendants have disrupted proceedings, have appeared to move for self-representation as a delay tactic, have made a *pro se* request in an untimely manner, or have insisted on hybrid representation (defendant and attorney alternate in conducting different parts of the defense).[9,10]

Indiana v. Edwards

The question posed in *Indiana v. Edwards* is as follows: May a state adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?[11]

In 1999, Ahmad Edwards fired three shots at a department store officer who had seen him steal a pair of shoes. The officer was grazed and a bystander was struck in the ankle. An FBI agent in the vicinity pursued Mr. Edwards into a parking garage and shot him in the thigh after several requests that he

drop his weapon. Mr. Edwards was subsequently apprehended and charged with several crimes, including attempted murder.

After his arrest, Mr. Edwards received a diagnosis of schizophrenia, was found incompetent to stand trial, and was hospitalized at Indiana's forensic state hospital for competency restoration. His mental condition eventually became the subject of three competency proceedings and two self-representation hearings. Five years after the offense and following two hospitalizations for competency restoration, Mr. Edwards began trial for his criminal charges. He asked to represent himself at that time, but his request was denied because he claimed to need a continuance to proceed *pro se*. He was convicted of criminal recklessness and theft, but the jury could not reach a verdict on the charges of battery with a deadly weapon and attempted murder.

Indiana sought to retry Mr. Edwards on the remaining charges, and he again asked to represent himself. The trial judge denied his request, appointing counsel to represent him after ruling that Mr. Edwards remained competent to stand trial but was not competent to defend himself. A jury convicted him of the remaining charges, and he was sentenced to 30 years' imprisonment.

On appeal to Indiana's appellate court, Mr. Edwards claimed that his Sixth Amendment right to represent himself was improperly violated. The appellate court agreed with him, citing the *Faretta* decision. After Indiana appealed the ruling, the Indiana Supreme Court upheld the appellate court decision. Although this court sympathized with the trial court judge's reasoning, it believed it was bound by both *Faretta* and *Godinez*. The U.S. Supreme Court granted *certiorari* to consider whether the trial court was constitutionally required to allow Mr. Edwards to represent himself.

Before the Supreme Court hearing on this matter, 19 states, the federal government, the American Bar Association, the American Psychiatric Association (APA), the American Academy of Psychiatry and the Law (AAPL) and others filed *amicus* briefs supporting Indiana in seeking a higher standard of competence for self-representation than is necessary to stand trial with the assistance of counsel. In their brief, APA and AAPL argued that there was professional recognition that competency was not a unitary concept and that individuals may have some competencies but not others.[12] These organizations noted that more than competence to stand trial is needed when a defendant seeks to proceed *pro se*, because a defendant would be required to play a much larger role in this capacity. The brief further reasons that the *Faretta* right to self-representation is subject to being overridden to prevent a defendant's mental illness from destroying the reliability of the adversarial process and notes that public interest is strong in this context. APA and AAPL further argued that the *Godinez* decision was not applicable to the *Edwards* case, because *Godinez* did not involve contesting criminal charges against which the defendant would actively represent himself. Finally, APA and AAPL argued that the underlying capabilities relevant to self-representation were subject to professional evaluation and were extensions of capabilities already addressed in evaluations of competency to stand trial.

Supreme Court Decision

The Supreme Court ruled that the Constitution does not forbid states from insisting on representation by counsel for those competent enough to stand trial but who are impaired by severe mental illness to the point that they are not competent to conduct trial proceedings by themselves. The Court agreed

that its precedents framed, but did not answer the question of whether states may adopt a higher standard of competency to represent oneself than to stand trial with the assistance of counsel. In ruling that the Constitution allows states to set this higher standard, the Court cited its prior insistence in *Dusky v. U.S.*[1] and *Drope v. Missouri*[2] that, in addition to an understanding of the nature and objectives of the proceedings, sufficient ability to consult with and assist counsel is required for a defendant to be competent to stand trial. The majority believed that this requirement suggests that forgoing counsel presents different circumstances than does the mental competency determination for standing trial with counsel.

The Court reasoned that neither the *Faretta* nor the *Godinez* decisions defined the scope of the self-representation right. It noted that the conclusion in *Faretta* was, in part, based on previous state cases either consistent with or specifically adopting competency limitations on the self-representation right and that subsequent self-representation decisions "made clear that the right of self representation is not absolute" (Ref. 11, p 5). The *Godinez* decision did not deal with a defendant's ability to conduct a defense, only his competence to *waive the right*" (Ref. 11, p 7), and this case's holding that a state may permit a borderline competent defendant to proceed *pro se* did not answer whether a state "may *deny* a gray-area defendant the right to represent himself" (emphases in original; Ref. 11, p 8).

The Court recognized that mental illness varies in degree, can vary over time, and may affect an individual's functioning at different times in different ways, thus cautioning against a single competency standard for standing trial with the assistance of counsel and standing trial *pro se*. Finally, the majority believed that allowing a mentally incompetent defendant to represent himself, who hasn't adequate ability to do so, would not "affirm the dignity" of

the defendant, and could undermine the Constitution's overriding insistence that an individual receive a fair criminal trial. Trial judges were often believed to be best able to evaluate an individual's specific competencies and make more fine-tuned competency determinations. Thus, the Indiana Supreme Court decision was vacated and remanded.

Analysis

There are several reasons that a criminal defendant might choose to represent himself: little trust in the fairness of the legal system (belief that public defenders are overworked or concern that they are employees of the state), too much trust in the system (faith that their innocence will result in a not guilty verdict), a desire to promote a political agenda, a belief that one can explain one's defense better than an attorney, or the desire to avoid attorney fees (nonindigent defendants).[13] There are also potential strategic advantages to representing oneself, including the opportunity to speak to a jury without undergoing cross-examination and the possible belief that one is more apt to win a jury's sympathy without an attorney. Additional potential advantages of *pro se* representation include the defendant's ability to confront and cross-examine accusers directly, the potential to establish better rapport with jurors, and the possibility of receiving greater latitude in allowed behavior and questioning than would be given a defense attorney.[14]

Twenty years after *Faretta*, in his criticism of the "chaos," "mockery of justice," and "disrupt[ion of] courtroom procedure" he believed resulted from this decision, Decker[9] cited more subversive and misguided motives behind defendants' requests to proceed *pro se*. He argued, "Some defendants may proceed *pro se* to symbolize their lack of respect for any kind of authority, … or because they are unable to get their way and so represent themselves as

an act of defiance" (Ref. 9, p 485). He noted that *pro se* defendants may "have committed such heinous atrocities that life imprisonment or the death penalty is the most likely result," "may be cleverly manipulating the criminal justice system for their own secret agenda," or "to proceed *pro se* may be the means to a radical political scheme that the defendant wants to advance" (Ref. 9, pp 486–7). Decker also opined that "[w]hile some *pro se* defendants may not harbor a hidden motive behind the request, they are so totally out of touch with reality that they believe they can do it all themselves" (Ref. 9, p 487).

Research on *Pro Se* Defendants

While the legal literature contains numerous articles and appellate cases regarding criminal defendants who choose to represent themselves, there is little empirical research that might indicate whether these defendants are mentally ill or merely foolish.[10,15] Justice Breyer bemoaned this lack of empirical evidence in his *Martinez* concurrence, noting, "I have found no empirical research, however, that might help determine whether, in general, the right to represent oneself furthers, or inhibits, the Constitution's basic guarantee of fairness" (Ref. 6, Breyer J., concurring, p 164).

To better identify the reasons why individuals seek to discharge their attorneys, Miller and Kaplan[16] evaluated 100 consecutive individuals admitted to a Wisconsin forensic hospital for evaluation of or treatment to regain competence to stand trial (CST). Twenty-four of these defendants sought to discharge their attorneys, 11 expressed a desire to waive counsel and represent themselves, and the other 13 wished merely to fire their current attorneys, but not to represent themselves. All 11 of the individuals

who sought to represent themselves were found incompetent to stand trial (ICST). The authors noted, however, that the findings were based not on the defendants' desire to represent themselves, but on the individuals' multiple competency-related deficits. Of the 13 individuals who wished merely to fire their current attorneys, 11 were judged CST, a higher competency rate than that among both those seeking to waive counsel and those accepting their current attorneys. The reasons the individuals sought to waive counsel tended to be egocentric, such as "I'm better than any lawyer," and "It's my constitutional right." Individuals sought to fire their current attorneys for more self-protective and practical reasons, such as concerns that the defendant's attorney was not spending enough time with him, would not listen to the defendant or verify his story, or wanted the defendant to plead guilty or not guilty by reason of insanity against the defendant's wishes. Higher rates of competence in those defendants seeking a different attorney for practical or strategic reasons are consistent with a study of public defenders' perceptions of their clients' competence and participation in their defense, where the defenders reported that among their clients whose competence was doubted, the defendants were less involved in decision-making and, overall, were passive participants in their cases.[17]

Mossman and Dunseith[14] attempted to better characterize *pro se* defendants by surveying the print media portrayals from 1997 to 1999 of 49 *pro se* criminal defendants. Media accounts of these proceedings allowed the authors to characterize defendants' reasons for representing themselves into three broad categories: eccentric, the decision to proceed without representation was one of many behavioral or emotional peculiarities reported; ideological, the alleged offenses reflected a defendant's feelings about larger ideological concerns (e.g., Dr. Jack Kevorkian and his advocacy of assisted suicide); and personal, the defendants desired to exercise more

control over their cases. The authors noted that these *pro se* defendants had a broad range of educational backgrounds and when compared with the population at large, men, attorneys, persons with other advanced degrees, and unemployed persons were disproportionately represented in the sample. *Pro se* defendants also faced a wide range of charges, although homicide was the most common. Many of these individuals had reasonable motives for seeking self-representation, such as dissatisfaction with their attorneys or the belief that they could do just as well without representation. While print media accounts of these defendants often contained reports of the defendants' having significant mental problems or displaying bizarre courtroom behavior, in some cases, *pro se* defendants were skillful and successful in representing themselves.

A recent novel study sought to evaluate *pro se* defendants empirically to test the validity of the commonly held assumption that these defendants are either foolish or mentally ill.[15] The author evaluated existing federal and state databases, documenting trial outcomes and type of counsel at case termination, and created an additional database (the Federal Docketing Database) using data contained in federal court docket sheets maintained by clerks of the court for each federal jurisdiction. These docket sheets documented written filings and oral motions made in court, and, from them, data were collected on 208 federal defendants who chose *pro se* representation at case disposition.

The outcomes of *pro se* defendants in state courts were at least as good as those for represented defendants with 50 percent of *pro se* defendants convicted of a charge, compared with a 75 percent conviction rate for represented defendants. Eventual felony convictions for *pro se* defendants were also less frequent than for represented defendants (26% versus 63%).

While *pro se* federal felony defendants did not fare as well as their state court counterparts, acquittal rates for *pro se* and represented federal felony defendants were nearly identical (.64% and .61%, respectively). Thus, *pro se* federal felony defendants did not seem to fare significantly worse than did the represented defendants. Finally, based on federal docketing sheets and with a court-ordered competency evaluation used as a proxy for the presence of outward signs of mental illness, 80 percent of *pro se* defendants were not believed to have displayed signs of mental illness, as only 20 percent of this sample were ordered to undergo competency evaluation. Furthermore, dissatisfaction with current counsel appeared to be a prominent reason that defendants in the Federal Docketing Database chose self-representation, as more than half of them requested new counsel before invoking their right to self-representation.

These studies of *pro se* defendants, though few in number, indicate that many such defendants seek to represent themselves for legitimate reasons. Voicing dissatisfaction with counsel was a rationale for seeking to dismiss counsel noted in all of these studies, and voicing displeasure about counsel perceived as ineffective may be viewed as an appropriate self-protective behavior for defendants facing serious legal charges. These studies cast doubt on the view that all *pro se* defendants are either mentally ill or foolish.

Competency to Stand Trial *Pro Se*

While the Court held that states may demand a higher standard of competence for *pro se* defendants, it did not articulate specific standards that defendants must meet to represent themselves at trial. Because the Court was unsure how a standard based on a defendant's ability to communicate would work in practice, it also rejected Indiana's proposal that a

defendant not be allowed to proceed *pro se* if he cannot communicate effectively with a court or a jury. Although the Indiana Supreme Court had previously held that trial courts should generally hold a pretrial hearing to evaluate a defendant's competency to proceed *pro se* and to establish a record of the defendant's waiver of counsel,[18] it is unclear what standard would differentiate a defendant who is merely competent to stand trial from one who is competent both to stand trial and to represent himself.

As outlined in the "AAPL Practice Guideline for Evaluation of Competency to Stand Trial," some jurisdictions have set forth specific factors to consider when evaluating a proposed waiver of counsel.[10] The Rhode Island Supreme Court asks trial courts to consider a defendant's age, education, experience, background, behavior at the hearing, mental and physical health, contact with lawyers before the hearing, and knowledge of the proceedings and possible sentence that may be imposed.[19] That court also viewed as important considerations of whether mistreatment or coercion had taken place and whether the defendant may be attempting to manipulate the proceedings. The Wisconsin Court of Appeals ruled that trial courts should consider a defendant's education, literacy, fluency in English, and physical or psychological disabilities that may significantly affect communication.[20]

These considerations are consistent with inquiries into a defendant's background, mental health, knowledge of the nature of the proceedings against him, and ability to assist counsel that are routinely evaluated in CST examinations. As the APA and AAPL argued in their *amicus* brief, competency to proceed *pro se* evaluations based on these factors would extend the evaluation of defendant abilities commonly examined in CST evaluations.[12] With general criteria such as these, forensic evaluators could provide useful information to courts regarding defendants' abilities to

communicate, process information, maintain attention and concentration, and behave appropriately in the courtroom. However, in both *Faretta* and *Edwards*, the trial judges questioned the defendants extensively about specific legal points, including *voir dire* and evidentiary rules. Defendants who represent themselves face numerous potential challenges: jury selection, evidentiary pretrial hearings, opening and closing arguments, direct and cross examination of witnesses, and planning trial strategy. Knowledge of these points of law lie outside of the training and expertise of most forensic clinicians, and it is questionable whether forensic clinicians could ethically testify to such matters.

Many defendants choose to represent themselves because they view the public defender system as inadequate. Others have had prior undesired outcomes in criminal cases in which they had legal representation. In both situations, the motive for self-representation lies in the defendant's value judgment regarding legal representation. However, forensic evaluators may find it difficult at times to distinguish such value judgments from thinking rooted in mental illness, especially illnesses that are manifested by delusions and/or paranoia.

Protection of Defendants' Rights

Writing in dissent, Justice Scalia criticized the majority's decision because he believed it would permit "a State to substitute its own perception of fairness for the defendant's right to make his own case before the jury—a specific right long understood as essential to a fair trial" (Ref. 11, Scalia, J., dissenting, p 1). While the *Edwards* decision hinges on these competing constitutional principles—namely, the defendant's autonomy interest in

making his own defense against government charges versus the state's interest in maintaining the dignity and reliability of its proceedings—Justice Scalia raises an important question regarding whether Mr. Edwards was improperly denied the right to choose, rather than merely conduct, his defense. Mr. Edwards sought to claim self-defense. His counsel preferred a defense focusing on lack of intent. With counsel appointed to speak for him, Mr. Edwards was denied not only the opportunity to conduct his defense, but also the autonomy to decide what basic type of defense would be used to answer the charges against him. As the *Faretta* Court cautioned, "An unwanted counsel 'represents' the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense" (Ref. 4, p 821). Forcing a criminal defendant to accept his attorney's defense strategy also appears inconsistent with the past precedent that a trial judge may not force an insanity defense on a competent defendant who intelligently and voluntarily elects to decline this defense.[21]

Professional Guidelines

The "AAPL Ethics Guidelines for the Practice of Forensic Psychiatry" note that forensic psychiatrists are "called upon to practice in a manner that balances competing duties to the individual and to society" (Ref. 22, p 1). In doing so, they are to be "bound by underlying ethical principles of respect for persons, honesty, justice, and social responsibility" (Ref. 22, p 1). *Edwards v. Indiana* involves all of these principles. The central conflict in this case weighed whether respecting a defendant's right to proceed *pro se* might render his trial unfair, usurping a basic principle of justice. Likewise, it

is foreseeable that courts will increasingly call on forensic clinicians as they attempt to discern whether a given defendant has the capacity to proceed *pro se*. In lending their expertise to courts in these matters, psychiatrists may demonstrate social responsibility by objectively aiding the courts' search for justice while educating courts on an individual's unique abilities and limitations. In doing so, clinicians must be cautious and claim expertise "only in areas of actual knowledge, skills, training, and experience" (Ref. 22, p 4) as an individual's competency to proceed *pro se* may hinge on legal abilities or points of law outside the scope of experience of most forensic psychiatrists.

American Academy of Psychiatry and the Law

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In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO SANCTION SHERIFF SCOTT FOR *per se* DIRECT CRIMINAL CONTEMPT OF JUDGE McHUGH

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because at hearing on 2/13/2018, Sheriff Scott lied that his protective order had exclusions for attendance at Court and to allow Huminski to report crimes. Major lies and deceptions. Contempt in the presence of the Chief Judge reveals a complete lack of respect for the Court system and Huminski, seeks $100,000 dollars for this attack upon the court system and the administration of justice with bold faced lies. Attached hereto is the protective order of Sheriff Scott.

Dated at Bonita Springs, Florida this 11th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 11th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

SCOTT HUMINSKI,

Plaintiff,

v. CASE NO. 17-CA-000421

TOWN OF GILBERT, AZ, et al.

Defendants.
_____/

ORDER ON DEFENDANT MIKE SCOTT'S MOTION TO DISMISS AND MOTION FOR PROTECTIVE ORDER

This matter having come before the Court on the following motions from Defendant Mike Scott, as Sheriff of Lee County (i) Motion to Dismiss, and (ii) Motion to prohibit Plaintiff from Directly Contacting, Communicating With, or Otherwise Serving Materials Directly upon Sheriff Scott, his Agents Servants and Employees, and the Court having reviewed the file, considered the arguments of all parties present, and being otherwise advised of the governing law, it is

ORDERED AND ADJUDGED as follows:

1. Defendant Mike Scott's Motion to prohibit Plaintiff from Directly Contacting, Communicating With, or Otherwise Serving Materials Directly upon Sheriff Scott, his Agents Servants and Employees is GRANTED.

2. Plaintiff shall directed all pertinent correspondence, communications, and/or pleadings involving this case solely to counsel for Defendant Mike Scott.

3. Defendant Mike Scott's Motion to Dismiss is GRANTED without prejudice.

4. Plaintiff's complaint fails to comply with Fla. R. Civ. P. 1.110(b)(2), which requires that a pleading "contain . . . a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." Id.

5. Plaintiff's complaint starts with a nearly incoherent diatribe of facts regarding death threats and a purported murder. Sprinkled amongst these paragraphs are references to public records requests, physical abuse, and alleged "human rights deprivations." These confusing and conclusory allegations fall far below Florida's pleading requirements. See Horowitz v. Laske, 855 So. 2d 169, 173 (Fla. 5th DCA 2003) ("[A]t the outset of a suit, litigants must state their pleadings with sufficient particularity for a defense to be prepared." (citation omitted)).

6. As pled, the complaint deprives Defendant Mike Scott of an opportunity to properly answer or prepare a defense. See Dawson v. Blue Cross Ass'n, 293 So. 2d 90, 92 (Fla. 1st DCA 1974) ("The allegations must, of course, be sufficient to inform the defendant of the nature of the cause against him.").

7. The Court further finds that Plaintiff is a vexatious litigant under Fla. Stat. § 68.093 based upon the numerous frivolous lawsuits Plaintiff has filed in Florida and elsewhere, of which this Court took judicial Notice, and the Court therefore orders that any further pleading Plaintiff files in this case shall be signed by a licensed attorney representing the Plaintiff.

8. As part of the Court's ruling that Plaintiff is a vexatious litigant, it takes judicial notice of the numerous court cases cited in the parties' papers, which include: Huminski v. State of Vermont, Md. Fla. Case No. 2:13-cv-692; Huminski v. State of Vermont, S.D. Fla. Case No. 1:13-cv-23099; and Huminski v. Connecticut, D. Conn. Case No. 3:14-cv-1390.

9. Plaintiff is granted 45 days to file an amended complaint in this matter, and consistent with the Court's rule that he is a vexatious litigant, any amended complaint must be signed by a licensed attorney.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 19 day of April, 2017.

The Honorable Elizabeth K. Krier
Circuit Court Judge

Copies furnished to:

All counsel of record

Scott Huminski
24544 Kingfish Street
Bonita Springs, FL 34134
Pro se Plaintiff
s_huminski@live.com

4/19/17

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTION TO DISMISS

THIS CAUSE comes before the Court on Defendant's "Motion To Dismiss, Huminski Is Incompetent To Conduct His Own Defense," filed February 13, 2018, citing an ADA report prepared by a "mental health counselor." The allegations in the report do not demonstrate that Defendant is incompetent pursuant to Fla. Stat. §916.12. Defendant has made no allegations which would cause this Court to have a reasonable belief he may be incompetent. It is

ORDERED AND ADJUDGED that Defendant's motion for dismiss is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 8th day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION FOR SANCTIONS

THIS CAUSE comes before the Court on Defendant's "Motion To Sanction Phoenix, et. al." filed January 29, 2018. The defendants in the civil case are not a party to this criminal case, and no testimony or evidence related to the defendants in the civil case would be relevant in this case as to the issue of whether Defendant violated orders issued by the civil Circuit court.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion for sanctions is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS FOR SUBPOENA

THIS CAUSE comes before the Court on Defendant's "Motion To Dismiss – Clerk Refuses To Provide Huminski With Stamped Subpoenas For Service"and "Notice Of Subpoena Request To Clerk Re: U.S. Postal Investigator, Marc Cavic" filed February 2, 2018. A motion to the Court is not the proper procedure to obtain or issue a subpoena. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions for subpoena are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTIONS REGARDING CIRCUIT COURT CASE

THIS CAUSE comes before the Court on Defendant's "Motion To Vacate All Acts And Orders Of The Circuit Court" filed January 28, 2018, "Motion For Circuit Court To Assert Jurisdiction In Criminal Matter" filed January 28, 2018, and "Motion To Hold In Abeyance Or Dismiss While Chief Judge McHugh Decides On The Validity Of Sheriff Scott's Protective Order" filed February 2, 2018. This Court has no jurisdiction to issue orders effecting the civil Circuit court case. Defendant has demonstrated no legal entitlement to a stay. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: L Balmores
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING SUCCESSIVE MOTIONS

THIS CAUSE comes before the Court on Defendant's "Notice Of Affirmative Defense At Trial Sixth Amendment Assistance Of Counsel," "Notice Of Affirmative Defense At Trial Sixth Amendment Compulsory Process Clause," "Motion To Vacate Sheriff Scott Protective Order," and "Brady Motion To Disclose" all filed February 6, 2018. The Court has already ruled on the issues raised in these motions, and the motions are successive. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION TO DISQUALIFY JUDGE

THIS CAUSE comes before the Court on Defendant's "Motion To Disqualify Judge Adams For Disdain Of The Federal And State Constitutions And FL Law" filed February 11, 2018, which the Court will treat as a successive motion to disqualify. Having reviewed the motion in accordance with Fla. R. Jud. Admin. 2.330, it is

ORDERED AND ADJUDGED that Defendant's motion to disqualify is DENIED, as legally insufficient.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished to: **Scott Huminski**, 24544 Kingfish St., Bonita Springs, FL 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL 33902-0399; and **Court Administration (XIV)**, 1700 Monroe St., Ft. Myers, FL 33901; this 13th day of February, 2018.

LINDA DOGGETT
CLERK OF COURT

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS FOR SUBPOENA

THIS CAUSE comes before the Court on Defendant's "Motion for Sixth Amendment Compulsory Process Of David Carroll For Appearance At Trial" and "Omnibus Motion For Order Mandating Sixth Amendment Compulsory Process & Confrontation Clauses," filed February 9, 2018. A motion to the Court is not the proper procedure to obtain or issue a subpoena. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions for subpoena are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION TO DISMISS REGARDING JURY TRIAL

THIS CAUSE comes before the Court on Defendant's "Motion To Dismiss, Judge Failed To Certify That No Jail Time Would Be Imposed When Defendant Was Stripped Of Counsel" filed February 11, 2018. Defendant's citation to the criminal rule and case law do not apply to a criminal contempt proceeding. A defendant is entitled to a jury trial in an indirect criminal contempt proceeding only when a sentence of more than six months of imprisonment will be imposed. Wells v. State, 654 So. 2d 146 (Fla. 3d DCA 1995). Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion to dismiss is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION TO DISMISS REGARDING PROTECTIVE ORDERS

THIS CAUSE comes before the Court on Defendant's "Motion To Dismiss – State Will Be Unable To Prove Receipt Of Protective Orders Thus No Mens Rea" filed February 9, 2018. This issue is one to be raised at trial, and is not the basis for a motion to dismiss.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion to dismiss is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING SUCCESSIVE MOTIONS TO APPOINT COUNSEL

THIS CAUSE comes before the Court on Defendant's "Motion To Vacate Stripping Huminski Of Counsel," "Motion To Dismiss or in the alternative, For Appointment Of Counsel Under The ADA," filed February 11, 2018, "Motion For Appointment Of Counsel," filed February 9, 2018, and "Corrected Motion For Appointment Of Counsel" filed February 10, 2018. The Court has already ruled on the issues raised in these motions, and the motions are successive. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS

THIS CAUSE comes before the Court on Defendant's "Motion To Re-Assert All Pro Se Motions In The Circuit Court," "Motion To Classify Contempt As Civil," "Motion For Nelson Hearing," "Motion To Dismiss, No Contact Allowed With Sheriff Mike Scott And His Staff," and "Notice Of ADA Claims" filed February 12, 2018. Defendant has presented no legal authority demonstrating his entitlement to the relief requested, and the motions are unauthorized.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS FOR SUBPOENA

THIS CAUSE comes before the Court on Defendant's email with the subject line "Please issue subpoenas case 17-mm-815 to Mr. Cavic" filed February 6, 2018 and "Motion For The Issuance And Service Of Subpoenas Under Sixth Amendment Compulsory Process Clause And ADA" filed February 7, 2018. The email is not a proper motion, and no relief can be granted based on an email. A motion to the Court is not the proper procedure to obtain or issue a subpoena. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions for subpoena are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTIONS

THIS CAUSE comes before the Court on Defendant's "Brady Motion To Disclose" filed February 6, 2018, email with the subject line "Huminski referral to mental health court supplement to referral" filed February 6, 2018, "Brady Motion To Disclose Specifics Related To The Service Of Scott Huminski With Protective Orders" filed February 6, 2018, "Motion To Update Online Court Access" filed February 7, 2018, "Notice That Huminski Was Never Served The Protective Orders In These Cases" filed February 7, 2018, and "Motion To Reverse Findings/Dicta" filed February 7, 2018. Defendant has presented no legal authority demonstrating his entitlement to the relief requested, and the motions are unauthorized.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS FOR SUBPOENA

THIS CAUSE comes before the Court on Defendant's "Re-Newed Motion For the Issuance And Service Of Subpoenas Under Sixth Amendment Compulsory Process Clause" and supplement filed February 6, 2018. A motion to the Court is not the proper procedure to obtain or issue a subpoena. To the extent Defendant requests witnesses "bring all materials related to the death threats Huminski has been receiving for 3 years," the Court notes that any such evidence would not be relevant in this contempt proceeding, as the only issue for trial is whether or not Defendant violated the Circuit Court's orders. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions for subpoena are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING SUCCESSIVE MOTIONS

THIS CAUSE comes before the Court on Defendant's "Notice Of Withdrawal Of Waivers Of Arraignment" filed January 27, 2018, "Motion To Sanction Kathleen Smith And Ita Neymotin" filed January 27, 2018, "Motion To Dismiss – Arraignment Was Held When Case Was Removed To Federal Court" filed January 27, 2018, "Motion To Dismiss – Protective Orders Were Authored With Conflicts Of Interest" filed January 27, 2018, "Motion To Reconsider Change Of Venue" filed January 27, 2018, "Motion To Vacate Protective Orders" filed January 28, 2018, "Motion To Remand Criminal Case To Circuit Court Where It Began" filed January 28, 2018, "Motion For Change Of Venue Circuit Court" filed January 28, 2018, "Motion To Dismiss, In The Alternative, To Change Venue" filed January 28, 2018, "Motion To Dismiss Criminal Contempt Charges" filed January 28, 2018, "Motion To Compel State's Attorney To Appear" filed January 29, 2018, "Motion To Dismiss Criminal Case" filed January 29, 2018, "Motion To Vacate Order Striking Settlement Demand" filed February 2, 2018, "Motion To Dismiss – Denial Of Bill Of Particulars Is Unlawful" filed February 2, 2018, "Motion To Dismiss – Defendant Is Not Competent To Act As His Own Attorney" filed February 3, 2018, and "Motion To Dismiss – Judge Adams Sabotaged The Right To Counsel" filed February 3, 2018.

The Court has already ruled on the issues raised in these motions, and the motions are

successive.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS FOR ADA ACCOMMODATIONS

THIS CAUSE comes before the Court on Defendant's "Motion For ADA Accommodations" filed January 2, 2018, "Motion For Order To Show Cause" filed January 29, 2018, "Motion To Appoint Criminal Defense Counsel As An ADA Accommodation" filed January 29, 2018, "Motion To Vacate The Protective Order Of Sheriff Mike Scott As An ADA Accommodation" filed January 29, 2018, "Motion To Vacate/Strike Hearing Of 2/13 Pursuant To The ADA" filed January 29, 2018, "Motion To Advance Without Hearing After ADA Motion Pleading Cycle Completes" filed January 29, 2018, "Motion To Correct Docket – Judge Gentile Never Precided [sic] Over Any Hearings In This Matter – As An ADA Accommodation" filed January 30, 2018, and "Motion For Clerk To Supply Transcript of 6/29 Hearing As An ADA Accommodation" filed January 30, 2018.

Under Title II of the ADA, courts cannot administratively grant requests for accommodations which would impact court procedures within a specific case. A court is not required to provide legal counsel or advice under Title II. Defendant has demonstrated no entitlement to the relief requested in the above motions.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 12 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 13th day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	02/13/2018	

Attorney: AT Huminski, Scott A

APPEARANCE
____ Failed to Appear
Y Present w/o Attorney
____ Present w/ Attorney
____ Present by Attorney
____ Present w/ Interpreter
____ Interpreter Services Requested
Language _____
____ Victim/Other _____

PLEA
____ Guilty
____ Not Guilty
____ Nolo Contender
____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
____ Withheld by Judge
____ Adjudicated Guilty
____ Withheld by Clerk
_____

VERDICT
____ Guilty by Judge
____ Not Guilty by Judge
____ Guilty by Jury
____ Not Guilty by Jury
____ Mistrial
_____

DISPOSITION
____ Acquitted
____ Nolle Pros
____ No Information
____ Dismissed
____ Adm.Dismissed
____ Merge & Dismiss

SENTENCE
____ Probation Reporting _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ One Time Cost $_____ Waive COS $_____
____ Report to Probation Today or Upon Release Within _____
____ Probation may terminate early when conditions are met
____ May Transfer Probation to _____
____ May Report to Probation and/or Instruct by Mail
____ Ignition Interlock Device _____ DD/MM/YY
____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
____ Statutory Exception to Vehicle Impound
____ Does Not Own Vehicle ____ Shared Vehicle
____ Other_____
____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
____ No Possession or Consumption of Alcohol or Illicit Substances
____ DUI School - Follow recommendations/Phase ____ I ____ II
____ School to Determine which Phase
____ Sign up w/in _____ days
____ Traffic School 4 Hr / 8Hr / 12 Hr
____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
____ Sign up for Batterer's Intervention Program w/in 30 Days
____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
____ Attend & Complete Program_____
____ DNA Testing Collected _____ in Court _____ at LCJ
____ Other Testing _____ HIV _____ STD _____
____ Defendant Advised of Habitual and/or Felony Status

____ Jail Time _____ DD/MM/YY
____ Consecutive/Concurrent with _____
____ Weekend Time Fri 6pm to Sun 6pm
____ Beginning _____
____ Day Work Program* _____ Days
___ Minimum ___ day(s) a week ___ consecutive weeks
____ Credit Time Served _____DD/MM/YY
____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
____ Defendant Remanded _____ Sentence Suspended
____ DL Suspended/Revoked _____ DD/MM/YY
____ Spec. Conditions - Drive for Work/Business purposes
____ Show Valid Driver's License within _____
____ Produced Valid Driver's License in Court
____ Community Service _____ Hours and/or Pay $_____
____ Must complete _____ hours of community service before buyout
____ Show Proof of Com. Service to Clerk w/in _____
____ Stay Away from arrest location _____
____ No Contact with victim _____
____ State Orally Amends Charge in Open Court
____ Formal Filing of Information is Waived
____ Information Filed in Open Court
____ Successfully Completed Pretrial Diversion Program
____ Judicial Warning
____ Defendant Accepted DV Diversion
____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to 3.6.18

MANDATORY COURT APPEARANCE

For _____ AR _____ DS Y TR _____ DA _____ DD _____ DT _____ RH

Time 8:30 (AM) / PM Court Room 2A Y Speedy Trial Waived ____ Speedy Trial Tolled

(JRA) ____ HAS ____ MEG ____ ZMG ____ DSG ____ JMG ____ TPP ____ ABH ____

____ Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** _____

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO SET NELSON – FARETTA HEARING WITH COMPULSATORY PROCESS

NOW COMES, Scott Huminski ("Huminski"), and, moves as above pursuant to *Nelson v. State*, 274 So. 2d 256 (Fla. 4th D.C.A. 1973) and Faretta v. California,422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975) The Court did not hold the proper inquiry prior to stripping Humnski of counsel violating Huminski's Due Process and Sixth Amendment rights and did not afford Huminski the ability to prove that he was receiving ineffective assistance of counsel prior to the Court stripping him of counsel instead of appointing competent counsel.

Huminski demands compulsory process to assure attendance of his former counsel at this hearing and to bring Huminski's defense file sans Huminski's filings for review. His former counsel are Ita Neymotion, Kathleen Smith, Kevin Sarlo and Zachary Miller. Compulsory process is mandated by the Sixth Amendment, Florida Constitution Section 16(a) and Fla.R. Crim.P. 3.840(d). The filing of 3 waivers of arraignment, in itself is an indication that counsel did not know what was going on and that Huminski had a defense that the arraignment was void ab initio as the

matter was removed to the United States Bankruptcy Court and his counsel sabotaged that defense. Sabotage is worse than ineffective assistance and is not just ineffective, it is incompetence.

See Vines v. Vines, 357 So. 2d 243 at 246 - Fla: Dist. Court of Appeals, 2nd Dist. 1978

> *"These scant proceedings show that the trial judge made no effort whatsoever to comply with the provisions of Fla.R. Crim.P. 3.830 or 3.840 governing the procedure to be followed by a judge with respect to direct or indirect criminal contempt.[1] 246*246 Because of the foregoing, we find no need to recite in detail the respects in which the trial judge failed to conform to either rule; suffice it to say that the rules were apparently ignored in their entirety. It is, of course, necessary that a judge follow these rules in all matters involving criminal contempt. Pugliese v. Pugliese, 347 So.2d 422 (Fla. 1977)."*
>
> *Id. At 424*
>
> *"If the purpose of the proceedings is to coerce action or non-action by a party, the order of contempt is characterized as civil. This type contempt proceeding is ordinarily instituted by one of the parties to the litigation who seeks to coerce another party to perform or cease performing an act. The order of contempt is entered by the court for the private benefit of the offended party. Such orders, although imposing a jail sentence, classically provide for termination of the contemnor's sentence upon purging himself of the contempt. The sentence is usually indefinite and not for a fixed term. Consequently, it is said that the contemnor "carries the key to his cell in his own pocket." See Demetree v. State,supra; Faircloth v. Faircloth, 321 So.2d 87 (Fla.1st DCA 1975); and In re S.L.T.,180 So.2d 374 (Fla.2d DCA 1965)"*

Dated at Bonita Springs, Florida this 12th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.comnelson

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 12th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – JUDGE MCHUGH DECLARED THE PROTECTIVE ORDERS VOID AT HEARING ON 2/13/2018

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, this matter is moot. In the alternative, a hearing date should be scheduled for an evidentiary Nelson/Faretta hearing.

Dated at Bonita Springs, Florida this 14th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 14th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – DENIAL OF RIGHT TO A NELSON AND FARETTA HEARING AND TO COMPLUSORY PROCESS AT THAT HEARING AND AT TRIAL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The judge intends to violate every sixth amendment right the defendant has. Huminski needs to hold the state to its proof beyond a reasonable doubt that Huminski received the protective orders, that Huminski not Trevor Nelson or anyone else authored alleged criminal documents, that the alleged documents where received by the so-called victims, that this Court has no jurisdiction, that Huminski was stripped of counsel illegally and that Huminski suffered from ineffective assistance of counsel and no confrontation of his accusers and no compulsory process. These are not the limits of Huminski's defenses, thus, prior to trial an order forbidding the right to compulsory process is for one purpose only, to secure a wrongful conviction and railroad the defendant.

Huminski's defense is turning to a strong Sixth Amendment defense. He was stripped of counsel without a chance to disprove the prejudicial opinion of the court

that Huminski's attorneys were effective based upon zero evidence and silencing Huminski's wish to examine his former counsel to expose an incompetence. On its face the three waivers of arraignment sabotaged a strong defense of Huminski and incompetence is presumed. Judge Krier needs to be examined as to her reason for recusal and her contempt of the U.S. Bankruptcy Court caught on audio and contradicted by the efiling system which lists removal to federal court as a frequently filed motion.

Huminski's omnibus, motion for compulsory process will form the basis of Huminski's defemse. As Judge Krier, the Sheriff and two scribd employees are Huminski's accusers, he needs to comfront them. Judge Krier will not be able to identify the show cause order as one she authored, it is a modified copy, she also is an accuser. Huminski will challenge the validity of the protective orders at trial and determine if any forgery or doctoring was performed on the court orders.

Compulsory process is generally automatic as the public defended and conflict counsel take case of service at an expense charged to the State. An indigent pro se plaintiff that was illegally striped of counsel without the aforementioned hearings still retains the right to compulsory process which is usually transparent to the Judge and this Judge has never interfered with process of the public defender or conflict counsel. Judge McHugh will be called to identify the document filed in his court that divested him of jurisdiction.

Dated at Bonita Springs, Florida this 14th day of February, 2018.
-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street

Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 14th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STAY TO ALLOW THE CIRCUIT COURT TO DETERMINE JURISDICTION AS TO THE CONTEMPT CHARGES

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Nothing on the docket indicates that the Circuit Court was divested of jurisdiction of the contempt. Two motions have been filed with the Circuit Court regarding contempt jurisdiction and an immediate appeal will be filed, if necessary along with motions to stay in both the Circuit Court and the 2 DCA.

Dated at Bonita Springs, Florida this 14th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 14th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

SECOND BRADY MOTION FOR STATE TO DIVULGE NAMES OF THE PERSON WHO DOCTORED JUDGE KRIER'S ORDER OF 6/5/2017AND FILED IT ON 6/30

NOW COMES, Scott Huminski ("Huminski"), and, moves as above and for the name of the person who discovered a copy of Judge Krier's 8/1/2017 recusal order on 9/22 and filed it back dated to 8/14/2017. This corruption is the only crime related to this case.

Dated at Bonita Springs, Florida this 15th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STRIKE ALL DISCOVERY FILINGS OF THE STATE FOR THE SAME REASON HUMINSKI IS PREVENTED FROM PRESENTING WITNESSES AT TRIAL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The Court seeks to deny all defense witnesses, to level the playing field all State witnesses should be disallowed as well. This is a show trial with the only goal is to railroad the defendant. Huminski's omnibus witnesses are essential to his defense which he Court does not know of yet, but, continues to attempt to silence Huminski's witnesses, like Sheriff Scott, the author of the protective order. However the Court welcomes a deputy that Huminski does not know and who has zero relationship to this case.

This Court has no business excluding State or defense witnesses despite its tainted view of this case.

Dated at Bonita Springs, Florida this 15th day of February, 2018.

-/S/- Scott Huminski

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(239) 300-6656
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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA
vs.
SCOTT ALAN HUMINSKI

CASE NO: 17-MM-000815 - (JRA) (AWK)

ANSWER TO DEMAND FOR DISCOVERY (AMENDED)

COMES NOW THE STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, pursuant to Fla. R. Crim. P. 3.220, and hereby furnishes to the Defendant amended names or addresses:

+ — indicates victim
* — indicates witness is under the age of 18

Brenda Horton, c/o Lee County Clerk of Courts, Lee County Justice Center, 1700 Monroe Street, Fort Myers, FL 33901 Category A

Also including all previously submitted information on original Witness List.

STEPHEN B. RUSSELL
STATE ATTORNEY

BY: /s/ Anthony W. Kunasek
Anthony W. Kunasek
Assistant State Attorney
Florida Bar Number: 0026999
2000 Main Street, 6th Floor
Fort Myers, FL 33901
eService: ServiceSAO-LEE@sao.cjis20.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to Zachary Miller, Attorney for the Defense, Office of Criminal Conflict & Civil Regional Couns, 2101 McGregor Boulevard, Suite 101, Fort Myers, FL 33901, by United States Mail/Hand Delivery/Electronic Transmission this February 15, 2018.

/s/ Anthony W. Kunasek
Anthony W. Kunasek
Assistant State Attorney

AWK:bh

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

SECOND MOTION FOR NELSON – FARETTA HEARING AND FOR A COMULSORY PROCESS ORDER IN SUPPORT OF HEARING

NOW COMES, Scott Huminski[1] ("Huminski"), and, moves as above and requests a compulsory process order of Ms Smith, Ms Neymotin, Kevin Sarlo and Zachary Miller. Compulsory Process is mandated under both the State and Federal Constiutions and under Rule 3.840(d) as is representation by counsel who both recused because written motions for a conflict of interest granted by the Court with zero inquiry.

Huminski never asked for self-representation and is incompetent to conduct a criminal trial.

Dated at Bonita Springs, Florida this 16th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

_____

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – DEFENDANT IS INCOMPETENT TO CONDUCT A TRIAL
HUMINSKI ADMITS HE IS UNABLE TO PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL AS HE HAS NEVER DONE SO AND HAS NO LAW DEGREE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski never waived the right to counsel. The Court will not allow a Nelson/Faretta hearing. The Court refuses to allow Huminski to call defense witnesses with compulsory process and allows the State to call anyone it wishes. The Court refuses to allow Huminski confrontation of his accusers, Sheriff Scott and Scribd employees and others.

The State has listed a LCSO witness that has no relation to this matter, however, protects Sheriff Scott, the author of the alleged protective order from testifiying. Huminski's disabilities prevent him from preventing a competent defense. He is competent to stand trial and incompetent to conduct legal defense proceedings. Aside from his disabilities, Huminski has no clue as to how to present a defense at trial, issue objections, move for mistrial or any other skills requiring a law degree.

Attached hereto is a copy of Huminski's ADA report clearly indicating the inability to conduct a legal defense at trial.

Dated at Bonita Springs, Florida this 16th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

Rebecca Potter, LMHC
Certified Disability Advocate
Licensed Mental Health Counselor
Email: tlc211@gmail.com
Phone: (561)267-3831

REPORT AND REQUEST FOR ADAA ACCOMMODATION

NAME:	**SCOTT HUMINSKI**
CASE NO:	**17-ca-421**
	17-mm-815
	17-ca-943
DATE:	**JANUARY 26, 2018**

*******THIS REPORT CONTAINS PRIVATE MEDICAL INFORMATION AND MUST BE KEPT FROM PUBLIC VIEW.**

The REPORT is to request that Mr. Huminski, who suffers from disabilities which prohibit equal access to the Court. Mr. Huminski has asked this writer to prepare this report for the Court. It contains private protected health information and is provided to the Court to ensure the necessity of accommodations for Mr. Huminski, guaranteeing he has equal access to the Court and receives fair due process. The report/accommodation request is protected by the Health Insurance Portability and Accountability Act of 1996 (HIPPA) Pub law 104.191.

The Americans with Disabilities Act, 42 USC Section 12131 requires that states insure that disabled citizens are provided with necessary accommodations to services, programs and agencies. To guarantee equal access, these citizens must be provided with reasonable accommodations to protect the compromised citizen from discrimination. If the accommodations are not provided, the disabled citizen is at an unfair disadvantage.

This report has been compiled from personal, telephonic conferences, email correspondence, review of court records, legal documents, review of medical records, mental status examination, structured interviews and assessments.

The ADAA defines in part....

Section 35.150(b)(2)-- Safe harbor

The "program accessibility" requirement in regulation implementing title II of the Americans with Disabilities Act requires that each service, program, or activity, *when viewed in its entirety,* be readily accessible to and usable by individuals with disabilities. 28CFR 35.150(a)

35.178 State Immunity.

A state shall not be immune under the eleventh amendment to the Constitution of the United State from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

PRESENTING PROBLEM:

Mr. Huminski has been involved in protracted litigation. He suffers from a cognitive disability and has to represent himself in this litigation. He is struggling to communicate to the Court. The physical effects of his disability interfere with his ability to process information and to communicate when he is symptomatic. Mr. Huminski becomes symptomatic when he encounters the stress created by the Court when there is not appropriate accommodations. There is no effective cure to his disability and he must be allowed accommodations to reduce his physical symptom responding in order to have equal access to the Court and due process.

His diagnosis by Dr. Leonard Lado, MD, RPh, ABPN is as follows:

Axis I	**Post Traumatic Stress Disorder** **Generalized Anxiety Disorder** **Social Phobia**
Axis II	**Deferred**
Axis III	**Hip Replacement, both hips**
Axis IV	**legal and social stressors**
Axis V	**Due to complex legal stressors: 60**

The Court has not given Mr. Huminski reasonable accommodations to allow access to the Court and due process. He has struggled to communicate to the Court his needs and the Court has reacted to his inability to clearly communicate.

Due process is a right guaranteed by The US Constitution and a disabled litigant is unable to access the legal system without appropriate accommodations.

He requires the following accommodations:

1. The use of audio and/or videotaping of all proceedings.
a. He will not be able to affectively process information when he becomes symptomatic. The Court has not worked effectively with Mr. Huminski and has now become an additional source of fear which activates his adrenal responses, causing loss of cognition and communication. These services are therefore necessary to review material presented in court proceeding and meetings.

b. Disabled litigants are financially compromised and may not be able to access court transcripts due to the cost. Without a means to review the court proceedings at a later time when he is not symptomatic, he is not able to participate fully in the court process.

2. He must be given extended deadlines to participate in the Court.

a. He becomes symptomatic when he reviews court documents/correspondence and is unable to process the information while he is physically compromised.

b. He is pro se litigant and is not trained in court rules and deadlines. The Court has set deadlines for the attorney profession and not a cognitively disabled litigant. These deadlines must be extended to allow him to cognitively process and fairly engage in litigation.

c. Each time that Mr. Huminski must present to court, prepare for court or review court documents and correspondence, he becomes symptomatic.

d. Mr. Huminski will need additional time to make any decision regarding legal matters to ensure he is not symptomatic and able to cognitively understand the consequences of any decision and to ensure that he has a cognitive capacity to understand his decision.

3. All court correspondence and documents need to be accessible to Mr. Huminski. All Court staff must respond to his questions and requests.

a. Mr. Huminski needs to be provided timely service of court documents.

b. Mr. Huminski must have access to court personnel and receive return phone calls and communication from the court personnel.

c. Many of the court records have not been provided to Mr. Huminski and he is unable to access many of these records within the electronic files. He must be provided with all documents in order to fully engage in the legal process.

d. All court records need to be accurate. If a document is altered, or back dated, it is a violation of FSS 415.101-115. Court personnel need to ensure he is not exploited and the court record is not used as an means to deceive a vulnerable adult.

e. Mr. Huminski reports, the current docket is missing factual documentation, i.e. pleading cycles, motions, opposition to motions. The misrepresentation on a public document leads to confusion/ exploitation to the litigant. The record and docket must be factual to allow equal access to the Court. Non factual records will cause increase in adrenal responding and will affect the disabled litigant's ability to cognitively process and proceed with litigation.

4. Court hearings must be on different days.

a. Mr. Huminski needs time, several days, between any court hearing to heal from the physical symptoms which cause loss of effective cognition and communication.

b. He is unable to recover from the powerful physical nervous system responding that the court process creates. He requires several days between any court meeting or hearing. allowing his nervous system to recover. Without this accommodation, he does not have the cognitive capacity to participate in court proceedings.

5. .Sheriff Scott's staff will not be in attendance at any hearings and/or trials which involve the vulnerable disabled litigant. He requires a safe venue where the staff of Sheriff Scott will not be present and he will not be intimidated by all court personnel.

a. There is a protective order against Mr. Huminski and he is barred (for life) from contact and communication with the Sheriff or his staff (the Lee County Sheriffs and Sheriff Scott-- i.e. court security officers and bailiffs). Mr. Huminski is in fear of violating this protective order and he requires a safe venue to obtain due process.

b. Security personnel and bailiffs are members of the Lee County Sheriff Department. Mr. Huminski has metal hips which set off the security alarms and he would not be able to explain or communicate his medical condition to the personnel in the circuit court.

c. Without safe accommodation and a safe venue to conduct his hearing, he is being denied equal access to the Lee Court complex staffed by Sheriff Scott's deputies. It is not a safe venue and denial of equal access to the court and due process for Mr. Huminski if he is unable to communicate with court personnel.

d. He has been denied access to Lee County Sheriff and reports he is fearful of entering the courtroom without being arrested. He is unable to have equal access to the court and due process under a physical threat from the Sheriff's office.

e. Without this accommodation, Mr. Huminski is under threat of intimidation, direct violation of FSS 415.101(13). If this accommodation is not given, all court personnel are mandatory reporters and need to report this violation to the appropriate authorities.

6. Mr. Huminski requires competent legal representation.

a. Mr. Huminski suffers from a cognitive disorder. He is not able to control the neurological physical responding of his body.

b. He is unable to effectively communicate or process information while he is symptomatic.

c. He requires a legal representative to ensure he has equal access and due process in the court agencies.

d. He has been denied access to Lee County Sheriff and reports he is fearful of entering the courtroom without being arrested. He is unable to have equal access to the court and due process under a physical threat from the Sheriff's office. He requires competent legal representation to assure he has access to the Court and will not lose his freedom while in the legal process.

e. Mr. Huminski reports that he has not received vital court orders and orders have been changed. It is necessary for Mr. Huminski to have competent legal

representation to ensure court compliance to all rules and regulations. This accommodation will ensure equal access and due process to Mr. Huminski and will discourage any appearance of deception. Many pro se litigants do not have access to the internet and do not have the ability to access court records online. The electronic records systems are a "new" science and are not completely reliable.

CONCLUSION"

The following report is respectfully submitted to the Court to provide reasonable accommodations for Mr. Scott Huminski, a disabled citizen who qualifies for these accommodations under the Americans With Disabilities Act.

The State of Florida guarantees additional protection to persons because of disabilities. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. FSS 415.101-115.

The above FSS, defines "deception" as a misrepresentation or concealment of a material fact relating to services rendered.... The requested accommodations are to protect the litigant and the Court from any perception of neglect, abuse, exploitation, intimidation and denial of equal access to the court agencies.

** Please also note that the FSS 415-101-115 requires mandatory reporting from all court representatives/officers of any exploitation, neglect, abuse, or intimidation of a vulnerable adult.

_____

Rebecca Potter,LMHC

Submitted to the Twentieth Judicial Circuit In and For Lee County, Florida -- Civil/Criminal Division on this _____ day of _____ 2018.

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

SECOND MOTION FOR COMPETENCY EXAM RE: COMPETENCE TO CONDUCT HIS OWN DEFENSE, HUMINSKI IS COMPETENT TO STAND TRIAL WITH COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Huminski demands a compulsory process order to mandate the attendance at competency hearing of Dr. Leornad Lado, M.D, 9776 Bonita Beach Road SE, 202b, Bonita Springs, FL 34135. and Rebecca Potter, LMHC, 3600 Forest Hill Boulevard Suite 4, West Palm Beach, FL 33406, Palm Springs, FL 33406. Huminski never waived counsel.

Dated at Bonita Springs, Florida this 16th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

In The

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MOTION IN LIEU OF ISSUANCE OF A COURT-ORDERED SUBPOENA, DEFENDANT MOVES FOR ISSUANCE OF BENCH WARRANTS TO MANDATE THE ATTENDENCE OF DEFENSE WITNESSES FOR COMPULSIVE PROCESS at TRIAL AND AT COMPETENCY HEARING

NOW COMES, Scott Huminski ("Huminski"), and, moves as above concerning the witnesses detailed in his omnibus motion for compulsory process. As this Court has refused to issue court orders compliant with compulsory, a bench warrant mandating attendance at trial is the next alternative for Huminski's confrontation of his accusers and to seek examination of other witnesses at trial. Court ordered subpoenas and contempt powers are the traditional way to seek witness attendance which this court has rejected leaving bench warrants as the final alternative.

Usually this issue is transparent as the Public Defender or conflict counsel bill the State for these services. Huminski has no such assistance and is forced to request bench warrants. There exists no procedure in the Florida Courts for compulsive process of the indigent, there are procedures for represented individuals. The Court referring to these procedures is misguided.

The STATE PAYS FOR COMPULSORY PROCESS IN INDIGENT CASES, NOT THE DEFENDANT.

Dated at Bonita Springs, Florida this 16th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

In The

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SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – NO PROCEDURE EXISTS IN FLORIDA TO ASSURE COMPULSORY PROCESS FOR NON-REPRESENTED INDIGENTS

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The Court's statements that there is a procedure to have the State pay for and accomplish compulsory process is false. A procedure exists for those represented by the Pulbic Defender and Conflict Counsel only. In the alternative, the public defender should be appointed to take care of compulsory process alone, without any duties to defend.

In another topic the State has to prove mens rea, which is where the death threats come into play. If Huminski's sole intent was to protect his wife and himself from the death threats of Trevor Nelson, criminal intent would be absent and self-defense, duress, necessity and unclean hands on the part of the Court and Sheriff would be factors related to a defense.

Dated at Bonita Springs, Florida this 16th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

In The

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MOTION TO CERTIFY ISSUE FOR APPEAL(for Circuit Court only)
*****Courtesy Copy filed in County Court*****

NOW COMES, Scott Huminski ("Huminski"), and, moves the Circuit Court to certify the issue that the criminal contempt case was never divested of jurisdiction from the Circuit Court. An issue that was posed, but not answered by this Court. As Huminski's captioning has posed, he has no idea of which Court is prosecuting him for contempt ahpnd must call Judge McHugh as a witness in County Court because Huminski does not know what pleading or paper divested jurisdiction from the Circuit Court. Perhaps it is not on the record

Dated at Bonita Springs, Florida this 16th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – JUDGE HAS ADMITTED MENS REA ABOLISHED FOR THIS CASE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because the Judge has admitted that a requisite element of a crime mens rea has been abolished from this case. Any acts of Huminski over the past three years are/were as a result of his attempt to protect his wife and himself from death threat and murder planned by Trevor Nelson of Scottsdale Arizona in retaliation for the suicide of his father, Justin M. Nelson. Trevor Nelson seeks to inflict violence. This is an incredibly complex case and involves more than the County Court believes, that seems hell bent on obtaining.a wrongfull conviction upon Huminski and any conduct of Huminski was in self defense, duress, necessity, in pari delicto or unclean hands

Dated at Bonita Springs, Florida this 16th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

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DEFENDANTS.	)	AKA: STATE V.HUMINSKI

NOTICE OF APPEAL, CIRCUIT COURT 17-CA-421, CRIMINAL CONTEMPT – and NOTICE OF INDIGENT CRIMINAL DEFENDANT and MOTION FOR ASSIGNMENT TO LEE PUBLIC DEFENDER'S OFFICE

NOW COMES, Scott Huminski ("Huminski") and notices of his appeal from the orders of the Circuit Court. Criminal contempt charges were properly before the Circuit Court and jurisdiction of the criminal contempt was never divested from the Circuit Court.

Huminski seeks an order remanding the criminal case for further proceedings as a primary goal of the justice system is finality and he is confronted with zero finality concerning this criminal case. In the alternative, this Court should order a Writ of Prohibition concerning the criminal contempt charges which have been abandoned by the Circuit Court and the State.

The public defender has already been assigned to this matter but had a conflict of interest. There will exist no conflict concerning this very narrowly tailored issue on appeal.

Dated at Bonita Springs on this 18th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

245444 Kingfish Street, Bonita Springs, FL 34134

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-/s/- Scott Huminski

Scott Huminski

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DEFENDANTS.	)	AKA: STATE V.HUMINSKI

NOTICE OF PTSD DEFENSE EXPERTS

NOW COMES, Scott Huminski ("Huminski") and notices of the following experts who will testify that Huminski is incompetent to conduct his own defense at trial and the impact of PTSD on mens rea,

Rebecca Potter, LMHC

Dr. L. Lado, M.D.

Dr. Seth Silvermane, M.D.

Dr. Karin Huffer, Phd.

Dated at Bonita Springs on this 18th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

245444 Kingfish Street, Bonita Springs, FL 34134

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-/s/- Scott Huminski

Scott Huminski

Filing # 68113596 E-Filed 02/18/2018 05:45:39 PM

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- Civil/Criminal Division -

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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V.HUMINSKI

NOTICE OF APPEAL, CIRCUIT COURT 17-CA-421, CRIMINAL CONTEMPT – and NOTICE OF INDIGENT CRIMINAL DEFENDANT and MOTION FOR ASSIGNMENT TO LEE PUBLIC DEFENDER'S OFFICE

NOW COMES, Scott Huminski ("Huminski") and notices of his appeal from the orders of the Circuit Court. Criminal contempt charges were properly before the Circuit Court and jurisdiction of the criminal contempt was never divested from the Circuit Court.

Huminski seeks an order remanding the criminal case for further proceedings as a primary goal of the justice system is finality and he is confronted with zero finality concerning this criminal case. In the alternative, this Court should order a Writ of Prohibition concerning the criminal contempt charges which have been abandoned by the Circuit Court and the State.

The public defender has already been assigned to this matter but had a conflict of interest. There will exist no conflict concerning this very narrowly tailored issue on appeal.

Dated at Bonita Springs on this 18th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

245444 Kingfish Street, Bonita Springs, FL 34134

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 18th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF INDIGENCY CONCERNING THE CRIMINAL CONTEMPT SET FORTH IN 17-CA-421 and regarding the very insufficiently plead CRIMINAL CONTEMPT IN 17-MM-815

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Case 17-ca-421 is the only valid case with proper charging information and some service that the State is relying upon. The collateral case has no valid charging information ant absolutely no proof of service. See attached indigency form.

Dated at Bonita Springs, Florida this 21st day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.comnelson

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 21st day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT/COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA vs. Scott Humiski
Defendant/Minor Child

For Both Contempt Cases

CASE NO. 17-CA-421
17-MM-815
Both Criminal Contempt

APPLICATION FOR CRIMINAL INDIGENT STATUS

X I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER OR

___ I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENCE STATUS FOR COSTS

Notice to Applicant: The provision of a public defender/court appointed lawyer and costs/due process services are not free. A judgment and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for whom you are making this application. There is a $50.00 fee for each application filed. If the application fee is not paid to the Clerk of the Court within 7 days, it will be added to any costs that may be assessed against you at the conclusion of this case. If you are a parent/guardian making this affidavit on behalf of a minor or tax-dependent adult, the information contained in this application must include your income and assets.

1. **I have** 0 **dependents.** *(Do not include children not living at home and do not include a working spouse or yourself.)*

2. **I have a take home income of $** 0 paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly ( ) yearly
*(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, **minus** deductions required by law and other court ordered support payments)*

3. **I have other income** paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly (X) yearly: *(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No.")*

Social Security benefits	Yes $ 1481	No	Veterans' benefit	Yes $	No
Unemployment compensation	Yes $	No	Child support or other regular support from family members/spouse	Yes $	No
Union funds	Yes $	No	Rental income	Yes $	No
Workers compensation	Yes $	No	Dividends or interest	Yes $	No
Retirement/pensions	Yes $	No	Other kinds of income not on the list	Yes $	No
Trusts or gifts	Yes $	No			

4. **I have other assets:** *(Circle "yes" and fill in the value of the property, otherwise circle "No")*

Cash	Yes $ 200	No	Savings	Yes $	No
Bank account(s)	Yes $ 160	No	Stocks/bonds	Yes $	No
Certificates of deposit or money market accounts	Yes $	No	*Equity in homestead real estate	Yes $	No
*Equity in motor vehicles	Yes $ 1200	No	*Equity in non-homestead real estate	Yes $	No
*Equity in boats/other tangible property	Yes $ 50	No			

*include expectancy of an interest in such property

5. **I have a total amount of liabilities and debts in the amount of $** 49500

6. **I receive:** *(Circle "Yes" or "No.")*
Temporary Assistance for Needy Families-Cash Assistance ...Yes No
Poverty- related veterans' benefits.....Yes No
Supplemental Security Income (SSI).....Yes No

7. **I have been released on bail in the amount of $** 0 **Cash** ____ **Surety** ____ **Posted by**: Self ____ Family ____ Other ____

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 27.52, F.S., commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. **I attest that the information I have provided on this Application is true and accurate.**

2/21/18
Signed on

12-1-59
Date of Birth

4327
Last four digits of Driver's License or ID Number

Signature of applicant for indigent status
Print full legal name: Scott A Humiski
Address: 2544 Kinkaid
City, State, Zip: Cape Coral FL 33904
Phone number: 239 300 6156
E-mail Address: S-Humiski@live.com

CLERK DETERMINATION

_____ Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent

_____ The Public Defender is hereby appointed to the case listed above until relieved by the Court.

Dated this ___day of_____, 20__

LINDA DOGGETT
Clerk of the Circuit Court, by Deputy Clerk

This form was completed with the assistance of:

Clerk/Deputy Clerk/Other authorized person

APPLICANTS FOUND NOT INDIGENT MAY SEEK REVIEW BY ASKING FOR A HEARING TIME. Sign here if you want the judge to review the clerk's decision of not indigent.

Florida Supreme Court Form 3.984, Updated 11/23/15

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V.HUMINSKI

AMENDDED NOTICE OF APPEAL, COUNTY COURT 17-MM-815 – REFUSAL TO DISQUALITYand NOTICE OF INDIGENT CRIMINAL DEFENDANT and MOTION FOR ASSIGNMENT TO LEE PUBLIC DEFENDER'S OFFICE

NOW COMES, Scott Huminski ("Huminski") and notices of his appeal from the orders of the County Court's refusal to disqualify when the Court has admitted it will obstruct Huminski's showing of a lack of mens rea via the 3 years of death threats targeting him and his family. Huminski's conduct has been governed by the death threats from Trevor Nelson which began 3 years ago. The Court proclaimed that it will not allow Huminski to include U.S. Postal Inspector Mark Cavic as a mens rea witness.

Criminal contempt charges were properly before the Circuit Court and jurisdiction of the criminal contempt was never divested from the Circuit Court. A non-original hand-modified illegitimate show cause order missing 117 pages of content is insufficient to support a County Court jurisdiction. The valid show cause order exists in Circuit Court, however, Huminski was only served with 3 of the 120 pages of that document.

Denial of the disabled Huminski's various motions for ADA accommodations and for appointment of an ADA advocate and counsel constitute a per se showing of bigotry and bias against disabled Americans worthy of recusal and possible removal from the bench. This is not the old south where discrimination was the rule.

Huminski seeks an order remanding the criminal case for further proceedings with instructions to disqualify and to dismiss the case as a primary goal of the justice system is finality and Huminski is confronted with zero finality concerning this criminal case. Under contract law, any factors that are ambiguous are resolved in favor of the party the did not draft the document, Huminski. In the alternative, this Court should order a Writ of Prohibition concerning the criminal contempt charges which have been abandoned by the Circuit Court and the State with a very defective version of the case allegedly existing in County Court.

The public defender has already been assigned to this matter but had a conflict of interest. There will exist no conflict concerning this very narrowly tailored issue on appeal.

Dated at Bonita Springs on this 18th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

245444 Kingfish Street, Bonita Springs, FL 34134

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 18th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V.HUMINSKI

MEMORANDUM OF LAW IN SUPPORT OF APPEAL / WRIT OF PROHIBITION CONCERNING COUNTY COURT'S FAILURE TO RECUSE

NOW COMES, Scott Huminski ("Huminski") and sets forth the below in support of his appeal.

975 So.2d 1073 (2008)

Thomas C. SUTTON, et al., Petitioners,
v.
STATE of Florida, Respondent.

No. SC06-1000.

Supreme Court of Florida.

January 31, 2008.

1074*1074 Michael Ufferman of the Law Firm of Michael Ufferman, P.A., Tallahassee, FL, for Petitioners.

Bill McCollum, Attorney General, Robert R. Wheeler, Trisha Meggs Pate, and Bryan Jordan, Assistant Attorneys General, Tallahassee, FL, for Respondent.

LEWIS, C.J.

We have for review *Sutton v. State*, No. 1D05-5922 (Fla. 1st DCA Apr. 20, 2006), which expressly and directly conflicts with the decisions in *Housing Authority of Tampa v. Burton*, 873 So.2d 356 (Fla. 2d DCA 2004), *Pinfield v. State*, 710 So.2d 201 (Fla. 5th DCA 1998), and *Guzzetta v. Hamrick*, 656 So.2d 1327 (Fla. 5th DCA 1995). We have jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution.[1] We approve the decision 1075*1075 under review for the reasons provided in our analysis.

FACTUAL AND PROCEDURAL HISTORY

The instant action arises from the order issued in *Sutton*. In the county court, the petitioners[2] filed identical motions to disqualify a trial court judge based upon the alleged bias of the judge toward the petitioners' attorneys, which was alleged to have been demonstrated during a single hearing. The trial judge was presiding over the misdemeanor criminal cases of the petitioners. The motions to disqualify were denied. The petitioners subsequently requested that the circuit court issue writs of prohibition in each case to direct the county court judge to take no further action. The circuit court denied the petitions for writs of prohibition. The petitioners then immediately filed notices of appeal to seek review of the circuit court's denial of the petitions for writs of prohibition, rather than waiting until the conclusion of their trials (for the misdemeanor criminal charges) to seek review. On December 22, 2005, the First District issued an order to show cause why the notices of appeal should not be considered petitions to invoke certiorari jurisdiction. After the parties presented their respective positions, the First District issued multiple orders on April 20, 2006, with regard to this matter. The order in *Sutton* contained only the following language:[3]

Upon the Court's own motion, the appeal is hereby redesignated as invoking the Court's certiorari jurisdiction. *See* State v. Frazee, 617 So.2d 350 (Fla. 4th DCA 1993) (reviewing circuit court order on petition for writ of prohibition by petition for writ of certiorari); *but see*1076*1076 *Guzzetta v. Hamrick*, 656 So.2d 1327 (Fla. 5th DCA 1995)(reviewing circuit court order denying prohibition by appeal). The petitioner shall have 20 days from the date of this order within which to file a petition which conforms to the requirements of Florida Rule of Appellate Procedure 9.100. The petition shall be accompanied by an appendix which complies with Florida Rule of Appellate Procedure 9.220.

No. 1D05-5922. On April 24, 2006, the First District consolidated the eleven cases "for all appellate purposes." On June 16, 2006, the First District denied the petitioners' motion to certify conflict and motion to conduct a rehearing en banc with regard to the issue of whether an order denying a petition for writ of prohibition is reviewable by appeal or certiorari. On January 19, 2007, this Court accepted discretionary jurisdiction to resolve the conflict between the instant case and *Burton, Pinfield,* and *Guzzetta.*

ANALYSIS

The single issue under review is whether a circuit court's order on a petition for writ of prohibition in this context is reviewable by appeal or certiorari. This is a pure question of law that is subject to de novo review. *See* *Engle v. Liggett Group, Inc.*,945 So.2d 1246, 1259 (Fla. 2006) (concluding that a de novo standard of review is proper for a question of law) (citing *D'Angelo v. Fitzmaurice*, 863 So.2d 311, 314 (Fla.2003)); *see also* *Smith v. Smith*, 902 So.2d 859, 861 (Fla. 1st DCA 2005)("The standard of review regarding the trial court's construction of the rules is *de novo.*").

Petition for Writ of Prohibition in Circuit Court

As a preliminary matter, it should be noted that the petitioners properly utilized petitions for writs of prohibition to seek review in the circuit court of the denials of the motions to disqualify the trial judge. In Florida, circuit courts have original jurisdiction under certain circumstances to do the following:

(3) Original Jurisdiction. Circuit courts may issue writs of mandamus, prohibition, quo warranto, common law certiorari, and habeas corpus, and all writs necessary to the complete exercise of the courts' jurisdiction.

Fla. R.App. P. 9.030(c)(3) (footnote omitted). A writ of prohibition is available only where there is no other "appropriate and adequate legal remedy." *S. Records & Tape Serv. v. Goldman*, 502 So.2d 413, 414 (Fla.1986) (citing *English v. McCrary*,348 So.2d 293 (Fla.1977)). "[A] defendant cannot resort to a writ of prohibition where he [or she] has an adequate remedy via appeal." *Sparkman v. McClure*, 498 So.2d 892, 895 (Fla.1986) (citing *State ex rel. Turner v. Earle*, 295 So.2d 609 (Fla. 1974); *State ex rel. Schwarz v. Heffernan*, 142 Fla. 137, 194 So. 313 (1940); *Benton v. Circuit Court for Second Judicial Circuit*, 382 So.2d 753 (Fla. 1st DCA 1980)).

Furthermore, notwithstanding that prohibition is generally available only to prevent courts from acting when there is no jurisdiction to act (rather than to prevent an erroneous exercise of jurisdiction), *see Goldman*, 502 So.2d at 414 (citing *English*,348 So.2d 293), prohibition is also clearly recognized as the proper avenue for immediate review of whether a motion to disqualify a trial judge has been correctly denied. *See Bundy v. Rudd*, 366 So.2d 440, 442 (Fla.1978) ("Once a basis for disqualification has been established, prohibition is both an appropriate and necessary remedy.") (citing *Brown v. Rowe*, 96 Fla. 289, 118 So. 9 (Fla.1928)); *Dep't of Pub. Safety v. Koonce*, 147 Fla. 616, 3 So.2d 331, 334 (1941); *State ex rel. Bank of America* 1077*1077 *v. Rowe*, 96 Fla. 277, 118 So. 5, 8 (1928) ("Prohibition may be an appropriate remedy to prevent judicial action, when the judge is disqualified, as well as when the judge is without jurisdiction in the cause.").

In the instant case, the petitioners' decision to petition for writs of prohibition to review the denial of the motions to disqualify was the correct avenue of review for multiple reasons. This Court has recognized that prohibition is a proper remedy to seek review of the denial of a motion to disqualify, and we have implicitly recognized in this context that the petitioners would not have an adequate remedy through direct appeal at the conclusion of the trial. The need for immediate review after a denial of a motion to disqualify arises due to practical considerations. On a motion to disqualify, the same judge who allegedly is biased is the one who rules on the motion. Thus, this ruling should be immediately reviewable because it could be erroneously denied in numerous situations in which a trial by that biased judge should have been avoided altogether. Moreover, the petitioners here did not have an adequate alternative remedy for immediate review with an appeal because they could not seek an interlocutory appeal under these circumstances. Under Florida Rule of Appellate Procedure 9.030, nonfinal orders of the county courts may be reviewed on appeal by a *district court of appeal* only if the county courts have certified them to be of great public importance. *See* Fla. R.App. P. 9.030(b)(4)(B). Additionally, the petitioners could not seek an interlocutory appeal in the *circuit court.* Under Florida Rule of Appellate Procedure 9.140, which governs appeal proceedings in criminal cases, only the *state* is allowed to appeal to the circuit court the nonfinal orders issued in the county court. *See* Fla. R.App. P. 9.140(c)(2). Here, it was the *defendants* who sought review of the trial court's order of denial.

Petition for Writ of Prohibition Serves Similar Function as a Direct Appeal

Immediate review of a county court ruling in a petition for writ of prohibition to the circuit court serves a function similar to a direct appeal, but is discretionary in nature. Notwithstanding that a petition for writ of prohibition is technically an original proceeding, *see* Fla. R.App. P. 9.030(b)(3), its function is to seek review of the action by the lower court to ensure that the lower court is not acting without jurisdiction or has not erroneously denied a motion to disqualify. *See State ex rel. Associated Utils. Corp. v. Chillingworth*, 132 Fla. 587, 181 So. 346, 348 (1938)("Proceedings by mandamus, quo warranto, habeas corpus, certiorari and prohibition are original in their nature, though they may be invoked to perform functions that are *appellate* in their nature." (emphasis supplied)). Here, a remedy in an interlocutory appeal was not available, but a remedy in

prohibition was available as an alternative for such circumstances even though it is discretionary in nature and not a matter of right.

As the petitioners correctly argue, a petition for writ of prohibition is technically sought to *prevent* the judge from proceeding further in the action, rather than to *correct* legal error, due to its status as an original proceeding. *See* Sparkman, 498 So.2d at 895. Although this distinction is correct in a formalistic sense, from a functional perspective, this writ provides the opportunity for review of the allegedly erroneous action of the lower court. Thus, although the mechanics may differ, the two avenues of review by direct appeal (either an interlocutory appeal or an appeal at the trial's conclusion) and discretionary review by petition for writ of prohibition may 1078*1078 operate in functionally the same manner if review is accepted.

The fact that a writ of prohibition is a discretionary writ, *see* Topps v. State, 865 So.2d 1253, 1257 (Fla.2004) ("Since the nature of an extraordinary writ is not of absolute right, the granting of such writ lies within the discretion of the court."), does not render it completely distinguishable from a direct appeal, which is guaranteed as a matter of right in this context. *See Amendments to the Fla. Rules of Appellate Procedure,* 685 So.2d 773, 774 (Fla. 1996) (discussing that article V, section 4(b)(1) of the Florida Constitution should be interpreted as providing a constitutional protection of the right to appeal). When a court acts without jurisdiction or the trial judge has erroneously denied a motion to disqualify, the higher court reviews the allegations and has discretion with regard to whether to grant the writ, which necessitates consideration of the substance of the petition. The discretion exercised when a petition for writ of prohibition is denied in this context is analogous to consideration of issues on an appeal before a decision is rendered. Moreover, if the circuit court in the instant case had determined that the motion for disqualification was erroneously denied by the county court, the circuit court would have granted the writ of prohibition in its review capacity. *See* Bundy,366 So.2d at 442 ("Once a basis for disqualification has been established, prohibition is both an appropriate and *necessary* remedy." (emphasis supplied)) (citing Brown, 96 Fla. 289, 118 So. 9). Thus, notwithstanding that a writ of prohibition is a discretionary writ, we conclude that review through a petition for writ of prohibition in this context and review in direct appeal are functionally the same with regard to the next step, if any, in a review process.

No matter what serves as the underlying basis for the petition for writ of prohibition, the court ruling on that petition in this context will undertake a similar analysis to that conducted by a court on direct appeal. This clearly supports that an order on a petition for writ of prohibition is reviewable by certiorari. *See* Haines City Cmty. Dev. v. Heggs, 658 So.2d 523, 526 n. 4, 530 (Fla.1995) ("There are societal interests in ending litigation within a reasonable length of time and eliminating the amount of judicial labors involved in multiple appeals. . . . As a case travels up the judicial ladder, review should consistently become narrower, not broader.").

Sheley v. Florida Parole Commission

Additionally, this Court's decision in Sheley v. Florida Parole Commission, 720 So.2d 216 (Fla.1998) ("*Sheley II*"), clearly supports the principle of law that a circuit court's order on a petition for writ of prohibition in this context is reviewable by certiorari. In that case, the defendant sought a writ of mandamus in the circuit court seeking to challenge an order of the Parole Commission with regard to a presumptive parole release date. *See id.* at 217. The circuit court denied relief in the petition for writ of mandamus. *See id.* The defendant sought review of the denial of the petition for writ of mandamus in an appeal to the First District. *See id.*The First District treated the appeal as a petition for writ of certiorari and denied relief. *See id.* This Court approved the decision of the First District. *See id.* at 216. In so holding, this Court quoted with approval the following from the decision of the First

District in *Sheley v. Florida Parole Commission*, 703 So.2d 1202 (Fla. 1st DCA 1997) ("*Sheley I*"):

The inmate has already been afforded the right to review the Commission's action on the merits by filing a petition for writ of mandamus in the circuit 1079*1079 court. It would be illogical to provide the inmate a second opportunity for review on the merits by allowing a plenary appeal from the circuit court order. For these reasons, we treat the appeal as a petition for writ of certiorari and we review the case by the limited standard that applies when certiorari is used to review a prior appellate decision.

Sheley II, 720 So.2d at 217 (quoting *Sheley I*, 703 So.2d at 1206). Additionally, this Court reasoned:

The district court drew an analogy to two lines of cases: (1) *those cases wherein a defendant files a petition for an extraordinary writ in circuit court to review an order of the county court;* and (2) those cases governing secondary appellate review of local administrative action. In both lines of cases, the petitioner is *unentitled to a second plenary appeal* on the merits.
We agree with the district court's reasoning and find its analogies apt.

Sheley II, 720 So.2d at 217 (emphasis supplied; footnotes omitted).

The significance of this quoted language to the single issue in this case cannot be overstated. In *Sheley II,* this Court adopted the analogy with regard to the two lines of cases. The first line of cases described by this Court is precisely the fact in the instant case. Thus, contrary to the petitioners' argument, it is irrelevant that the other facts in *Sheley I* are somewhat distinguishable from those before us today. In holding that the defendant was not entitled to a second plenary appeal of the administrative action, this Court explicitly concluded that a defendant would not also be entitled to a second plenary appeal under the more general circumstances when a petition for an extraordinary writ (e.g., a petition for writ of prohibition) is filed in circuit court to review an order of the county court. Thus, there is precedent from this Court which clearly supports the principle of law that an order on a petition for writ of prohibition in connection with an issue of recusal is reviewable by certiorari.

Constitutional Provisions and the Florida Rules of Appellate Procedure

The Florida Constitution and the Florida Rules of Appellate Procedure also clearly support the principle that an order on a petition for writ of prohibition is reviewable by certiorari. The petitioners argue that because a petition for writ of prohibition is technically an original proceeding, a circuit court's order on a petition for writ of prohibition is a final order; thus, it is reviewable by appeal pursuant to article V, section 4(b)(1) of the Florida Constitution, which provides:

(1) District courts of appeal *shall have jurisdiction to hear appeals,* that may be taken as a matter of right, *from final judgments or orders of trial courts,* including those entered on review of administrative action, not directly appealable to the supreme court or a circuit court.

Art. V, § 4(b)(1), Fla. Const. (emphasis supplied). Contrary to the petitioners' argument, this constitutional provision does not establish that an order on a petition for writ of prohibition is a final order or final judgment reviewable by appeal. Instead, the Florida Rules of Appellate Procedure provide insight into the meaning of this constitutional provision and support the determination that an order on a petition for writ of prohibition is reviewable by certiorari. Florida Rule of Appellate Procedure 9.030 provides:

(b) Jurisdiction of District Courts of Appeal.
(1) Appeal Jurisdiction. District courts of appeal shall review, by appeal

1080*1080 (A) final orders of trial courts, not directly reviewable by the supreme court or a circuit court, including county court final orders declaring invalid a state statute or provision of the state constitution;
(B) non-final orders of circuit courts as prescribed by rule 9.130;
(C) administrative action if provided by general law.
(2) Certiorari Jurisdiction. The certiorari jurisdiction of district courts of appeal may be sought to review
(A) non-final orders of lower tribunals other than as prescribed by rule 9.130;
(B) final orders of circuit courts acting in their review capacity.

Fla. R.App. P. 9.030(b)(1)-(2) (footnotes omitted). Rule 9.030(b)(1)(A) is taken directly from article V, section 4(b)(1) of the Florida Constitution. When read in conjunction, the statement that district courts of appeal must review "final orders of trial courts," Fla. R.App. P. 9.030(b)(1)(A), obviously does not include "final orders of circuit courts acting in their review capacity." Fla. R.App. P. 9.030(b)(2)(B). In formulating rule 9.030, this Court recognized that these two types of final orders are distinguishable and the latter, when the court is acting in a review capacity, may instead be reviewed by certiorari. Under rule 9.030(b)(1)(A), the "trial courts" language establishes that this mandatory appeal rule only applies to county courts and circuit courts acting in their trial capacity, rather than "circuit courts acting in their review capacity." Fla. R.App. P. 9.030(b)(2)(B). As previously discussed, although a petition for writ of prohibition may technically be classified as an original action, courts act only in their review capacity in this context in the determination of a petition for writ of prohibition.

An order on a petition for writ of prohibition is clearly reviewable by certiorari. As a general rule, certiorari should not be used as a second appeal:

[I]f the role of certiorari was expanded to review the correctness of the circuit court's decision, it would amount to a second appeal. If an appellate court gives what amounts to a second appeal, by means of certiorari, it is not complying with the Constitution, but is taking unto itself the circuit courts' final appellate jurisdiction and depriving litigants of final judgments obtained there.

Heggs, 658 So.2d at 526 n. 4. Because review in the nature of a petition for writ of prohibition in this context functions like an appeal, additional review that functioned as a second appeal would be problematic. Thus, the distinguishing features of review under common-law certiorari, in comparison to review by appeal, must be utilized to review an order on a petition for writ of prohibition in this context to ensure there is not another appeal under "the guise of certiorari." *Id.* These distinguishing features are:

First, common-law certiorari is available only "where no direct appellate proceedings are provided by law." Second, common-law certiorari is entirely *discretionary* with the court, as opposed to appeal which is taken as a matter of right. Third, the scope of review by common-law certiorari is traditionally limited and *much narrower* than the scope of review on appeal. . . . Fourth, common-law certiorari will only lie to review judicial or quasi-judicial action, never purely legislative action. . . .

Id. at 526 n. 3 (emphasis supplied; citations omitted) (quoting *G-W Dev. Corp. v. Village of N. Palm Beach*, 317 So.2d 828, 830 (Fla. 4th DCA 1975)). With regard to the scope of review, the reviewing court in this context can only grant a petition for writ of certiorari based on a departure 1081*1081 from the essential requirements of law. *See Combs v. State*, 436 So.2d 93, 94 (Fla. 1983). A departure from the essential requirements of law is not mere legal error, but instead, involves a "gross miscarriage of justice." *Heggs*, 658 So.2d at 527. Due to its discretionary nature, a district court of appeal may refuse to grant certiorari relief even if there is legal error which could be argued to be a departure from the essential requirements of law. *See Combs*, 436 So.2d at 96. These standards govern the process of

a district court of appeal in certiorari review of an order on a petition for writ of prohibition in this context to ensure that such review will neither function like nor actually be a second appeal.

Contrary to the petitioners' assertion, review by certiorari under these standards will not violate the petitioners' (or future parties') constitutional right to appeal. In its interpretation of article V, section 4(b)(1) of the Florida Constitution, this Court concluded that this provision is a constitutional protection of the right to appeal. *See Amendments to the Fla. Rules of Appellate Procedure,* 685 So.2d at 774. As described above, the petitioners were given review, through the circuit court's consideration of the original petition for writ of prohibition, on the narrow issue of whether the motion to disqualify was improperly denied. Thus, we conclude that the petitioners have been afforded the right of review in accordance with the Florida Constitution. Accordingly, the proper method to review the order on the petition for writ of prohibition in this context is certiorari.

CONCLUSION

For the foregoing reasons, we approve the decision under review and remand for proceedings consistent with this opinion. In so doing, we disapprove the decisions in *Burton, Pinfield,* and *Guzzetta* to the extent they are inconsistent with this opinion.

It is so ordered.

WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.

[1] The State argues that there is no conflict jurisdiction because the action below by the First District Court of Appeal was an unpublished order without table citation and such does not constitute a "decision" as contemplated by article V, section 3(b)(3) of the Florida Constitution. This argument is without merit. This Court has previously exercised its discretionary jurisdiction where the action below was an unpublished order. In *Department of Law Enforcement v. House,* 678 So.2d 1284, 1284 (Fla.1996), and *Espinosa v. Sparber, Shevin, Shapo, Rosen & Heilbronner,* 612 So.2d 1378, 1379 (Fla.1993), this Court held that jurisdiction existed under article V, section 3(b)(4), even though conflict was certified by an unpublished order (and no table citation was provided). In both *House* and *Espinosa,* this Court subsequently rendered a decision on the merits. *See House,* 678 So.2d at 1284; *Espinosa,* 612 So.2d at 1380. Also, in *Florida Physician's Insurance Reciprocal v. Stanley,* 452 So.2d 514 (Fla.1984), this Court held that jurisdiction existed under article V, section 3(b)(4), even though the question of great public importance was certified by unpublished order (and no table citation was provided). *See id.* at 514. In *Stanley,* this Court also subsequently rendered a decision on the merits. *See id.* at 515. Thus, there is precedent for this Court exercising its discretionary jurisdiction with regard to unpublished orders that are without table citation, and this includes cases that involve conflict jurisdiction. Similar to the use of the word "

Dated at Bonita Springs on this 18th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

245444 Kingfish Street, Bonita Springs, FL 34134

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 18th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STAY COUNTY AND CIRCUIT COURT CASES PENDING DISPOSITION OF APPEALS

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. As appeal in the County Court relate to disqualification of the judge alleging bigotry, bias and hatred against disabled Americans and also casts severe doubt upon jurisdiction, that matter should absolutely be stayed.

The Circuit Court matter should be stayed as a procedural remedy and to further propriety.

Dated at Bonita Springs, Florida this 19th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 19th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V.HUMINSKI

Motion To Dismiss as the allegations are, at best Civil Contempt under Bowen and a bill of particulars was denied and Huminski moves to depose
Sheriff Mike Scott, Judge Krier, Trip Alder, Jason Bentley, Judge McHugh and Mark Cavic pursuant to Aaron v. State

NOW COMES, Scott Huminski ("Huminski") and moves as above with the below supporting case law. Denial of a bill of particulars mandated by both the state and federal Constitutions and statute and the below case law demands dismissal. Huminski has alerted his former counsel to appear at the next hearing to be examined at the Nelson/Faretta hearing. As this case contains several instances (counts) of the alleged contempt, Huminski demands a jury trial.

471 So.2d 1274 (1985)

Eugenia BOWEN and the Florida Department of Health and Rehabilitative Services, Petitioners,
v.
Frankie L. BOWEN, Respondent.

No. 64906.

Supreme Court of Florida.

June 20, 1985.

1275*1275 Joseph R. Boyd and Susan S. Thompson of Boyd, Thompson & Williams and Chriss Walker, Dept. of Health and Rehabilitative Services, Tallahassee, for petitioners.

Robert T. Connolly and Michael A. Campbell, Florida Rural Legal Services, Inc., Bartow, for respondent.

Miriam E. Mason, Tampa, and N. David Korones, Clearwater, amicus curiae for the Executive Council to the Family Law Section of the Florida Bar.

OVERTON, Justice.

This is a petition to review *Bowen v. Bowen*, 454 So.2d 565 (Fla. 2d DCA 1984), in which the Second District Court of Appeal held that a civil contempt proceeding was transformed into a criminal contempt proceeding where the trial judge, without regard to the contemnor's ability to purge himself of contempt, imposed imprisonment for failure to pay child support on the ground that the contemnor wrongfully used his resources for purposes other than making the court-ordered support payments. The district court reversed the trial court's judgment, concluding that due process required the appointment of counsel and other due process protections in such a proceeding. We find conflict with *Waskin v. Waskin*, 452 So.2d 999 (Fla. 3d DCA 1984).[1] For the reasons expressed, we agree with the district court that the record under review fails to establish that the respondent had the present ability to pay the arrearage and that, under the facts of this case, the respondent was improperly incarcerated for civil contempt. We recognize the need to explain our decisions in *Faircloth v. Faircloth*, 339 So.2d 650 (Fla. 1976); *Garo v. Garo*, 347 So.2d 418 (Fla. 1977); *Pugliese v. Pugliese*, 347 So.2d 422 (Fla. 1977); *Lamm v. Chapman*, 413 So.2d 749 (Fla. 1982); and *Andrews v. Walton*, 1276*1276 428 So.2d 663 (Fla. 1983), and harmonize them with multiple district court decisions on this issue. In this opinion, we will attempt to clarify the law with respect to the use of civil and criminal contempt in family support matters.

In the instant case, the petitioner Florida Department of Health and Rehabilitative Services (HRS) filed an action against the respondent, Frankie L. Bowen, to establish the amount of child support to be paid by the respondent to HRS in reimbursement for public assistance payments made to the respondent's estranged wife, Eugenia Bowen, also a petitioner in this cause. HRS obtained a default against the respondent. The circuit court judge entered an order of support in July, 1982, directing the respondent to pay $163 monthly to HRS. When respondent failed to make the payments and to respond to an order to appear and show cause why he should not be held in contempt,[2] a warrant was issued for his arrest. In December, 1982, the trial court held the respondent in contempt, found him financially able to make the support payments, and modified the prior order by directing him to make weekly payments of $50 to HRS. The respondent again failed to make the payments and the court issued a second order for him to appear and show cause. This order warned that respondent was subject to imprisonment and/or fines if adjudged in contempt, and admonished him to bring "all proof you may have such as pay-stubs, income tax returns,

doctor's statements, receipts, etc., to show why you have not made these payments."

Pursuant to the second order, the respondent presented evidence that he had been laid off from his $140 per week job as a painter in May, 1982, due to a general cutback in the employer's work force; that despite a diligent search for employment, he remained unemployed until January 1, 1983, except for occasional yard work, for which he never earned more than $25 per week; and that on January 21, 1983, he received a paycheck and tendered $200 to HRS, which an HRS employee refused to accept until after the scheduled February 11, 1983, hearing. The record reflects that at the February 11 hearing, the trial judge informed respondent that he was free to present any evidence or witness on his own behalf, that respondent was not represented by counsel, and that respondent asked questions of an HRS representative, who testified that HRS employees are instructed to accept any payment tendered. Respondent was unable to name or describe the person whom he claimed had refused to accept the tendered payment. The trial judge informed respondent that he was $916 in arrears in child support payments and asked how much he could pay at that point. Respondent stated that he could pay $200.

In adjudicating respondent in contempt for failure to make the support payments, the trial judge found that respondent previously had the ability to comply with the support order, but had divested himself of that ability through his own fault or neglect designed to frustrate the intent or purpose of the order. The respondent was sentenced to five months and 29 days in jail with the provision that he could purge himself of contempt by paying the $916 arrearage plus $50 court costs. The trial court also found the respondent indigent for the purpose of an appeal to the district court of appeal.

In reversing the respondent's conviction and sentence, the district court noted that, although the record lacked "total clarity concerning [respondent's] inability to pay," the case came to it "on a finding that [respondent] was unable to pay and that his inability was his own fault." 454 So.2d at 567. It concluded that, because the trial court's order imposed incarceration on a finding that respondent wrongfully divested himself of the ability to pay, without a finding that respondent had the present 1277*1277 ability to pay the purge amount, the contempt proceeding was criminal rather than civil in nature. Since the proceeding was criminal, the district court held that the judgment imposing incarceration could not be affirmed because respondent was not afforded the right to court-appointed counsel at the contempt hearing.

HRS seeks a reversal of that holding, contending that this Court's holding in *Faircloth* permits a judge to incarcerate a defaulting parent in a civil contempt proceeding upon a finding that the parent has divested himself of the ability to comply with the court's support order through his own fault or neglect designed to frustrate the order. HRS asserts that, under such circumstances, there is no need to show that the defaulting party has a present ability to purge himself of contempt and there is no right to counsel.

The respondent counters by asserting that a jail sentence unaccompanied by a purge condition that is within the power of the contemnor to accomplish is in fact a sentence for criminal contempt, requiring the application of full due process protections. He argues that *Faircloth* focused solely on the adjudicatory phase of

the contempt hearing and did not address the requirements for a civil incarceration order after an adjudication of contempt. He asserts that our subsequent decisions in *Pugliese* and *Andrews* set forth the requirement that a civil contemnor must possess the present ability to purge himself of contempt before incarceration can be imposed.

As this Court has previously stated, the purpose of a *civil* contempt proceeding is to obtain *compliance* on the part of a person subject to an order of the court. Because incarceration is utilized solely to obtain compliance, it must be used only when the contemnor has the ability to comply. This ability to comply is the contemnor's "key to his cell." *Pugliese*. The purpose of *criminal* contempt, on the other hand, is to *punish*. Criminal contempt proceedings are utilized to vindicate the authority of the court or to punish for an intentional violation of an order of the court. *Andrews; Pugliese; Demetree v. State ex rel. Marsh*, 89 So.2d 498 (Fla. 1956); *In re S.L.T.*, 180 So.2d 374 (Fla. 2d DCA 1965). Because this type of proceeding is punitive in nature, potential criminal contemnors are entitled to the same constitutional due process protections afforded criminal defendants in more typical criminal proceedings. *See Aaron v. State*, 284 So.2d 673 (Fla. 1973); *see also* Fla.R.Crim.P. 3.830, 3.840. We continue to adhere to the view that incarceration for civil contempt cannot be imposed absent a finding by the trial court that the contemnor has the present ability to purge himself of contempt. Without the present ability to pay from some available asset, the contemnor holds no key to the jailhouse door.

Confusion concerning the requirement that a civil contemnor have the ability to purge has resulted from two separate statements in our *Faircloth* decision. In the first, we stated:

We hold a trial judge must make an affirmative finding that either (1) the petitioner presently has the ability to comply with the order and willfully refuses to do so, or (2) that the petitioner previously had the ability to comply, but divested himself of that ability through his fault or neglect designed to frustrate the intent and purpose of the order.

339 So.2d at 651. In the second, we expressly approved the following excerpt from Judge Robert Smith's dissenting opinion in *Faircloth v. Faircloth*, 321 So.2d 87, 94 (Fla. 1st DCA 1975):

Upon the affected party's failure to discharge his burden of proving that he is disabled to pay by reason of intervening factors not due to his own neglect or fault, the chancellor may find as a fact .. . that any disability was self-induced. And on that finding the chancellor may order the defaulting party to pay or be imprisoned for his contemptuous refusal to do so.

339 So.2d at 652. To the extent these statements indicate that incarceration can be imposed upon a civil contemnor who lacks the ability to pay the purge amount, 1278*1278 we recede from this language. Although we did not directly address in that opinion the purge requirement of a civil contempt proceeding, it is important to note that the *Faircloth* result establishes that a present ability to purge is a prerequisite to incarceration for *civil* contempt. In affirming the trial court's incarceration of Faircloth, the district court of appeal found the record reflected that Faircloth's inability to comply with the court order was caused by his own "neglect or misconduct," and noted that the record did not establish that Faircloth had the ability to pay the $4,300 arrearage that had been fixed by the

trial court as the purge amount. In the face of this holding, this Court quashed the district court's decision and directed that the case be remanded so that the trial court could make an "affirmative finding of ability if supported by the record or otherwise vacate the order of contempt." *Id.* at 653. The disposition in that case indicates clearly that incarceration cannot be imposed upon a civil contemnor for willfully failing to comply with a court order unless the court first determines that the contemnor has the present ability to purge himself of contempt.

Consistent with the *Faircloth* decision, in *Garo* we held that an order finding a husband in contempt for willful nonpayment of alimony was fatally defective in that it lacked specific findings regarding his ability to pay the amount due. In *Pugliese*we distinguished between the purposes of civil and criminal contempt, observing that notice must be given to a person who will be charged with criminal contempt. In holding in *Lamm* that HRS may utilize all remedies available to the custodial parent, including civil contempt proceedings, to enforce a parent's obligation to provide child support, we found that the record in that case was insufficient to establish the father's ability to pay the support. In *Andrews* we concluded that the evidence clearly supported the trial court's determination that the father had the ability to pay the ordered child support and held that

there are no circumstances in which a parent is entitled to court-appointed counsel in a civil contempt proceeding for failure to pay child support because if the parent has the ability to pay, there is no indigency, and if the parent is indigent, there is no threat of imprisonment.

428 So.2d at 666. We find the decisions of the First District in *Griffin v. Griffin*, 461 So.2d 251 (Fla. 1st DCA 1984); *Smith v. Miller*, 451 So.2d 945 (Fla. 1st DCA 1984); and *Ponder v. Ponder*, 438 So.2d 541 (Fla. 1st DCA 1983), and the Third District in *Robbins v. Robbins*, 429 So.2d 424 (Fla. 3d DCA 1983), to be fully consistent with these holdings. The decision of the Third District in *Waskin*,however, conflicts with the instant case. The petitioner in *Waskin* instituted a contempt proceeding against the respondent, her former husband, alleging he willfully disobeyed a court order for payment of alimony and support. The district court, in affirming the finding of contempt by the trial court, held that the trial court could properly imprison the respondent for civil contempt upon a finding that the respondent willfully violated the court order, without affirmatively finding that the respondent possessed the present ability to pay the purge amount. This holding is contrary to the law established by this Court as outlined above.

To avoid confusion, we believe it appropriate to address the correct procedure for establishing civil contempt in family support matters. In these cases, the initial order or judgment directing a party to pay support or alimony is predicated on an affirmative finding that the party has the ability to pay. This initial judicial determination creates, in subsequent proceedings, a presumption that there is an ability to pay. In a civil contempt proceeding for failure to pay child support or alimony, the movant must show that a prior court order directed the party to pay the support or alimony, and that the party in default has failed to make the ordered payments. The burden of producing evidence then shifts to the defaulting party, who must dispel the presumption of ability to pay by demonstrating that, due to circumstances beyond his control which intervened since the time 1279*1279 the order directing him to pay was entered, he no longer

has the ability to meet his support obligations. The court must then evaluate the evidence to determine whether it is sufficient to justify a finding that the defaulting party has willfully violated the court order. Once the court finds that a civil contempt has occurred, it must determine what alternatives are appropriate to obtain compliance with the court order. If incarceration is deemed appropriate, the court must make a separate, affirmative finding that the contemnor possesses the present ability to comply with the purge conditions set forth in the contempt order. In determining whether the contemnor possesses the ability to pay the purge amount, the trial court is not limited to the amount of cash immediately available to the contemnor; rather, the court may look to *all assets* from which the amount might be obtained.

Although incarceration cannot be used as a means to seek compliance with the court order when the contemnor does not have the ability to purge himself of contempt, the court does have available other means to obtain compliance. If, for example, the defaulting party has willfully neglected his support obligations but no longer has a present ability to pay because he is unemployed, the court may direct him to seek employment through Florida State Employment Services and to report weekly until employment is secured, in addition to requesting the employment service to periodically report to the court on the status of his job search. If the party is employed but presently lacks funds or assets, the court may issue a writ directing his employer to garnish the party's salary in order to satisfy the alimony or child support obligations in accordance with section 61.12, Florida Statutes (Supp. 1984), or may enter an income deduction order for payment of child support or alimony, pursuant to section 61.081 or 61.1301, Florida Statutes (Supp. 1984). These alternatives to incarceration are examples and are not intended to limit the trial judge's discretion in obtaining compliance with a court order.

When the court believes that the defaulting party's conduct is such that it warrants punishment, a criminal contempt proceeding should be instituted. Criminal contempt proceedings are appropriate when it can be established that the party in default has continually and willfully neglected his support obligations, or has affirmatively acted to divest himself of assets and property. An indirect criminal contempt proceeding must fully comply with rule 3.840, Florida Rules of Criminal Procedure, and defendants are entitled to the appropriate due process protections, which may include court-appointed counsel. In such a proceeding, the movant must prove, beyond a reasonable doubt, that the defendant willfully violated the court order. The movant, however, has the benefit of the presumption that the defendant has had the ability to pay the ordered support or alimony by reason of the prior judicial determination. This presumption, of course, places the burden on the defendant to come forward with evidence to show that, due to circumstances beyond his control, he had no ability to pay. We reject the argument that this presumption improperly infringes upon a criminal contempt defendant's fifth amendment privilege. *See* State v. Buchman, 361 So.2d 692 (Fla. 1978). This type of required response has been approved in other criminal matters. *See* § 812.022(2), Fla. Stat. (1983) (statutory inference that a person proved to be in possession of recently stolen property knew or should have known that the property was stolen); *Barnes v. United States*, 412 U.S. 837, 93 S.Ct. 2357, 37 L.Ed.2d 380 (1973) (upholding an inference essentially identical to § 812.022(2)).

In the instant case, the record clearly supports the conclusion that the respondent did not have the present ability to pay the $966 purge amount. The finding of the trial judge that the respondent was indigent for purposes of the appeal affirmatively establishes that the respondent was indigent and had no present ability to pay the purge amount.

1280*1280 In summary, we hold: (a) In both civil and criminal contempt proceedings, a prior judgment establishing the amount of support or alimony to be paid creates a presumption that the defaulting party has the ability to pay that amount. (b) In civil contempt proceedings, the defaulting party has the burden to come forward with evidence to dispel the presumption that he had the ability to pay and has willfully disobeyed the court order. In the event contempt is found, the trial judge must separately find that the contemnor has the present ability to pay the purge amount before incarceration can be imposed to obtain compliance with the court order. (c) In criminal contempt proceedings, the movant has the burden of establishing, beyond a reasonable doubt, that the defaulting party willfully violated the court order. In meeting this burden, the movant has the benefit of the presumption that the defaulting party had the ability to comply with the court order.

For the reasons expressed, we approve the decision of the district court of appeal with directions to remand this cause to the trial court for further proceedings consistent with this opinion.

It is so ordered.

ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., concur.

ADKINS, Acting C.J., dissents.

[1] We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

[2] We note that under rule 1.100(b), Florida Rules of Civil Procedure, civil contempt proceedings should be instituted by motion and notice of hearing. *See* form 1.982, Florida Rules of Civil Procedure. In matters involving criminal contempt, however, an order to show cause is mandatory.

284 So.2d 673 (1973)

Fred AARON, Petitioner,
v.
STATE of Florida, Respondent.

No. 42439.

Supreme Court of Florida.

July 11, 1973.
Rehearing Denied November 30, 1973.

674*674 Henry R. Barksdale of Barksdale, Mayo & Murphy, Pensacola, for petitioner.

Robert L. Shevin, Atty. Gen., and Richard W. Prospect, Asst. Atty. Gen., for respondent.

BOYD, Justice.

This cause is before us on petition for writ of certiorari to review the decision of the District Court of Appeal, First District, reported at 261 So.2d 515, which affirmed the judgment of the Circuit Court of the First Judicial Circuit in and for Escambia County. Our jurisdiction is based on conflict between the decision sought to be reviewed and State ex rel. Brocato v. Purdy.[1]

The following are the facts in this case:

On August 13, 1970, the Escambia County Grand Jury issued a presentment charging that petitioner had attempted to influence the action of a Grand Juror, Mrs. Jennie F. Rosenbaum. On August 17, 1970, the Circuit Court issued an order for petitioner to appear before said Court on August 20, 1970, and to show cause why he should not be held in contempt, said order being served on Aaron on August 18, 1970. Petitioner filed a motion for a continuance on August 19, 1970, and a continuance to August 26, 1970, was granted. A demand for trial by jury was filed on behalf of petitioner on August 21, 1970, and said motion was denied that same day. On August 24, 1970, motions were filed in behalf of petitioner seeking an order to take the deposition of Mrs. Jennie F. Rosenbaum, for a continuance of the cause, and for a bill of particulars. Each of these motions was denied without hearing on August 25, 1970. On August 26, 1970, a letter requesting the voluntary statement of Mrs. Jennie F. Rosenbaum was filed and on the same day a statement of Mrs. Rosenbaum's refusal to give the voluntary statement to petitioner's attorney was also filed in the Circuit Court for Escambia County, Florida.

On August 26, 1970, petitioner entered a plea of not guilty and was that day tried, convicted and sentenced to four months in the County Jail and fined $250.00 for contempt, said trial conducted before the Judge as the trier of the facts and law, without benefit of jury.

On the foregoing facts, the District Court of Appeal, First District, was presented with the following points of law:

(a) Whether or not the refusal of the trial court to grant defendant's motion for a trial by a jury resulted in the denial of due process of law guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 22 and Article 1, Section 9 of the Florida Constitution.

On this point of law the Court affirmed the judgment of the trial court holding that under the applicable law one must look in retrospect to the actual sentence imposed and by doing so in the present case the offense for which petitioner was found guilty was a "petty" offense as distinguished from a "serious" offense as he was sentenced to less than six months in the County Jail and therefore was not entitled to the benefit of a trial by jury as demanded.

(b) Whether or not the trial court erred in refusing to grant a motion for continuance 675*675 and thereby greatly prejudiced the defendant by failing to provide sufficient time for the presentation of an adequate defense.

On this point of law the Court affirmed the judgment of the trial court holding that this ground was "without substantial merit."

(c) Whether or not the trial court erred in failing to grant the motion for a bill of particulars filed in behalf of the defendant and thereby greatly prejudiced the preparation of the case for the defense.

On this point of law the Court affirmed the judgment of the trial court holding that said point was "without substantial merit."

(d) Whether or not the trial court erred in refusing to enter an order to allow defendant to take the deposition of Mrs. Jennie Rosenbaum, witness for the state.

On this point of law the Court affirmed the judgment of the trial court holding that said point was "without substantial merit."

Upon careful examination of the record and argument of counsel we are compelled to reverse the decision of the District Court of Appeal for the following reasons.

Historically, criminal contempt, both direct and indirect, has been punishable by fines and imprisonment. Although the trials have been, and still are, handled in a summary fashion, to assure speedy judicial progress without interruption, these proceedings are effectively criminal in nature and persons accused of contempt are as much entitled to the basic constitutional rights as are those accused of violating criminal statutes.[2]

In Bloom v. Illinois,[3] the Supreme Court of the United States held that prosecutions for serious criminal contempts are subject to the jury trial provisions of Article III, § 2, of the Federal Constitution, and of the Sixth Amendment, which is made binding upon the states by virtue of the due process clause of the Fourteenth Amendment.

Duncan v. Louisiana[4] distinguished between serious and petty crimes, in relation to the necessity for trial by jury, and the Supreme Court of the United States specifically held that a crime punishable by two years in prison is a serious crime, thus invoking the right to jury trial. The distinctions between serious and petty crimes were further amplified in Baldwin v. New York,[5] where the Court stated:

"The question in this case is whether the *possibility* of a one-year sentence is enough *in itself* to require the opportunity for a jury trial. We hold that it is."[6]

The Court further held that:

"We cannot ... conclude that ... administrative conveniences ... justify denying an accused the important right to trial by jury where the *possible* penalty exceeds six months' imprisonment."[7]

The Court has, in the past, required a jury trial for contempt, Dade County Classroom Teachers Association, Inc. v. Rubin.[8] However, at the time of that decision, the applicable Florida Rule of Criminal Procedure, 33 F.S.A., in effect also 676*676 stated such a requirement.[9] Since that decision, the Rule has been amended to permit the judge to hear and determine both the law and the facts.[10]The question before this Court then, is whether the present rule, F.R.C.P. 3.840(a)(4), does, in light of the foregoing federal decisions, pass constitutional muster. We hold that it does not — to the extent that it authorizes a judge to impose a sentence of six months' imprisonment, or greater, without empanelling a jury to try the facts.

The District Court of Appeal, in affirming the conviction, relied upon *Bloom* and Cheff v. Schnackenberg,[11] for the proposition that, in contempt trials, the result would be viewed retroactively to determine if the right to a jury trial existed at the time of trial. That is, if the defendant was, as in the instant case, the recipient of a

sentence of less than six months, he was not entitled to a jury of his peers at the inception of trial. The District Court of Appeal apparently bases its decision on the following language found in *Bloom*:

"[C]riminal contempt is not a crime of the sort that requires the right to jury trial regardless of the penalty involved... . [W]hen the legislature has not expressed a judgment as to the seriousness of an offense by fixing a maximum penalty which may be imposed, we are to look to the penalty actually imposed as the best evidence of the seriousness of the offense."[12]

We believe, however, that the District Court of Appeal erred in assuming that such a situation exists in this State, as an examination of the following statutes will show.

Section 38.22 of the Florida Statutes, F.S.A., authorizes courts to impose imprisonment and fines for contempt, but states no maximum time for such imprisonment.[13] Section 775.01 of the Florida Statutes, F.S.A., provides that the common law crimes of England are crimes in Florida.[14] Section 775.02 of the Florida Statutes, F.S.A., provides that when no maximum punishment is prescribed for criminal contempt, the maximum shall not exceed one year imprisonment and a fine of $500.00.[15]

Therefore, we must conclude that criminal contempt is a crime under Florida law, with the possible maximum punishment exceeding six months' imprisonment. In light of this conclusion, we hold that F.R.C.P. 3.840(a) (4), authorizing the judge to be the trier of both the law and the facts, is limited in its application to situations in which the judge contemplates, if a finding of guilt be made, the imposition of a sentence of less than six months' imprisonment. A judge's denial of a pre-trial motion for trial by jury will mean that he cannot impose a sentence of six months' 677*677 imprisonment, or greater, should there be a finding of guilt. If the judge contemplates the imposition of a sentence of six months' imprisonment, or greater, he must empanel a jury to try the facts, unless the defendant has made a waiver thereof. Had a sentence of six months' imprisonment, or greater, been imposed upon the petitioner, the invalidity of the rule beyond the six-month limit would require reversal. However, petitioner's sentence of four months' imprisonment was properly imposed by the judge, as trier of both law and fact, in that the sentence falls within the constitutional limitations upon the operation of the rule we announce today.[16]

In the case before us, petitioner was denied the right to take the deposition of the primary State's witness against him — the woman whom he was charged with attempting to influence as a member of the Grand Jury. Additionally, the Judge denied petitioner's motion for a bill of particulars. The right of persons accused of serious offenses to know, before trial, the specific nature and detail of crimes they are charged with committing is a basic right guaranteed by our Federal and State Constitutions. The foregoing federal cases lead us to conclude that this right is extended to those persons charged with criminal contempt. We, therefore, hold that the trial court's denial of petitioner's motions to take Mrs. Rosenbaum's deposition and for a bill of particulars was error[17] — error which deprived petitioner of his rights to due process and a fair trial.[18]

In this opinion we deal only with indirect criminal contempt. Although persons so charged are entitled to the foregoing constitutional protections, we recognize that

the orderly administration of justice requires such proceedings be handled as expeditiously as the circumstances and law may permit.

For the foregoing reasons, the decision of the District Court of Appeal, First District, is quashed and this cause is remanded for further action in the trial court in conformance with this opinion.

It is so ordered.

CARLTON, C.J., and ERVIN and McCAIN, JJ., concur.

ADKINS, J., dissents.

ROBERTS and DEKLE, JJ., dissent and concur with ADKINS, J.

ADKINS, Justice (dissenting).

[1] 251 So.2d 309 (Fla.App. 3rd 1971), wherein the Court stated at footnote 1: "The requirement for a hearing and an opportunity to resist the charge [indirect criminal contempt] includes the right to reasonable notice and a reasonable opportunity to present a defense."

[2] Cf. State ex rel. Argersinger v. Hamlin, 236 So.2d 442, 445 (Fla. 1970), rev'd 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972): "From the inside all jails look alike." (Boyd, J., dissenting).

[3] 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968).

[4] 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

[5] 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970).

[6] Id. at 69, 90 S.Ct. at 1888 (Emphasis supplied.)

[7] Id. at 73-74, 90 S.Ct. at 1890-1891. (Emphasis supplied.)

[8] 217 So.2d 293 (Fla. 1968).

[9] F.R.C.P. 1.840(a) (4) provided at that time: "All issues of law shall be heard and determined by the judge; all issues of fact shall be heard and determined by a jury of six persons selected as in criminal cases... ."

[10] F.R.C.P. 3.840(a) (4) provides: "All issues of law and fact shall be heard and determined by the judge."

[11] 384 U.S. 373, 86 S.Ct. 1523, 16 L.Ed.2d 629 (1966).

[12] 391 U.S. at 211, 88 S.Ct. at 1487.

[13] "Every court may punish contempts against it whether such contempts be direct, indirect, or constructive... ." The statute further empowers the judge to hear and determine all questions of law and fact. It would appear that the same constitutional infirmities that are present within F.R.C.P. 3.840(a) (4) also infect this portion of the statute.

[14] "The common law of England in relation to crimes, except so far as the same relates to the modes and degrees of punishment, shall be of full force in this state where there is no existing provision by statute on the subject."

[15] "When there exists no such provision by statute, the court shall proceed to punish such offense by fine or imprisonment but the fine shall not exceed five hundred dollars, nor the imprisonment twelve months."

[16] In so holding, we deal only with the provisions of F.R.C.P. 3.840(a) (4), provisions which concern indirect criminal contempt. Under the facts of this case we have no occasion to consider the Rule concerning direct criminal contempt, F.R.C.P. 3.830.

[17] See State v. Gillespie, 227 So.2d 550 (Fla.App.2d 1969). See also F.R.C.P. 3.140(n); F.R.C.P. 3.220(f); F.R.C.P. 3.840(a) (2).

[18] "The adversary system is still the core of our Anglo-American concept of the truth-finding process; and constitutional concern demands ... that such process be fair... . [T]he underlying principle supporting the whole idea of criminal pre-trial discovery ... is fairness." Id. at 553.

Dated at Bonita Springs on this 18th day of February, 2018.

Scott Huminski

245444 Kingfish Street, Bonita Springs, FL 34134

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-/s/- Scott Huminski

Scott Huminski

PTSD as a Criminal Defense: A Review of Case Law

Omri Berger, MD, Dale E. McNiel, PhD, and Rene´e L. Binder, MD

Posttraumatic stress disorder (PTSD) has been offered as a basis for criminal defenses, including insanity, unconsciousness, self-defense, diminished capacity, and sentencing mitigation. Examination of case law (e.g., appellate decisions) involving PTSD reveals that when offered as a criminal defense, PTSD has received mixed treatment in the judicial system. Courts have often recognized testimony about PTSD as scientifically reliable. In addition, PTSD has been recognized by appellate courts in U.S. jurisdictions as a valid basis for insanity, unconsciousness, and self-defense. However, the courts have not always found the presentation of PTSD testimony to be relevant, admissible, or compelling in such cases, particularly when expert testimony failed to show how PTSD met the standard for the given defense. In cases that did not meet the standard for one of the complete defenses, PTSD has been presented as a partial defense or mitigating circumstance, again with mixed success.

Even before posttraumatic stress disorder (PTSD) became an official diagnosis, traumatic stress syndromes, such as traumatic neurosis of war, were successfully offered as bases for criminal defenses.[1] Soon after its introduction in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSMIII), in 1980,[2] the PTSD diagnosis also made its way into the criminal courts as a basis for several types of criminal defenses for both violent and nonviolent crimes.[1,3,4] In addition, other trauma-related syndromes not included in the DSM, such as batteredwife syndrome and battered-child syndrome, have been offered as bases for criminal defenses.[3,5,6] However, these related syndromes have generally been presented as special types of PTSD.[4,5]

Initially, the introduction of PTSD raised concern about its potential misuse in the criminal courts.[1,3] Skepticism was further heightened by cases in which malingered PTSD was used as a criminal defense.[3] In addition, shortly after the introduction of PTSD as a diagnosis, widespread reform of insanity defense statutes took place after the insanity acquittal of John

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Hinkley in 1984. These trends most likely made the successful use of PTSD as a criminal defense more difficult.[1,3] Appelbaum *et al.*[7] examined the frequency and rate of success of the insanity defense based on PTSD in several states and found that defendants had no more success with PTSD than with other mental disorders and that insanity pleas based on PTSD made up a small fraction of all insanity pleas, suggesting that fears about abuse of the diagnosis in the courts were largely unfounded.

Various PTSD phenomena have been presented in courts as bases for criminal defenses, including dissociative flashbacks, hyperarousal symptoms, survivor guilt, and sensation-seeking behaviors.[1,3,4,8–10] It has been suggested by some that dissociative flashbacks should be the only legitimate basis for insanity and other exculpating defenses and that other PTSD phenomena are insufficient to warrant exculpation. However, there has not been consensus on this proposal in the field.[1,3,4] Furthermore, although there has been some psychiatric research examining the role of certain PTSD phenomena in violent and criminal behavior, this body of research is yet to elucidate the relevance of such phenomena to criminal defenses.[8,9] Correlations between a diagnosis of PTSD and interpersonal violence, as well as between a diagnosis of PTSD and criminal behavior, have been described in the psychiatric literature, lending some empirical support for the use of PTSD as a criminal defense.[11–14] However, there has been little empirical research examining the role of specific PTSD symptoms in criminal behavior. The relevance of PTSD

and specific PTSD symptoms to criminal defenses may therefore be best understood by examining how the criminal justice system has addressed the question.

In this article, we review United States criminal case law involving PTSD as a criminal defense. Case law is based on published legal decisions, which are typically at the appellate level. The significance of these cases is that they establish precedents for courts to follow in subsequent cases. Verdicts at the trial court level are usually not published, unless they are appealed. In addition, most pretrial decisions, such as whether a criminal defense based on PTSD can be presented at trial, are not published, unless they are appealed. As a result, research on appellate cases preferentially involves cases in which a criminal defense based on PTSD was barred or failed at the trial court level. On the other hand, cases in which a criminal defense based on PTSD was allowed at trial or was successfully presented at trial are largely not included in this review. This review will not address trends at the pretrial or trial court level; however, it will address the precedents that trial judges follow in rendering decisions about the use of PTSD as a basis for criminal defenses.

METHODS

A systematic review of case law was conducted using the legal database LexisNexis. Federal and state appellate cases through 2010 were sought by using the search terms PTSD, posttraumatic stress disorder, post-traumatic stress disorder, or post traumatic stress disorder occurring in the summary, syllabus, or overview sections of cases, along with the terms criminal, insanity, diminished capacity, *mens rea*, self-defense, mitigation, or unconsciousness occurring in the same sections. The search was restricted to those criteria so that cases were selected in which PTSD played a prominent role.

A search for relevant law review articles was conducted on LexisNexis with the criterion that the term PTSD or a variation thereof appeared more than 10 times in the article. PubMed was searched using the terms PTSD, insanity, and criminal behavior. Identified law review and PubMed articles were searched for cited legal cases.

RESULTS

Cases

The search of LexisNexis yielded 194 cases, of which 47 involved a criminal defense based on PTSD. In 39 of these 47 cases, the defense was addressed by the appellate court in some way, whereas in the remaining 8 cases the issue appealed was not related to the use of PTSD as a criminal defense. Twenty-nine of the cases in which the use of PTSD as a criminal defense was addressed on appeal will be further described later in the text. The 10 cases that are not described in this article were excluded because they were redundant with other cases, in that the issues addressed by the appellate court were the same as those in other cases that are discussed. The search of law review articles and the psychiatric literature for cited legal cases yielded two published cases in which trauma-related disorders that preceded the DSM diagnosis of PTSD were the bases for criminal defenses. It also yielded three unpublished trial court cases in which PTSD was the basis for criminal defenses. These cases will be described later.

Table 1 lists the published cases that we identified, including the two cases that involved trauma-related disorders that preceded PTSD. The table lists the jurisdiction, legal issue, and outcome of each appellate case. Table 2 lists the three unpublished cases that we identified, along with the jurisdiction, legal issue, and verdict in each case.

Admissibility of PTSD Expert Witness Testimony

In a series of landmark decisions commonly called the *Daubert* trio, the Supreme Court established criteria for the admissibility of expert witness testimony in federal court.[59–61] The *Daubert* standard requires that trial courts establish the reliability and relevance to the case at hand of proffered expert witness testimony. Some elements identified as relevant to this determination include the reliability of the techniques underlying a proposed testimony, peerreviewed publications supporting it, and the general acceptance of it in the relevant field.[59] With a large and growing research base supporting the diagnosis of PTSD, along with its widespread acceptance in the mental health professions and its inclusion in the DSM, the diagnosis certainly meets the reliability prong of the *Daubert* standard, as has been well established in case law.[5]

Table 1 Published Cases in Which PTSD Was Presented as a Criminal Defense

Case Name	Jurisdiction	Year	Legal Issue	Outcome
Shepard v. State[*15]	Alaska	1993	Admissibility	Reversed denial of PTSD expert
Doe v. Superior Court[16]	California	1995	Admissibility	Reversed denial of PTSD expert
Houston v. State[17]	Alaska	1979	Insanity	Conviction reversed and remanded
State v. Felde[*18]	Louisiana	1982	Insanity	Conviction affirmed
United States v. Duggan[19]	Federal	1984	Insanity†	Conviction affirmed
Gentry v. State[20]	Tennessee	1984	Insanity†	Conviction affirmed
State v. Percy[21]	Vermont	1988	Insanity†	Conviction reversed and remanded
Commonwealth v. Tracy[22]	Massachusetts	1989	Insanity†	NGRI of armed robbery; conviction of firearms possession affirmed
United States v. Whitehead[23]	Federal	1990	Insanity‡	Conviction affirmed
State v. Wilson[24]	Louisiana	1991	Insanity‡	Conviction affirmed
State v. Angel[25]	North Carolina	1991	Insanity‡	Conviction affirmed
People v. Rodriguez[26]	New York	1993	Insanity†	Conviction affirmed
United States v. Long Crow[27]	Federal	1994	Insanity‡	Conviction affirmed
United States v. Cartagena-Carrasquillo[28]	Federal	1995	Insanity‡	Conviction affirmed
United States v. Rezaq[29]	Federal	1996	Insanity‡	Allowing of insanity defense affirmed
State v. Page[*30]	North Carolina	1997	Insanity‡	Conviction affirmed
United States v. Calvano[*31]	Federal	2009	Insanity‡	Conviction affirmed
People v. Lisnow[32]	California	1978	Unconsciousness	Conviction reversed
State v. Fields[33]	North Carolina	1989	Unconsciousness	Conviction reversed and remanded
State v. Kelly[34]	New Jersey	1984	Self-defense	Conviction reversed and remanded
United States v. Simmonds[*35]	Federal	1991	Self-defense	Conviction affirmed
Rogers v. State[36]	Florida	1993	Self-defense	Conviction reversed and remanded
State v. Janes[37]	Washington	1997	Self-defense	Affirmed reversal of conviction and remanded
Harwood v. State[38]	Texas	1997	Self-defense	Conviction affirmed

State v. Sullivan[39]	Maine	1997	Self-defense	Conviction vacated
State v. Hines[40]	New Jersey	1997	Self-defense	Conviction reversed and remanded
Perryman v. State[41]	Oklahoma	1999	Self-defense	Conviction affirmed
State v. Mizell[*42]	Florida	2000	Self-defense	Allowing of PTSD testimony upheld
State v. Stuart[*43]	Washington	2006	Self-defense	Conviction affirmed
United States v. Cebian[44]	Federal	1985	*Mens rea*	Conviction affirmed
State v. Warden[45]	Washington	1996	*Mens rea*	Conviction reversed and remanded
State v. Bottrell[46]	Washington	2000	*Mens rea*	Conviction reversed and remanded
United States v. Johnson[47]	Federal	1995	Mitigation	Sentence affirmed
United States v. Kim[*48]	Federal	2004	Mitigation	Sentence affirmed
Gilley v. Morrow[49]	Federal	2007	Mitigation	Sentence vacated and remanded
United States v. Cope[50]	Federal	2008	Mitigation	Sentence affirmed
In re Nunez[51]	California	2009	Mitigation	Sentence vacated and remanded
Hall v. Lee[52]	Georgia	2009	Mitigation	Sentence affirmed
Dever v. Kansas State Penitentiary[*53]	Federal	1992	Ineffective assistance	*Habeas* petition denied
Seidel v. Merkle[*54]	Federal	1998	Ineffective assistance	*Habeas* petition granted
Aguirre v. Alameida[*55]	Federal	2005	Ineffective assistance	*Habeas* petition granted

* Case not described in the paper.
† Jurisdiction uses the American Law Institute insanity standard. ‡Jurisdiction uses the *M'Naughten* insanity standard.

Given its widespread acceptance in the mental health professions, PTSD has also met the *Frye* standard of admissibility, which preceded the *Daubert*

Table 2 Unpublished Cases in Which PTSD Was Successfully
Presented as the Basis for an Insanity Defense

Case Name	Jurisdiction	Year	Criminal Defense	Verdict
State v. Heads[56]	Louisiana	1980	Insanity	NGRI
State v. Cocuzza[57]	New Jersey	1981	Insanity	NGRI
State v. Wood[58]	Illinois	1982	Insanity	NGRI

standard in the federal courts and is still the standard in some state jurisdictions.[62] For example, in *Doe v. Superior Court*,[16] a 1995 California appellate court case, the defendant was charged with capital murder. In pretrial motions, she petitioned the court to appoint experts of her choosing to assist in presenting a defense based on PTSD and battered-woman syndrome. The trial court denied her motion and instead appointed a panel expert without such expertise. The defendant appealed this decision, which the appellate court reversed, holding that "Expert testimony on Battered Woman Syndrome and PTSD is routinely admitted in criminal trials in California and other states and no one suggests they are not recognized psychiatric conditions" (Ref. 16, p 541). The court cited several cases supporting its opinion.

With respect to the relevance prong of the *Daubert* and other admissibility standards, courts have ruled more variably on PTSD's relevance to various criminal defenses. However, in some cases PTSD has been found to be relevant to the criminal defenses of insanity, unconsciousness, self-defense, diminished capacity, and sentencing mitigation. A more detailed discussion of each follows.

PTSD and the Insanity Defense

Even before the addition of PTSD to the DSM, traumatic stress disorders were offered as the basis for insanity defenses. In *Houston v. State*,[17] a 1979 Alaska Supreme Court case, the defendant, an army sergeant, shot and killed a man he perceived to be reaching for a weapon. At trial, a defense expert testified that Mr. Houston had traumatic neurosis of war and severe alcoholism and that the shooting took place while he was in a

dissociative state. The trial court denied his request for a bifurcated trial with an insanity phase, and he was found guilty of seconddegree murder. The appeals court reversed and remanded, finding that he had provided substantial evidence to support an insanity defense.

Shortly after its introduction into DSM-III in 1980,[2] PTSD itself became the basis for successful insanity defenses. In *State of New Jersey v. Cocuzza*, the defendant, a Vietnam veteran who assaulted a police officer was found to be not guilty by reason of insanity.[57] Mr. Cocuzza maintained that he believed he was attacking enemy soldiers, and his claim was supported by the testimony of a police officer that Mr. Cocuzza was holding a stick as if it were a rifle. In another case, *State v. Heads*,[56] the defendant, also a Vietnam veteran, was charged with the shooting death of his sister-in-law's husband, after he entered the victim's residence in search of his estranged wife and began to fire a gun. Although he was found guilty in the first trial, the conviction was reversed on several grounds. In a subsequent trial, he was found not guilty by reason of insanity after testimony about PTSD was offered. The expert gave testimony that Mr. Heads had PTSD, that he had experienced at least one prior dissociative episode, and that there was a resemblance between the scene of the shooting and Vietnam.[63] In the case *State v. Wood*,[58] a 1982 Illinois Circuit Court case, the defendant, again a Vietnam veteran, was found not guilty by reason of insanity in the shooting of the foreman in the factory where he worked. The shooting took place shortly after Mr. Wood was confronted about his alcohol use by the foreman in front of several witnesses. The defense presented expert testimony about PTSD, about Mr. Wood's combat exposures, and about the ways in which the factory environment was reminiscent of combat, contending that the shooting took place while Mr. Wood was in a dissociative state. In yet another case, *Commonwealth v. Tracy*,[22] a 1989 Massachusetts case, Mr. Tracy, a Vietnam veteran who was charged with armed robbery, was found not guilty by reason of insanity based on PTSD. The defense contended that he was in a dissociative state during the robbery, which was triggered by stress and by the sight of a funeral parlor, which was a reminder of his Vietnam experience. Of note, Massachusetts employs the American Law Institute standard for insanity, in which a defendant is not considered criminally responsible if, as a result of mental disease or defect, the defendant lacked the capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.[62] Given that most jury verdicts are unpublished, it is not possible to determine how PTSD testimony has fared overall as a basis for the insanity defense. However, analysis of this selection of jury verdicts indicates that the PTSD phenomenon of dissociation has been successfully presented as a basis for insanity, at least when the American Law Institute standard for insanity was used.

At the appellate level, over the three decades of its existence as a diagnosis, PTSD has received mixed treatment when offered as a basis for insanity. This disparity was particularly noticeable after the widespread reform of insanity defense statutes in 1984, where, in both the federal system and in many states, insanity defense statutes were amended to require the presence of a severe mental disorder, proof of insanity under the *M'Naughten* standard or its variant, and proof of insanity by the defense at the clearand-convincing level. Under the more stringent *M'Naughten* standard, a defendant is not considered criminally responsible if, as a result of mental disease or defect, the defendant lacked the capacity to understand the nature and quality or the wrongfulness of his conduct.[62] The placement of the burden of proof on the defendant constituted a significant shift in many jurisdictions. In the past, the defendant had been required only to present evidence in support of insanity, with the prosecution bearing the burden of showing that the standard for insanity was not met.

With respect to admissibility as a qualifying mental disorder for the insanity defense, in several jurisdictions, a PTSD defense was met with skepticism, particularly after the changes in insanity defense statutes. For example, in *United States v. Duggan*,[19] a 1984 federal case, the district court denied the defendants' pretrial motion for an insanity plea, finding that they failed to offer evidence or clinical findings in support of insanity, and the court questioned whether PTSD is a diagnosis that could ever lead to insanity. The defendants were found guilty of various firearms and explosives charges, which they appealed. The court of appeals upheld the conviction and agreed with the trial court's finding that an

insanity plea based on PTSD was not supported. In *United States v. Whitehead*,[23] a 1990 federal case, Mr. Whitehead, a Vietnam veteran, was charged with bank robbery. He mounted an insanity defense based on PTSD and presented the expert testimony of a psychologist. The district court found that there was insufficient evidence to support a jury instruction on insanity, and Mr. Whitehead was found guilty of his charges. The court of appeals upheld the trial court's decision on the insanity defense, finding that, based on the testimony and evidence presented by the defense, no fact finder found that Mr. Whitehead could not appreciate the nature or wrongfulness of his actions or that his actions were a result of a severe mental illness at the clear-and-convincing standard. In its decision, the court did not specifically address whether PTSD could ever be a qualifying mental disorder for insanity. In *United States v. CartagenaCarrasquillo*,[28] a 1995 federal case, the defendants were charged with cocaine-related offenses. At trial, one defendant gave notice and sought to present PTSD testimony as part of an insanity defense. The district court, after reviewing the expert's report, denied the defense, finding that the report did not show how the defendant, whether he had PTSD or not, did not know right from wrong. The defendants were convicted, and on appeal, the court of appeals affirmed the conviction, as well as the district court's decision to exclude the PTSD testimony, also finding that it was insufficient to support an insanity defense. Finally, in *United States v. Long Crow*,[27] a 1994 federal case, the defendant was charged with assault with a deadly weapon for firing a gun at a party after a confrontation with another individual. He claimed insanity based on PTSD and presented the testimony of a psychiatrist who observed him in court but did not evaluate him. The trial court refused to instruct the jury on the insanity defense, and he was found guilty of several charges. The court of appeals affirmed the conviction and agreed with the district court that there was insufficient evidence to support an insanity defense based on PTSD. In its decision, the court stated that it was unable to find cases in which PTSD was successfully presented as a basis for insanity, although it did not reject the possibility that PTSD could lead to insanity. Taken together, the appellate decisions in these federal cases suggest that the primary reason for the rejection of an insanity defense based on PTSD resulted from a lack of showing by the defense of how PTSD could lead to insanity. It does not appear that the federal courts of appeals found that PTSD was categorically disqualified as a basis for insanity, even after the Insanity Defense Reform Act of 1984.

In fact, some courts explicitly found PTSD to be a qualifying mental disorder that could lead to a defense of insanity. For example, in *United States v. Rezaq*,[29] a District of Columbia district court case, the defendant was charged with aircraft piracy, for which he intended to present an insanity defense based on PTSD. In support of this defense, he offered the opinions of three psychiatrists who diagnosed PTSD. The government sought to exclude this testimony, stating that the defendant's PTSD was not a sufficient basis for insanity. The district court denied the motion, finding that the reports by the defendant's experts "clearly indicate that defendant's diagnosis of PTSD meets the test of insanity as set out" in federal statutes (Ref. 29, p 467). In addition, in several cases that will be discussed later in the article, insanity defenses based on PTSD were found to be compelling by appellate courts in both state and federal jurisdictions. It appears that as a matter of law, some courts have found PTSD to be a sufficiently severe mental disorder that could lead to insanity, but based on the facts of specific cases, it has sometimes been rejected.

In cases in which an insanity defense based on PTSD was allowed, but in which the defendant was convicted and the case was appealed, appellate courts have in some cases upheld the rejection of the insanity defense by juries. This has been the case in jurisdictions that use the *M'Naughten* standard for insanity and in those that use the American Law Institute standard. For example, in *Gentry v. State*,[20] a 1984 Tennessee Court of Criminal Appeals case, Mr. Gentry was charged with the first-degree murder of his girlfriend. He claimed insanity based on PTSD, contending that, after accidentally shooting his girlfriend, he lost touch with reality and shot her again. Mr. Gentry was diagnosed with PTSD by both defense and prosecution experts, but prosecution experts opined that the disorder was not sufficiently severe to render him incapable of

understanding the wrongfulness of his acts or of conforming his conduct to the requirements of the law. The jury found him guilty of first-degree murder, rejecting his insanity defense. The court of appeals upheld the conviction, finding that he did not have a mental disorder sufficient to render him insane under Tennessee's American Law Institute insanity standard. In *State v. Wilson*,[24] a 1991 Louisiana Court of Appeal case, Mr. Wilson was accused of the attempted murder of a couple he knew, after he shot them in their home. The defendant, a Vietnam veteran, claimed insanity based on a PTSD flashback induced by jets flying overhead. He presented the testimony of three psychiatrists who diagnosed PTSD and who opined that he committed the shooting in the context of a flashback. In rebuttal, the prosecution presented the testimony of psychiatrists who evaluated the defendant's competency to stand trial. They were asked questions based on hypotheticals and in response opined that the defendant was able to tell right from wrong. The jury convicted Mr. Wilson, rejecting his insanity defense under Louisiana's *M'Naughten* insanity standard. On appeal, Mr. Wilson asserted that the jury had erred in failing to find him not guilty by reason of insanity. The court of appeal disagreed and affirmed the conviction, finding that there was sufficient evidence for the jury to reject the insanity defense, given that the burden of proof was the defendant's. In *State v. Angel*,[25] a North Carolina Supreme Court case, Mr. Angel was accused of the first-degree murder of his estranged wife. He pleaded not guilty by reason of insanity due to dissociation caused by PTSD and presented lay and expert testimony in support of his defense. In rebuttal, the prosecution in part presented hearsay testimony that the victim feared for her life from the defendant. The defendant was convicted. He appealed on the basis that the hearsay testimony should not have been admitted. Thecourtofappealsaffirmed,findingthatevenifthe admission of the testimony was an error, there was sufficient evidence to reject his insanity defense under North Carolina's *M'Naughten* insanity standard. Finally, in *People v. Rodriguez*,[26] a 1993 New York appellate division court case, the defendant appealed his conviction of five counts of armed robbery on the basis that the jury erred in failing to find him not guilty by reason of insanity related to chronic PTSD under New York's American Law Institute insanity standard. The appellate court affirmed the conviction, finding that there was conflicting but credible expert witness testimony, and it was within the purview of the jury to determine which expert's testimony should be given more weight. These cases demonstratethatinthepresenceofconflictingexpert witness testimony as to a defendant's PTSD diagnosisandsanity,juries'rejectionsoftheinsanitydefense based on PTSD have often been affirmed by appellate courts.

However, in some cases, appellate courts have found an insanity defense based on PTSD to be compelling and at times to be grounds for reversal. For example, in *State v. Percy*,[21] a 1988 Supreme Court of Vermont case, a Vietnam veteran was accused of sexual assault and kidnapping, among other charges. At trial, he did not dispute committing the acts, but he claimed insanity based on having a PTSD flashback during the incident. Defense and prosecution experts all diagnosed PTSD, but disagreed on whether it was related to Mr. Percy's offenses. Defense experts opined that Mr. Percy was experiencing an unconscious flashback during the commission of his crimes and that as a result he was not in control of his thinking and behavior. Under Vermont's American Law Institute insanity standard, Mr. Percy was found guilty by the trial court, and he appealed. The Vermont Supreme Court determined that in reaching its verdict, the trial court improperly considered Mr. Percy's silence after he received the *Miranda* warning. The court reversed and remanded for a new trial, concluding that it was not possible to determine what verdict the trial court would have reached absent the error, as there was conflicting expert witness testimony as to the defendant's sanity.

In summary, in some cases in which the insanity defense based on PTSD was successful or was found by appellate courts to be viable, the defense theory involved dissociative phenomena leading to a break with reality. As has been suggested elsewhere, this is probably the sole PTSD phenomenon that could meet the strict insanity standards in most current jurisdictions that use the *M'Naughten* standard or its variant, with a clear-

and-convincing standard of proof.[1,3,4] However, even dissociative phenomena have been rejected as a valid basis for insanity in some if not most cases.

PTSD and the Unconsciousness Defense

Another exculpating defense in which PTSD has had relevance is that of unconsciousness. In that defense, the defendant claims not to have been conscious during the commission of the criminal act. Therefore, the act was not voluntary, and there was no criminal liability. Unlike insanity, unconsciousness is a complete defense, resulting in exoneration but not in a hospital commitment.[62] Traumatic disorders were the basis for successful unconsciousness defenses even before the introduction of PTSD as a diagnosis.[4,8]

For example, in *People v. Lisnow*,[32] a 1978 California Supreme Court Appellate Department case, Mr. Lisnow was convicted of battery in an apparently unprovoked assault that he engaged in while dining in a restaurant. He claimed unconsciousness, and a defense expert testified that the defendant was unconscious at the time of the incident as a result of a fugue state brought on by a continuing traumatic neurosis related to his service in Vietnam. The trial court struck the expert witness's testimony, resulting in a conviction. The appeals court reversed the judgment, holding that the evidence of Mr. Lisnow's unconsciousness at the time of the incident was admissible and compelling.

In another case, *State v. Fields*,[33] Mr. Fields was charged and convicted of the first-degree murder of his sister's boyfriend, who was allegedly abusive toward the defendant's sister. The defendant presented lay and expert witness testimony that suggested he had PTSD and was in a dissociated state when the homicide took place. The trial court refused to instruct the jury on the unconsciousness defense, and Mr. Fields was found guilty. On appeal, the court found that the evidence presented by the defense tended to show that the defendant was unconscious just before and during the homicide and that the jury should have received instructions on the unconsciousness defense. The court reversed and remanded for a new trial. These cases illustrate that, in addition to relevance to the insanity defense, the PTSD phenomenon of dissociation has been used as a basis for the unconsciousness defense.

PTSD and Self-Defense

Since its introduction, PTSD and related syndromes, such as battered-woman syndrome, have been used in the justification defense of self-defense. The basic elements of self-defense are that the defendant is not the aggressor, the defendant reasonably fears imminent death or great bodily harm that necessitates the use of force to save his life, and the amount of force used by the defendant is reasonably necessary to avert the danger and not more than exigency demands. Self-defense is precluded if a defendant uses excessive force. In perfect self-defense, all elements of self-defense are met and complete exoneration results. In imperfect self-defense, only some of the elements are met, and typically a conviction of a lesser included offense (e.g., manslaughter as opposed to first-degree murder) results.[62]

Expert testimony about PTSD has been used to establish the necessary state-of-mind element of selfdefense (namely that the defendant reasonably feared imminent death or great bodily harm). Such testimony has been most relevant in jurisdictions that have a subjective test of imminent danger, where the trier of fact must determine whether the defendant believed that there was an imminent risk that necessitated the use of force. In most jurisdictions, an additional objective test is used to determine whether a reasonable person under the same circumstances would

have believed that there was imminent risk that necessitated the use of force.[62] The relevance of PTSD in jurisdictions that use an objective test is more limited, although some courts have considered PTSD to be an aspect of the circumstances to be considered in the objective test.

At the appellate level in different jurisdictions, expert witness testimony on PTSD and related syndromes has been deemed relevant to claims of selfdefense, particularly in cases that involved the homicide or attempted homicide of an abuser (i.e., the perpetrator of trauma leading to PTSD). For example, in *State v. Kelly*,[34] a 1984 New Jersey Supreme Court case, Ms. Kelly was charged with the firstdegree murder of her husband. She admitted to the killing, but claimed to have acted in self-defense. In support of this claim, the defense sought to introduce expert witness testimony on battered-spouse syndrome (but not PTSD), given past abuse of the defendant at the hands of her husband, including at the time of the homicide. First described by Dr. Lenore Walker,[1,4–6,34] battered-spouse syndrome is a psychological construct that describes and explains behavior patterns typical of battered spouses. The trial court excluded this testimony as irrelevant, and Ms. Kelly was convicted of manslaughter. On appeal, the court held that the testimony sought by the defense on battered-spouse syndrome was in fact relevant to self-defense. The court reasoned that the testimony was relevant to bolster the credibility of the defendant that she subjectively feared for her life and to aid the jury in determining whether, in the defendant's circumstances, a reasonable person would have feared for her life. The court therefore reversed the conviction and remanded. At the same time, the appellate court allowed the trial court to determine whether the expert testimony on battered-spouse syndrome was sufficiently reliable to admit, given its recent emergence as a syndrome.

In *Rogers v. State*,[36] a 1993 Florida Court of Appeal case, the defendant was convicted of the firstdegree murder of her boyfriend. At trial, she sought to present expert witness testimony about batteredwoman syndrome, which included characterizing the disorder as a form of PTSD. The trial court excluded the testimony as not meeting the standard for admission. On appeal, the court disagreed and found the testimony to be relevant and to meet the standard for admission, noting that PTSD is commonly accepted in the mental health community and that expert testimony on PTSD has been recognized as admissible by Florida courts. The conviction was reversed, and the case was remanded for a new trial.

In *State v. Hines*,[40] a 1997 Superior Court of New Jersey, Appellate Division case, the defendant was charged with the intentional murder and robbery of her father and was convicted of the lesser included charges of manslaughter and theft. At trial, Ms. Hines claimed self-defense, contending that she was sexually abused by her father as a child and that on the day of the offense he made sexual advances toward her and threatened her. She contended that she feared for her safety and as a result struck him repeatedly with a hammer, killing him. To support her defense, Ms. Hines sought to admit expert testimony on PTSD. The trial court excluded the testimony. On appeal, the court found that the exclusion of PTSD testimony was an error, as this testimony would have been relevant to the defendant's claim of self-defense. The conviction was reversed and the case was remanded for a new trial. These cases demonstrate that some appellate courts have viewed testimony on PTSD as relevant to self-defense claims involving the homicide or attempted homicide of abusers.

PTSD testimony has also been proffered by the defense in cases involving the homicide of nonabusers, but it has enjoyed less acceptance by courts in such cases. For example, in *Perryman v. State*,[41] a 1999 Oklahoma Court of Criminal Appeals case, the defendant was convicted of the first-degree murder of a man who he claimed attempted to assault him sexually and then threatened to shoot him when he fought back. The defendant sought to introduce PTSD testimony related to alleged childhood sexual abuse. The trial court excluded the testimony on the grounds of irrelevance. On appeal, the court affirmed theconvictionandtheexclusionofPTSDtestimony, reasoning that the relevance of PTSD to self-defense involving a nonabuser (as opposed to an abuser) is questionable.

Other courts have found testimony on PTSD to be relevant to self-defense claims for the homicide or attempted homicide of nonabusers. For example, in *State v. Mizell*,[42] a 2000 Florida Court of Appeal case, the defendant, a Vietnam veteran, was charged with attempted second-degree murder after he got into a fight with another man at the home of a third person. Mr. Mizell claimed that the victim threatened him and ran his hand over his pocket, at which point he picked up a stick and hit the victim several times. Mr. Mizell sought to introduce testimony about PTSD, which the court allowed. The state appealed the decision to allow such testimony. The court of appeal held that PTSD evidence is admissible and relevant to the question of self-defense.

In cases in which PTSD or related syndrome testimony was allowed, courts have at times refused to instruct juries on self-defense, questioning whether the defense theory based on PTSD was compelling. On appeal of some of those cases, courts have reversed, suggesting that self-defense based on PTSD is a recognized phenomenon in case law. For example, in *State v. Janes*,[37] a 1993 Washington Supreme Court case, 17-year-old Mr. Janes shot and killed his mother's boyfriend, who reportedly had abused Mr. Janes, his mother, and his siblings over a period of 10 years. An argument between the defendant's mother and the victim took place the night before the shooting, but reportedly there was no confrontation between the defendant and the victim at the time of the shooting. At trial, Mr. Janes presented two defenses, self-defense based on the history of abuse and diminished capacity. He presented expert witness testimony that he had PTSD, which led him to believe he was in imminent danger from the victim. The trial court refused to issue self-defense instructions to the jury, because it did not believe that Mr. Janes was in imminent danger of abuse. Mr. Janes was convicted of second-degree murder. On appeal, the lower appellate court reversed the conviction, which the state appealed to the Supreme Court of Washington. In its decision, the court held that testimony on PTSD and battered-child syndrome was admissible and that the trial court erred in failing to consider the subjective element of self-defense in the context of the expert testimony given. The court remanded the case to the trial court to reconsider the self-defense jury instructions.

Appellate courts had similar findings in cases of self-defense claims involving nonabusers. In *State v. Sullivan*,[39] a 1997 Maine Supreme Judicial Court case, Mr. Sullivan was charged with attempted murder and aggravated assault related to his shooting into a crowd in a bar after an altercation with a bar patron. Mr. Sullivan claimed self-defense, which in part involved PTSD. The trial court refused to instruct the jury on self-defense, and Mr. Sullivan was convicted of all three charges of aggravated assault. On the basis of expert witness testimony, the appeals court vacated the convictions, holding that a jury could have reasonably found that Mr. Sullivan acted in self-defense.

A review of appealed jury verdicts in cases in which self-defense based on PTSD was claimed reveals that conviction of a lesser included offense is another potential outcome of such cases. Such outcomes often occurred in jurisdictions that allow imperfect selfdefense. For example, in *Harwood v. State*,[38] a 1997 Texas Court of Appeals case, 16-year-old Mr. Harwood was charged with the murder of a man who had molested him. He claimed self-defense and introduced the testimony of his therapist, who had diagnosed PTSD and testified to his opinion that the shooting was in self-defense. Mr. Harwood was convicted of the lesser included offense of manslaughter. On appeal, the verdict was affirmed, as the court found that the jury most likely believed the defendant's version of events but did not believe it should result in complete exoneration.

In summary, appellate courts have found expert testimony on PTSD to be relevant in cases of selfdefense. This finding has been true for offenses of abusers as well as nonabusers, although for the latter, some courts have excluded PTSD testimony. Selfdefense claims based on PTSD have been offered primarily in jurisdictions that use a subjective test of reasonableness. Finally, in jurisdictions that allow an imperfect self-defense, in which conviction of a lesser included charge is possible, PTSD has been relevant and successfully presented as an element of the defense.

Detailed review of these cases indicates that expert testimony on PTSD as it relates to selfdefense was focused on the PTSD phenomena of

hyperarousal symptoms, increased impulsivity, reexperiencing of psychological distress when confronted with an abuser or reminders of past traumas, and the overestimation of danger.

PTSD and Refuting Mens Rea

In the criminal courts, expert witness testimony on PTSD has also been introduced to refute the requisite state of mind, or *mens rea*, for certain criminal charges. Most U.S. jurisdictions allow mental health expert testimony to refute *mens rea*, whereas some jurisdictions restrict such testimony to the insanity defense.[62] In jurisdictions that allow such testimony, appellate courts have in some cases found testimony about PTSD to be admissible for such purposes and to be compelling. For example, in *United States v. Cebian*,[44] a 1985 federal case, the defendant was charged with cocaine-related offenses. Her defense was that she lacked the ability to form the requisite state of mind for the charged crime as a result of PTSD related to abuse by her spouse, a cocaine dealer. Expert witness testimony to this effect was presented by the defense and was admitted. Although the jury ultimately found the defendant guilty on the basis of prosecution evidence countering the defense claims, the admissibility of such testimony was not questioned on appeal.

In *State v. Warden*,[45] a 1997 Washington Supreme Court case, Ms. Warden, a 41-year-old woman, was charged with the first-degree murder of an 81-year-old woman who had formerly employed her as a housekeeper. She presented the defense of diminished capacity due to PTSD from long-standing abuse by her son. A psychiatric expert testified that the defendant had PTSD with dissociative states and that she lacked the capacity to form specific intent with respect to the charged crime. The judge instructed the jury on first- and second-degree murder, but not on manslaughter. On appeal, the supreme court reversed, finding that there was substantial evidence to support a conviction of the lesser charge of manslaughter on the basis of the expert witness testimony offered. In *State v. Bottrell*,[46] a 2000 Washington Court of Appeals case, Ms. Bottrell was charged with the premeditated murder of an elderly man who had made sexual overtures toward her. The trial court excluded expert testimony on PTSD that the defendant sought to present to supportherdefenseofdiminishedcapacity.Shewasconvicted, but the appeals court reversed, ruling that the exclusion of PTSD testimony was an error. In its decision, the court held that, "Washington case law acknowledges that PTSD is recognized within the scientific and psychiatric communities and can affect the intent of the actor resulting in diminished capacity" (Ref. 46, p 715). In summary, PTSD testimony has been allowed and has been found to be relevant and compelling by some appellate courts when offered in conjunction with a diminished capacity or related *mens rea* defense.

PTSD as a Mitigating Circumstance

In the federal jurisdiction, a mental illness can be a basis for downward departure in sentencing if the defendant committed the offense while in a significantlyreducedmentalstateandifthereducedmental state contributed substantially to the commission of the offense.[62] In some state jurisdictions, the presence of a mental illness as a factor in a crime can similarly mitigate sentencing. Courts have found PTSD to be a relevant diagnosis for such mitigation, and, in some cases, sentences have been reversed because of the exclusion or oversight of such testimony. For example, in *In re Nunez*,[51] a 2009 California Court of Appeal case, the defendant, a juvenile, was convicted of charges related to an attempted kidnapping and firing at police during a high-speed chase. The defendant was sentenced to life imprisonment without the possibility of parole. On appeal, the court found that PTSD evidence should have been considered in sentencing and should have mitigated the sentence, which was excessive. Mr. Nunez's diagnosis was PTSD related to past traumas, including childhood abuse by his father, being the victim of a shooting, and

witnessing the shooting death of his brother only months before the offense. An expert opined that PTSD contributed substantially to his offense, an opinion that the court found compelling. The court therefore vacated the sentence and remanded to the trial court for resentencing.

In *Gilley v. Morrow*,[49] a 2007 federal case, the defendant was convicted of the murder of his parents and sister. No mitigating evidence was introduced during the sentencing phase of his trial. Mr. Gilley filed a petition for a writ of *habeas corpus* for ineffective assistance of counsel, which was granted by the federal district court. The court of appeals affirmed the district court's granting of his petition in the sentencing phase, but not in the trial phase. The court found that evidence about the defendant's PTSD from childhood abuse would have been relevant in sentencing, so that trial counsel rendered ineffective assistance when he failed to present such evidence.

In some cases, courts have chosen not to reduce sentencing on the basis of the presence of PTSD as a factor in the crime, and their rulings have been upheld on appeal. For example, in *United States v. Cope*,[50] a 2008 federal case, the defendant received the maximum sentence for methamphetamine-related charges. The defendant contended that his military service in Vietnam and his related PTSD should have mitigated the sentence, but the trial court opined that "even individuals with this disorder have to take responsibility for their actions " (Ref. 50, p 371). The court of appeals affirmed the sentence, holding that the trial court had the discretion of not considering the presence of PTSD to be a mitigating factor in the sentence.

Finally, in some cases, courts did not find the purported connection between PTSD and the offense to be compelling, thus denying a downward deviation of sentencing. For example, in *United States v. Johnson*,[47] a 1995 federal case, Mr. Johnson was convicted of two cocaine sales charges. He appealed his sentence, in part because he argued that the district court should have reduced his sentence because of his diminished mental capacity related to PTSD. The court of appeals upheld the district court's rejection of Mr. Johnson's diminished mental capacity claim, finding that he failed to show a direct connection between PTSD and the offense. Similarly, in *Hall v. Lee*,[52] a 2009 Georgia Supreme Court case, Mr. Hall and an accomplice broke into a gun store and stole several guns. The defendant then drove to his father's house, planning to kill him; however, his father was not home and the defendant shot his father's girlfriend. Following conviction, sentencing, and appeal, he filed a *habeas* petition for ineffective assistance of counsel, contending that his trial counsel did not sufficiently investigate mitigating circumstances. In support of his argument, he presented expert testimony that he had PTSD. The *habeas* court denied his petition, holding that he had failed to show how PTSD was related to his offense.

In summary, in cases in which PTSD played a role in an offense but did not meet the standard for an exculpating defense, courts have found it to be a mitigating circumstance that permits a reduction in sentencing. In such cases, a wide range of PTSD phenomena have been found to be applicable, including hyperarousal symptoms, impaired impulse control, overestimation of danger, and dissociative phenomena. However, in most jurisdictions, a showing of a direct connection between PTSD and the offense is required.

DISCUSSION

In this article we reviewed U.S. case law relating to the use of PTSD as a criminal defense. Since its introduction in DSM-III,[2] PTSD has been offered as the basis for defenses, including insanity, unconsciousness, self-defense, and diminished capacity and as a mitigating circumstance in sentencing. The diagnosis has received both positive and negative treatment by appellate courts when presented as the basis for each of these defenses. An analysis of the reviewed cases yielded the following conclusions.

Appellate courts in some jurisdictions have found testimony on PTSD to meet both the *Daubert* and *Frye* standards for admissibility. In assessing expert testimony, courts have favorably regarded the direct evaluation of the defendant by the expert, confirmation of the traumatic exposure via collateral information, and the existence of documented PTSD symptomatology and treatment before the occurrence of the criminal act in question.

Appellate courts have found criminal defenses based on PTSD to be viable and compelling when a clear and direct connection between the defendant's PTSD symptoms and the criminal incident was found by the expert. The PTSD phenomena that appellate courts have found to be most relevant to criminal defenses include dissociations, hyperarousal symptoms, hypervigilance symptoms, and the overestimation of danger. Although other PTSD phenomena, such as survivor guilt, a sense of a foreshortened future, and thrill seeking, have been proposed in the literature and in expert testimony as relevant, the case law reviewed in this article suggests that courts have not agreed.[3,4,8]

In the rare instances of crimes committed in the context of dissociative episodes, the exculpating defenses of insanity and unconsciousness have been successfully presented. In such cases, the mental health expert has been called on to determine whether the defendant was indeed in the midst of a PTSD dissociation while committing the offense. PTSD dissociations have been the basis for successfully presented arguments of self-defense, diminished capacity, and other *mens rea* defenses. These defenses have also been successfully based on the PTSD phenomena of overascertainment of danger and hyperarousal symptoms. Finally, for crimes in which PTSD played a role but did not amount to one of these defenses, some courts have found it to be a mitigating circumstance in sentencing.

Several authors have offered recommendations for the forensic expert evaluating PTSD as a potential criminal defense, although these have largely not been research based. For example, in describing two cases of malingered PTSD offered as a basis for criminal defense, Sparr and Atkinson[3] discussed the importance of assessing the veracity of the trauma that is presented as reason for the diagnosis. Recommendations included the use of confirmatory records and being alert to signs of an exaggerated or factitious trauma, such as grandiose stories, esoteric terminology that is difficult to understand, or contradictory stories. Colbach[64] proposed similar recommendations in a paper describing a case of malingered PTSD that was successfully used as a basis for an insanity defense but that was later exposed in a civil suit. In reviewing PTSD as a criminal defense, Sparr[4] proposed characteristics of authentic PTSD dissociations that cause criminal acts. These included the absence of a motive or explanation for the crime, lack of premeditation, similarities between the circumstances of the crime and the trauma causing PTSD, a random or fortuitous victim, and no criminal history. Sparr and Atkinson[3,4] and others[8] have also proposed certain interview techniques in the evaluation of PTSD as a criminal defense, such as beginning with open-ended questions before inquiring about specific PTSD symptoms. The utility of neuropsychological tests in diagnosing PTSD has also been discussed and reviewed by others. Finally, although not yet an aspect of clinical or forensic practices, physiological testing, reviewed elsewhere,[8] has been studied as a potentially useful adjunctive tool to aid in the diagnosis of PTSD.

Analysis of the cases reviewed in this article supports some of the above recommendations. First, accurately diagnosing PTSD is fundamental for the acceptance of expert testimony as reliable by courts. Second, forensic experts should specifically determine whether and how specific PTSD phenomena played a role in the criminal act in question. Particular attention should be directed to whether PTSD phenomena that have been recognized by courts as relevant to criminal defenses were present. The forensic expert should elucidate as clearly as possible how the PTSD phenomena that were present contributed to the act. In doing so, the forensic expert should keep in mind the relevant criminal defenses involved, including insanity, self-defense, and diminished capacity. In numerous cases reviewed in this article, expert testimony has been excluded or deemed irrelevant because of a failure to identify a clear and direct connection between the defendant's PTSD symptoms and the criminal act.

This review has several limitations. First, it is limited to U.S. case law, which is likely to be only partially relevant in other countries. However, as has been suggested by Friel *et al.*,[8] the prevalence of PTSD-based criminal defenses in U.S. courts has very likely been higher than in other countries as a result of the Vietnam War. Because of that, U.S. case law in this area is likely to serve as an important reference point for other jurisdictions. Second, and as discussed earlier, because this review is based on published cases, it cannot address trends in PTSDbased criminal defenses in jury trials. Furthermore, the published decisions examined often contained only short exerpts or brief synopses of expert testimony, such that the complete examination of expert testimonies offered was not possible. Finally, this review describes the extent to which appellate courts have found PTSD and specific phenomena of the disorder to be valid bases for criminal defenses. These findings may differ from those in future empirical research, regarding the validity of PTSD phenomena and their role in criminal behavior.

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Post-Traumatic Stress Disorder (PTSD)

Post-Traumatic Stress Disorder (PTSD) is a mental disorder triggered by trauma considered by the individual experiencing it to be life-threatening. It can present at any age and generally occurs within the first three months following the traumatic experience. PTSD can result from a single episode or multiple exposures occurring over time. It is most often associated with war veterans, military contractors, individuals who have suffered abuse or rape, natural disaster victims, victims of and witnesses to a crime, terrorist act, accident or other tragic event, although it can occur under many circumstances.

The most common symptoms associated with PTSD include depression, anger, anxiety, impulsivity, suicidal thinking, violent behavior, dissociation, paranoia, alcohol and substance abuse, and isolation.

The diagnosis of a PTSD can occur after a person has been exposed to a severe trauma, and finds him or herself repeatedly

reliving the incident (as if it just happened,) avoiding similar situations and withdrawing from their environment. An analysis of treatments for PTSD reveals that there are multiple modalities for which the effectiveness is often unclear.

One model of treatment is to stabilize the individual psychiatrically and medically, provide increased psychosocial supports, and eventually obtain job testing, training and placement.

PTSD in the Courts

Individuals with PTSD are frequently involved in legal proceedings, either in Civil or Criminal Court. Civil proceedings usually involve the determination as to whether a PTSD is present, its etiology, its presentation, severity and impairment. In criminal proceedings, the etiology, presentation, severity and impairment are considered, but more specifically, criminal proceedings address how a PTSD disorder might have influenced the mental state and behavior of the defendant.
Competency and insanity are examples of two criminal proceedings in which PTSD has been considered.

Assessment for drug and alcohol abuse is common as substance abuse frequently co-occurs with PTSD in both Civil and Criminal situations.

A forensic psychiatrist has unique training and experience in assisting the Civil or Criminal Court in its determination as to whether an individual has PTSD . If it is determined that an individual does have a PTSD, a forensic psychiatrist has the unique training and experience to assist in understanding how the PTSD should be considered in a particular suit or criminal allegation.

Civil Forensic Evaluations | Criminal Forensic Evaluations | Post Traumatic Stress Disorder in Courts | Civil Competency | Criminal Competency | Testamentary Capacity | Insanity Defense (NGRI)

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Pro Se Competence in the Aftermath of *Indiana v. Edwards*

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Abstract

The right to represent oneself at trial is well-established, but not absolute. Recently, in *Indiana v. Edwards*, the United States Supreme Court considered whether states may demand a higher standard of competence for criminal defendants seeking to represent themselves at trial than that necessary for standing trial with attorney representation. Ultimately, the Court ruled that the Constitution allows states to employ a higher competency standard for *pro se* defendants. In this analysis of the Court's decision, the authors describe the facts of this case, the legal precedents framing the issues facing the Court, and the Court's rationale for its opinion. The ruling is considered in light of available research involving *pro se*

defendants and whether this ruling is consistent with professional guidelines related to forensic psychiatric practice. Implications of the decision for forensic clinicians and limitations of the decision are discussed.

Among guarantees for the right to a speedy and public trial, an impartial jury in the district of the offense, notice of charges, confrontation of witnesses, and compulsory processes for obtaining witnesses in one's favor, the Sixth Amendment guarantees a criminal defendant the assistance of counsel in making his defense. The United States Supreme Court has further recognized the importance of the assistance of counsel through its subsequent decisions identifying the ability to assist counsel as a necessary component of competence to stand trial[1,2] and ruling that "lawyers in criminal courts are necessities, not luxuries," obligating states to provide attorneys for indigent defendants.[3] However, for a variety of reasons, criminal defendants may seek to forgo the benefits of counsel and represent themselves during their proceedings.

The common adage that one who is his own lawyer has a fool for a client suggests that it is a mistake for a layperson to tread into the legal arena without the assistance of counsel. The Supreme Court has offered such cautions in past decisions[4,5] and noted, "Our experience has taught us that 'a pro se defense is usually a bad defense, particularly compared with a

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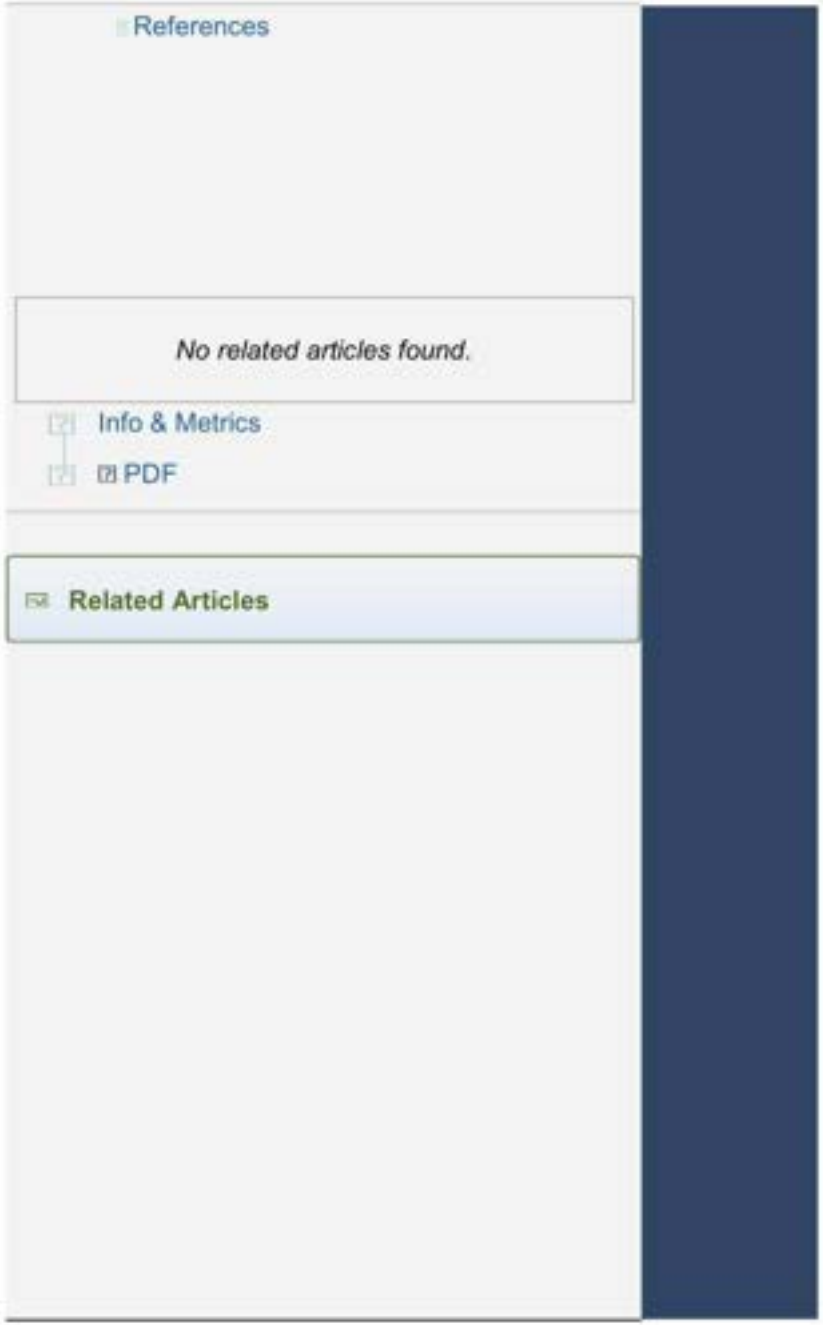
defense provided by an experienced criminal defense attorney' " (Ref. 6, p 161). To what degree does this conventional wisdom hold true?

In 1975, the U.S. Supreme Court recognized in *Faretta v. California*, "a near universal conviction, on the part of our people as well as our courts, that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself" (Ref. 4, p 817). The Court cited federal precedents



recognizing a constitutional right to self-representation, the wording of the Sixth Amendment referring to the *assistance* of counsel (emphasis added), and common law and colonial traditions protecting a defendant's right to proceed without counsel were he voluntarily and intelligently to elect to do so. Mr. Faretta's technical legal knowledge was ruled to be irrelevant in the assessment of his knowing exercise of his right to defend himself, but courts should assure themselves that the waiver of counsel was knowing and voluntary, and a defendant should be made aware of the dangers and disadvantages of self-representation so that the record will establish that "he knows what he is doing and his choice is made with eyes open" (Ref. 6, citing *Adams v. U.S. ex rel. McCann*, 317 U.S., 269, 279 (1942)).

While Anthony Faretta's wisdom in seeking to proceed *pro se* was questioned, there were no specific concerns that he had an underlying mental illness or cognitive deficit that may have affected his decision or ability to represent himself. The Supreme Court dealt with this question in their 1993 *Godinez v. Moran*[7] decision.

Richard Moran, charged with three counts of murder and believed to be marginally competent to stand trial, sought to discharge his attorneys and plead guilty. The trial court found that he was "knowingly and intelligently" waiving counsel and that his waiver was "freely and voluntarily" given. His guilty plea was accepted, and he was sentenced to death. Later, following Mr. Moran's series of federal *habeas* appeals on the grounds that he was incompetent to

represent himself, the Supreme Court ruled that the competency standard for pleading guilty or waiving the right to counsel is the same as that for competency to stand trial.[7] In the majority opinion, Justice Thomas wrote that the decision to plead guilty was no more complicated than the sum of the decisions one must make during a trial. The competence

necessary to waive counsel was specifically noted to be that required to waive the right, not that needed to represent oneself.

While the right to represent oneself at trial is well established, the Supreme Court has recognized limitations to this right. In *McKaskle v. Wiggins*, the Court ruled that judges may appoint standby counsel over a *pro se* defendant's objection.[8] In 2000, the Court unanimously ruled in *Martinez v. Court of Appeals of California* that there was no constitutional right to self-representation during appeal of a criminal conviction.[6] In this opinion, the Court also questioned whether the historical precedents of self-representation underlying the *Faretta* decision were as pertinent in the modern era when attorneys are more available and are standard participants in legal proceedings. Appellate decisions have further denied or limited defendants' requests to proceed *pro se* when defendants have disrupted proceedings, have appeared to move for self-representation as a delay tactic, have made a *pro se* request in an untimely manner, or have insisted on hybrid representation (defendant and attorney alternate in conducting different parts of the defense).[9,10]

Indiana v. Edwards

The question posed in *Indiana v. Edwards* is as follows: May a state adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?[11]

In 1999, Ahmad Edwards fired three shots at a department store officer who had seen him steal a pair of shoes. The officer was grazed and a bystander was struck in the ankle. An FBI agent in the vicinity pursued Mr. Edwards into

drop his weapon. Mr. Edwards was subsequently apprehended and charged with several crimes, including attempted murder.

After his arrest, Mr. Edwards received a diagnosis of schizophrenia, was found incompetent to stand trial, and was hospitalized at Indiana's forensic state hospital for competency restoration. His mental condition eventually became the subject of three competency proceedings and two self-representation hearings. Five years after the offense and following two hospitalizations for competency restoration, Mr. Edwards began trial for his criminal charges. He asked to represent himself at that time, but his request was denied because he claimed to need a continuance to proceed *pro se*. He was convicted of criminal recklessness and theft, but the jury could not reach a verdict on the charges of battery with a deadly weapon and attempted murder.

Indiana sought to retry Mr. Edwards on the remaining charges, and he again asked to represent himself. The trial judge denied his request, appointing counsel to represent him after ruling that Mr. Edwards remained competent to stand trial but was not competent to defend himself. A jury convicted him of the remaining charges, and he was sentenced to 30 years' imprisonment.

On appeal to Indiana's appellate court, Mr. Edwards claimed that his Sixth Amendment right to represent himself was improperly violated. The appellate court agreed with him, citing the *Faretta* decision. After Indiana appealed the ruling, the Indiana Supreme Court upheld the appellate court decision. Although this court sympathized with the trial court judge's reasoning, it believed it was bound by both *Faretta* and *Godinez*. The U.S. Supreme Court granted *certiorari* to consider whether the trial court was constitutionally required to allow Mr. Edwards to represent himself.

Before the Supreme Court hearing on this matter, 19 states, the federal government, the American Bar Association, the American Psychiatric Association (APA), the American Academy of Psychiatry and the Law (AAPL) and others filed *amicus* briefs supporting Indiana in seeking a higher standard of competence for self-representation than is necessary to stand trial with the assistance of counsel. In their brief, APA and AAPL argued that there was professional recognition that competency was not a unitary concept and that individuals may have some competencies but not others.[12] These organizations noted that more than competence to stand trial is needed when a defendant seeks to proceed *pro se*, because a defendant would be required to play a much larger role in this capacity. The brief further reasons that the *Faretta* right to self-representation is subject to being overridden to prevent a defendant's mental illness from destroying the reliability of the adversarial process and notes that public interest is strong in this context. APA and AAPL further argued that the *Godinez* decision was not applicable to the *Edwards* case, because *Godinez* did not involve contesting criminal charges against which the defendant would actively represent himself. Finally, APA and AAPL argued that the underlying capabilities relevant to self-representation were subject to professional evaluation and were extensions of capabilities already addressed in evaluations of competency to stand trial.

Supreme Court Decision

The Supreme Court ruled that the Constitution does not forbid states from insisting on representation by counsel for those competent enough to stand trial but who are impaired by severe mental illness to the point that they are not competent to conduct trial proceedings by themselves. The Court agreed

that its precedents framed, but did not answer the question of whether states may adopt a higher standard of competency to represent oneself than to stand trial with the assistance of counsel. In ruling that the Constitution allows states to set this higher standard, the Court cited its prior insistence in *Dusky v. U.S.*[1] and *Drope v. Missouri*[2] that, in addition to an understanding of the nature and objectives of the proceedings, sufficient ability to consult with and assist counsel is required for a defendant to be competent to stand trial. The majority believed that this requirement suggests that forgoing counsel presents different circumstances than does the mental competency determination for standing trial with counsel.

The Court reasoned that neither the *Faretta* nor the *Godinez* decisions defined the scope of the self-representation right. It noted that the conclusion in *Faretta* was, in part, based on previous state cases either consistent with or specifically adopting competency limitations on the self-representation right and that subsequent self-representation decisions "made clear that the right of self representation is not absolute" (Ref. 11, p 5). The *Godinez* decision did not deal with a defendant's ability to conduct a defense, only his competence to *waive the right*' (Ref. 11, p 7), and this case's holding that a state may permit a borderline competent defendant to proceed *pro se* did not answer whether a state "may *deny* a gray-area defendant the right to represent himself" (emphases in original; Ref. 11, p 8).

The Court recognized that mental illness varies in degree, can vary over time, and may affect an individual's functioning at different times in different ways, thus cautioning against a single competency standard for standing trial with the assistance of counsel and standing trial *pro se*. Finally, the majority believed that allowing a mentally incompetent defendant to represent himself, who hasn't adequate ability to do so, would not "affirm the dignity" of

the defendant, and could undermine the Constitution's overriding insistence that an individual receive a fair criminal trial. Trial judges were often believed to be best able to evaluate an individual's specific competencies and make more fine-tuned competency determinations. Thus, the Indiana Supreme Court decision was vacated and remanded.

Analysis

There are several reasons that a criminal defendant might choose to represent himself: little trust in the fairness of the legal system (belief that public defenders are overworked or concern that they are employees of the state), too much trust in the system (faith that their innocence will result in a not guilty verdict), a desire to promote a political agenda, a belief that one can explain one's defense better than an attorney, or the desire to avoid attorney fees (nonindigent defendants).[13] There are also potential strategic advantages to representing oneself, including the opportunity to speak to a jury without undergoing cross-examination and the possible belief that one is more apt to win a jury's sympathy without an attorney. Additional potential advantages of *pro se* representation include the defendant's ability to confront and cross-examine accusers directly, the potential to establish better rapport with jurors, and the possibility of receiving greater latitude in allowed behavior and questioning than would be given a defense attorney.[14]

Twenty years after *Faretta*, in his criticism of the "chaos," "mockery of justice," and "disrupt[ion of] courtroom procedure" he believed resulted from this decision, Decker[9] cited more subversive and misguided motives behind defendants' requests to proceed *pro se*. He argued, "Some defendants may proceed *pro se* to symbolize their lack of respect for any kind of authority, … or because they are unable to get their way and so represent themselves as

an act of defiance" (Ref. 9, p 485). He noted that *pro se* defendants may "have committed such heinous atrocities that life imprisonment or the death penalty is the most likely result," "may be cleverly manipulating the criminal justice system for their own secret agenda," or "to proceed *pro se* may be the means to a radical political scheme that the defendant wants to advance" (Ref. 9, pp 486–7). Decker also opined that "[w]hile some *pro se* defendants may not harbor a hidden motive behind the request, they are so totally out of touch with reality that they believe they can do it all themselves" (Ref. 9, p 487).

Research on *Pro Se* Defendants

While the legal literature contains numerous articles and appellate cases regarding criminal defendants who choose to represent themselves, there is little empirical research that might indicate whether these defendants are mentally ill or merely foolish.[10,15] Justice Breyer bemoaned this lack of empirical evidence in his *Martinez* concurrence, noting, "I have found no empirical research, however, that might help determine whether, in general, the right to represent oneself furthers, or inhibits, the Constitution's basic guarantee of fairness" (Ref. 6, Breyer J., concurring, p 164).

To better identify the reasons why individuals seek to discharge their attorneys, Miller and Kaplan[16] evaluated 100 consecutive individuals admitted to a Wisconsin forensic hospital for evaluation of or treatment to regain competence to stand trial (CST). Twenty-four of these defendants sought to discharge their attorneys, 11 expressed a desire to waive counsel and represent themselves, and the other 13 wished merely to fire their current attorneys, but not to represent themselves. All 11 of the individuals

who sought to represent themselves were found incompetent to stand trial (ICST). The authors noted, however, that the findings were based not on the defendants' desire to represent themselves, but on the individuals' multiple competency-related deficits. Of the 13 individuals who wished merely to fire their current attorneys, 11 were judged CST, a higher competency rate than that among both those seeking to waive counsel and those accepting their current attorneys. The reasons the individuals sought to waive counsel tended to be egocentric, such as "I'm better than any lawyer," and "It's my constitutional right." Individuals sought to fire their current attorneys for more self-protective and practical reasons, such as concerns that the defendant's attorney was not spending enough time with him, would not listen to the defendant or verify his story, or wanted the defendant to plead guilty or not guilty by reason of insanity against the defendant's wishes. Higher rates of competence in those defendants seeking a different attorney for practical or strategic reasons are consistent with a study of public defenders' perceptions of their clients' competence and participation in their defense, where the defenders reported that among their clients whose competence was doubted, the defendants were less involved in decision-making and, overall, were passive participants in their cases.[17]

Mossman and Dunseith[14] attempted to better characterize *pro se* defendants by surveying the print media portrayals from 1997 to 1999 of 49 *pro se* criminal defendants. Media accounts of these proceedings allowed the authors to characterize defendants' reasons for representing themselves into three broad categories: eccentric, the decision to proceed without representation was one of many behavioral or emotional peculiarities reported; ideological, the alleged offenses reflected a defendant's feelings about larger ideological concerns (e.g., Dr. Jack Kevorkian and his advocacy of assisted suicide); and personal, the defendants desired to exercise more

control over their cases. The authors noted that these *pro se* defendants had a broad range of educational backgrounds and when compared with the population at large, men, attorneys, persons with other advanced degrees, and unemployed persons were disproportionately represented in the sample. *Pro se* defendants also faced a wide range of charges, although homicide was the most common. Many of these individuals had reasonable motives for seeking self-representation, such as dissatisfaction with their attorneys or the belief that they could do just as well without representation. While print media accounts of these defendants often contained reports of the defendants' having significant mental problems or displaying bizarre courtroom behavior, in some cases, *pro se* defendants were skillful and successful in representing themselves.

A recent novel study sought to evaluate *pro se* defendants empirically to test the validity of the commonly held assumption that these defendants are either foolish or mentally ill.[15] The author evaluated existing federal and state databases, documenting trial outcomes and type of counsel at case termination, and created an additional database (the Federal Docketing Database) using data contained in federal court docket sheets maintained by clerks of the court for each federal jurisdiction. These docket sheets documented written filings and oral motions made in court, and, from them, data were collected on 208 federal defendants who chose *pro se* representation at case disposition.

The outcomes of *pro se* defendants in state courts were at least as good as those for represented defendants with 50 percent of *pro se* defendants convicted of a charge, compared with a 75 percent conviction rate for represented defendants. Eventual felony convictions for *pro se* defendants were also less frequent than for represented defendants (26% versus 63%).

While *pro se* federal felony defendants did not fare as well as their state court counterparts, acquittal rates for *pro se* and represented federal felony defendants were nearly identical (.64% and .61%, respectively). Thus, *pro se* federal felony defendants did not seem to fare significantly worse than did the represented defendants. Finally, based on federal docketing sheets and with a court-ordered competency evaluation used as a proxy for the presence of outward signs of mental illness, 80 percent of *pro se* defendants were not believed to have displayed signs of mental illness, as only 20 percent of this sample were ordered to undergo competency evaluation. Furthermore, dissatisfaction with current counsel appeared to be a prominent reason that defendants in the Federal Docketing Database chose self-representation, as more than half of them requested new counsel before invoking their right to self-representation.

These studies of *pro se* defendants, though few in number, indicate that many such defendants seek to represent themselves for legitimate reasons. Voicing dissatisfaction with counsel was a rationale for seeking to dismiss counsel noted in all of these studies, and voicing displeasure about counsel perceived as ineffective may be viewed as an appropriate self-protective behavior for defendants facing serious legal charges. These studies cast doubt on the view that all *pro se* defendants are either mentally ill or foolish.

Competency to Stand Trial *Pro Se*

While the Court held that states may demand a higher standard of competence for *pro se* defendants, it did not articulate specific standards that defendants must meet to represent themselves at trial. Because the Court was unsure how a standard based on a defendant's ability to communicate would work in practice, it also rejected Indiana's proposal that a

defendant not be allowed to proceed *pro se* if he cannot communicate effectively with a court or a jury. Although the Indiana Supreme Court had previously held that trial courts should generally hold a pretrial hearing to evaluate a defendant's competency to proceed *pro se* and to establish a record of the defendant's waiver of counsel,[18] it is unclear what standard would differentiate a defendant who is merely competent to stand trial from one who is competent both to stand trial and to represent himself.

As outlined in the "AAPL Practice Guideline for Evaluation of Competency to Stand Trial," some jurisdictions have set forth specific factors to consider when evaluating a proposed waiver of counsel.[10] The Rhode Island Supreme Court asks trial courts to consider a defendant's age, education, experience, background, behavior at the hearing, mental and physical health, contact with lawyers before the hearing, and knowledge of the proceedings and possible sentence that may be imposed.[19] That court also viewed as important considerations of whether mistreatment or coercion had taken place and whether the defendant may be attempting to manipulate the proceedings. The Wisconsin Court of Appeals ruled that trial courts should consider a defendant's education, literacy, fluency in English, and physical or psychological disabilities that may significantly affect communication.[20]

These considerations are consistent with inquiries into a defendant's background, mental health, knowledge of the nature of the proceedings against him, and ability to assist counsel that are routinely evaluated in CST examinations. As the APA and AAPL argued in their *amicus* brief, competency to proceed *pro se* evaluations based on these factors would extend the evaluation of defendant abilities commonly examined in CST evaluations.[12] With general criteria such as these, forensic evaluators could provide useful information to courts regarding defendants' abilities to

communicate, process information, maintain attention and concentration, and behave appropriately in the courtroom. However, in both *Faretta* and *Edwards*, the trial judges questioned the defendants extensively about specific legal points, including *voir dire* and evidentiary rules. Defendants who represent themselves face numerous potential challenges: jury selection, evidentiary pretrial hearings, opening and closing arguments, direct and cross examination of witnesses, and planning trial strategy. Knowledge of these points of law lie outside of the training and expertise of most forensic clinicians, and it is questionable whether forensic clinicians could ethically testify to such matters.

Many defendants choose to represent themselves because they view the public defender system as inadequate. Others have had prior undesired outcomes in criminal cases in which they had legal representation. In both situations, the motive for self-representation lies in the defendant's value judgment regarding legal representation. However, forensic evaluators may find it difficult at times to distinguish such value judgments from thinking rooted in mental illness, especially illnesses that are manifested by delusions and/or paranoia.

Protection of Defendants' Rights

Writing in dissent, Justice Scalia criticized the majority's decision because he believed it would permit "a State to substitute its own perception of fairness for the defendant's right to make his own case before the jury—a specific right long understood as essential to a fair trial" (Ref. 11, Scalia, J., dissenting, p 1). While the *Edwards* decision hinges on these competing constitutional principles—namely, the defendant's autonomy interest in

making his own defense against government charges versus the state's interest in maintaining the dignity and reliability of its proceedings—Justice Scalia raises an important question regarding whether Mr. Edwards was improperly denied the right to choose, rather than merely conduct, his defense. Mr. Edwards sought to claim self-defense. His counsel preferred a defense focusing on lack of intent. With counsel appointed to speak for him, Mr. Edwards was denied not only the opportunity to conduct his defense, but also the autonomy to decide what basic type of defense would be used to answer the charges against him. As the *Faretta* Court cautioned, "An unwanted counsel 'represents' the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense" (Ref. 4, p 821). Forcing a criminal defendant to accept his attorney's defense strategy also appears inconsistent with the past precedent that a trial judge may not force an insanity defense on a competent defendant who intelligently and voluntarily elects to decline this defense.[21]

Professional Guidelines

The "AAPL Ethics Guidelines for the Practice of Forensic Psychiatry" note that forensic psychiatrists are "called upon to practice in a manner that balances competing duties to the individual and to society" (Ref. 22, p 1). In doing so, they are to be "bound by underlying ethical principles of respect for persons, honesty, justice, and social responsibility" (Ref. 22, p 1). *Edwards v. Indiana* involves all of these principles. The central conflict in this case weighed whether respecting a defendant's right to proceed *pro se* might render his trial unfair, usurping a basic principle of justice. Likewise, it

is foreseeable that courts will increasingly call on forensic clinicians as they attempt to discern whether a given defendant has the capacity to proceed *pro se*. In lending their expertise to courts in these matters, psychiatrists may demonstrate social responsibility by objectively aiding the courts' search for justice while educating courts on an individual's unique abilities and limitations. In doing so, clinicians must be cautious and claim expertise "only in areas of actual knowledge, skills, training, and experience" (Ref. 22, p 4) as an individual's competency to proceed *pro se* may hinge on legal abilities or points of law outside the scope of experience of most forensic psychiatrists.

American Academy of Psychiatry and the Law

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In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION F0R ASSINGENT ORDER CONCERNING THE COUNTY COURT APPEAL, 17-mm-815, AND TO APPOINT THE PUBLIC DEFENDEER

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Notice of Appeal has been filed. nxThe Public Defender conflict that allegedly existed at trial does not exist in this appeal because the issues are extremely narrow and the protective orders, according to Judge McHugh have expired.

Dated at Bonita Springs, Florida this 20th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
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V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V.HUMINSKI

SWORN OPINION OF EXPERT REBECCA POTTER, LMHC CONDERNING THE COMPETENCE OF SCOTT HUMINSKI TO CONDUCT HIS OWN CRIMINAL DEFENSE WITHOUT THE ASSISTANCE OF COUNSEL

NOW COMES, Rebecca Potter and, under oath, hereby deposes states and swears concerning Scott Huminski's ability to present and conduct his own criminal trial defense without the assistance of counsel as follows: Scott Huminski's disabilities absolutely prohibit his competence to function as an equal adversary to Mr. Russell who has practicd law for over 30 years. Aside from having no training in the laws, Huminski's diagnosed issues of PTSD, Social Phobia and Generalized Anxiety Disorder render him in a high state of symptoms impacting his abilities to process information and output information on his behalf.

Attached hereto are legal/medical scholarly papers providing insight into PTSD and the Courts as well as my ADA accommodation report for Mr. Huminski. See also the below paper.

https://books.google.com/books?hl=en&lr=&id=2Is85jX9U74C&oi=fnd&pg=PA113&dq=Responses+to+violence+and+trauma+Adshead&ots=CbBHZKVcKG&sig=I4EcTHTBL-uz8t5H8cazB7Lusv8#v=onepage&q&f=false

Dated at at 20th on this day of February, 2018.

Rebecca Potter, LMHC

Rebec a Potter, LMHC

3600 Forest Hill Boulevard suite 4, west Palm Beach, FL 33406 (561) 965-9161

SWORN AND SUBSCRIBED TO before this T of February, 2018

Notary EXP

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-/s/- Scott Huminski

Scott Huminski

PTSD as a Criminal Defense: A Review of Case Law

Omri Berger, MD, Dale E. McNiel, PhD, and Rene´e L. Binder, MD

Posttraumatic stress disorder (PTSD) has been offered as a basis for criminal defenses, including insanity, unconsciousness, self-defense, diminished capacity, and sentencing mitigation. Examination of case law (e.g., appellate decisions) involving PTSD reveals that when offered as a criminal defense, PTSD has received mixed treatment in the judicial system. Courts have often recognized testimony about PTSD as scientifically reliable. In addition, PTSD has been recognized by appellate courts in U.S. jurisdictions as a valid basis for insanity, unconsciousness, and self-defense. However, the courts have not always found the presentation of PTSD testimony to be relevant, admissible, or compelling in such cases, particularly when expert testimony failed to show how PTSD met the standard for the given defense. In cases that did not meet the standard for one of the complete defenses, PTSD has been presented as a partial defense or mitigating circumstance, again with mixed success.

Even before posttraumatic stress disorder (PTSD) became an official diagnosis, traumatic stress syndromes, such as traumatic neurosis of war, were successfully offered as bases for criminal defenses.[1] Soon after its introduction in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSMIII), in 1980,[2] the PTSD diagnosis also made its way into the criminal courts as a basis for several types of criminal defenses for both violent and nonviolent crimes.[1,3,4] In addition, other trauma-related syndromes not included in the DSM, such as batteredwife syndrome and battered-child syndrome, have been offered as bases for criminal defenses.[3,5,6] However, these related syndromes have generally been presented as special types of PTSD.[4,5]

Initially, the introduction of PTSD raised concern about its potential misuse in the criminal courts.[1,3] Skepticism was further heightened by cases in which malingered PTSD was used as a criminal defense.[3] In addition, shortly after the introduction of PTSD as a diagnosis, widespread reform of insanity defense statutes took place after the insanity acquittal of John

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Disclosures of financial or other potential conflicts of interest: None.

Hinkley in 1984. These trends most likely made the successful use of PTSD as a criminal defense more difficult.[1,3] Appelbaum *et al.*[7] examined the frequency and rate of success of the insanity defense based on PTSD in several states and found that defendants had no more success with PTSD than with other mental disorders and that insanity pleas based on PTSD made up a small fraction of all insanity pleas, suggesting that fears about abuse of the diagnosis in the courts were largely unfounded.

Various PTSD phenomena have been presented in courts as bases for criminal defenses, including dissociative flashbacks, hyperarousal symptoms, survivor guilt, and sensation-seeking behaviors.[1,3,4,8–10] It has been suggested by some that dissociative flashbacks should be the only legitimate basis for insanity and other exculpating defenses and that other PTSD phenomena are insufficient to warrant exculpation. However, there has not been consensus on this proposal in the field.[1,3,4] Furthermore, although there has been some psychiatric research examining the role of certain PTSD phenomena in violent and criminal behavior, this body of research is yet to elucidate the relevance of such phenomena to criminal defenses.[8,9] Correlations between a diagnosis of PTSD and interpersonal violence, as well as between a diagnosis of PTSD and criminal behavior, have been described in the psychiatric literature, lending some empirical support for the use of PTSD as a criminal defense.[11–14] However, there has been little empirical research examining the role of specific PTSD symptoms in criminal behavior. The relevance of PTSD

and specific PTSD symptoms to criminal defenses may therefore be best understood by examining how the criminal justice system has addressed the question.

In this article, we review United States criminal case law involving PTSD as a criminal defense. Case law is based on published legal decisions, which are typically at the appellate level. The significance of these cases is that they establish precedents for courts to follow in subsequent cases. Verdicts at the trial court level are usually not published, unless they are appealed. In addition, most pretrial decisions, such as whether a criminal defense based on PTSD can be presented at trial, are not published, unless they are appealed. As a result, research on appellate cases preferentially involves cases in which a criminal defense based on PTSD was barred or failed at the trial court level. On the other hand, cases in which a criminal defense based on PTSD was allowed at trial or was successfully presented at trial are largely not included in this review. This review will not address trends at the pretrial or trial court level; however, it will address the precedents that trial judges follow in rendering decisions about the use of PTSD as a basis for criminal defenses.

METHODS

A systematic review of case law was conducted using the legal database LexisNexis. Federal and state appellate cases through 2010 were sought by using the search terms PTSD, posttraumatic stress disorder, post-traumatic stress disorder, or post traumatic stress disorder occurring in the summary, syllabus, or overview sections of cases, along with the terms criminal, insanity, diminished capacity, *mens rea*, self-defense, mitigation, or unconsciousness occurring in the same sections. The search was restricted to those criteria so that cases were selected in which PTSD played a prominent role.

A search for relevant law review articles was conducted on LexisNexis with the criterion that the term PTSD or a variation thereof appeared more than 10 times in the article. PubMed was searched using the terms PTSD, insanity, and criminal behavior. Identified law review and PubMed articles were searched for cited legal cases.

RESULTS

Cases

The search of LexisNexis yielded 194 cases, of which 47 involved a criminal defense based on PTSD. In 39 of these 47 cases, the defense was addressed by the appellate court in some way, whereas in the remaining 8 cases the issue appealed was not related to the use of PTSD as a criminal defense. Twenty-nine of the cases in which the use of PTSD as a criminal defense was addressed on appeal will be further described later in the text. The 10 cases that are not described in this article were excluded because they were redundant with other cases, in that the issues addressed by the appellate court were the same as those in other cases that are discussed. The search of law review articles and the psychiatric literature for cited legal cases yielded two published cases in which trauma-related disorders that preceded the DSM diagnosis of PTSD were the bases for criminal defenses. It also yielded three unpublished trial court cases in which PTSD was the basis for criminal defenses. These cases will be described later.

Table 1 lists the published cases that we identified, including the two cases that involved trauma-related disorders that preceded PTSD. The table lists the jurisdiction, legal issue, and outcome of each appellate case. Table 2 lists the three unpublished cases that we identified, along with the jurisdiction, legal issue, and verdict in each case.

Admissibility of PTSD Expert Witness Testimony

In a series of landmark decisions commonly called the *Daubert* trio, the Supreme Court established criteria for the admissibility of expert witness testimony in federal court.[59–61] The *Daubert* standard requires that trial courts establish the reliability and relevance to the case at hand of proffered expert witness testimony. Some elements identified as relevant to this determination include the reliability of the techniques underlying a proposed testimony, peerreviewed publications supporting it, and the general acceptance of it in the relevant field.[59] With a large and growing research base supporting the diagnosis of PTSD, along with its widespread acceptance in the mental health professions and its inclusion in the DSM, the diagnosis certainly meets the reliability prong of the *Daubert* standard, as has been well established in case law.[5]

Table 1 Published Cases in Which PTSD Was Presented as a Criminal Defense

Case Name	Jurisdiction	Year	Legal Issue	Outcome
Shepard v. State[*15]	Alaska	1993	Admissibility	Reversed denial of PTSD expert
Doe v. Superior Court[16]	California	1995	Admissibility	Reversed denial of PTSD expert
Houston v. State[17]	Alaska	1979	Insanity	Conviction reversed and remanded
State v. Felde[*18]	Louisiana	1982	Insanity	Conviction affirmed
United States v. Duggan[19]	Federal	1984	Insanity†	Conviction affirmed
Gentry v. State[20]	Tennessee	1984	Insanity†	Conviction affirmed
State v. Percy[21]	Vermont	1988	Insanity†	Conviction reversed and remanded
Commonwealth v. Tracy[22]	Massachusetts	1989	Insanity†	NGRI of armed robbery; conviction of firearms possession affirmed
United States v. Whitehead[23]	Federal	1990	Insanity‡	Conviction affirmed
State v. Wilson[24]	Louisiana	1991	Insanity‡	Conviction affirmed
State v. Angel[25]	North Carolina	1991	Insanity‡	Conviction affirmed
People v. Rodriguez[26]	New York	1993	Insanity†	Conviction affirmed
United States v. Long Crow[27]	Federal	1994	Insanity‡	Conviction affirmed
United States v. Cartagena-Carrasquillo[28]	Federal	1995	Insanity‡	Conviction affirmed
United States v. Rezaq[29]	Federal	1996	Insanity‡	Allowing of insanity defense affirmed
State v. Page[*30]	North Carolina	1997	Insanity‡	Conviction affirmed
United States v. Calvano[*31]	Federal	2009	Insanity‡	Conviction affirmed
People v. Lisnow[32]	California	1978	Unconsciousness	Conviction reversed
State v. Fields[33]	North Carolina	1989	Unconsciousness	Conviction reversed and remanded
State v. Kelly[34]	New Jersey	1984	Self-defense	Conviction reversed and remanded
United States v. Simmonds[*35]	Federal	1991	Self-defense	Conviction affirmed
Rogers v. State[36]	Florida	1993	Self-defense	Conviction reversed and remanded
State v. Janes[37]	Washington	1997	Self-defense	Affirmed reversal of conviction and remanded
Harwood v. State[38]	Texas	1997	Self-defense	Conviction affirmed

State v. Sullivan[39]	Maine	1997	Self-defense	Conviction vacated
State v. Hines[40]	New Jersey	1997	Self-defense	Conviction reversed and remanded
Perryman v. State[41]	Oklahoma	1999	Self-defense	Conviction affirmed
State v. Mizell[†42]	Florida	2000	Self-defense	Allowing of PTSD testimony upheld
State v. Stuart[†43]	Washington	2006	Self-defense	Conviction affirmed
United States v. Cebian[44]	Federal	1985	*Mens rea*	Conviction affirmed
State v. Warden[45]	Washington	1996	*Mens rea*	Conviction reversed and remanded
State v. Bottrell[46]	Washington	2000	*Mens rea*	Conviction reversed and remanded
United States v. Johnson[47]	Federal	1995	Mitigation	Sentence affirmed
United States v. Kim[*48]	Federal	2004	Mitigation	Sentence affirmed
Gilley v. Morrow[49]	Federal	2007	Mitigation	Sentence vacated and remanded
United States v. Cope[50]	Federal	2008	Mitigation	Sentence affirmed
In re Nunez[51]	California	2009	Mitigation	Sentence vacated and remanded
Hall v. Lee[52]	Georgia	2009	Mitigation	Sentence affirmed
Dever v. Kansas State Penitentiary[*53]	Federal	1992	Ineffective assistance	*Habeas* petition denied
Seidel v. Merkle[*54]	Federal	1998	Ineffective assistance	*Habeas* petition granted
Aguirre v. Alameida[*55]	Federal	2005	Ineffective assistance	*Habeas* petition granted

* Case not described in the paper.
† Jurisdiction uses the American Law Institute insanity standard. ‡Jurisdiction uses the *M'Naughten* insanity standard.

Given its widespread acceptance in the mental health professions, PTSD has also met the *Frye* standard of admissibility, which preceded the *Daubert*

Table 2 Unpublished Cases in Which PTSD Was Successfully
Presented as the Basis for an Insanity Defense

Case Name	Jurisdiction	Year	Criminal Defense	Verdict
State v. Heads[56]	Louisiana	1980	Insanity	NGRI
State v. Cocuzza[57]	New Jersey	1981	Insanity	NGRI
State v. Wood[58]	Illinois	1982	Insanity	NGRI

standard in the federal courts and is still the standard in some state jurisdictions.[62] For example, in *Doe v. Superior Court*,[16] a 1995 California appellate court case, the defendant was charged with capital murder. In pretrial motions, she petitioned the court to appoint experts of her choosing to assist in presenting a defense based on PTSD and battered-woman syndrome. The trial court denied her motion and instead appointed a panel expert without such expertise. The defendant appealed this decision, which the appellate court reversed, holding that "Expert testimony on Battered Woman Syndrome and PTSD is routinely admitted in criminal trials in California and other states and no one suggests they are not recognized psychiatric conditions" (Ref. 16, p 541). The court cited several cases supporting its opinion.

With respect to the relevance prong of the *Daubert* and other admissibility standards, courts have ruled more variably on PTSD's relevance to various criminal defenses. However, in some cases PTSD has been found to be relevant to the criminal defenses of insanity, unconsciousness, self-defense, diminished capacity, and sentencing mitigation. A more detailed discussion of each follows.

PTSD and the Insanity Defense

Even before the addition of PTSD to the DSM, traumatic stress disorders were offered as the basis for insanity defenses. In *Houston v. State*,[17] a 1979 Alaska Supreme Court case, the defendant, an army sergeant, shot and killed a man he perceived to be reaching for a weapon. At trial, a defense expert testified that Mr. Houston had traumatic neurosis of war and severe alcoholism and that the shooting took place while he was in a

dissociative state. The trial court denied his request for a bifurcated trial with an insanity phase, and he was found guilty of seconddegree murder. The appeals court reversed and remanded, finding that he had provided substantial evidence to support an insanity defense.

Shortly after its introduction into DSM-III in 1980,[2] PTSD itself became the basis for successful insanity defenses. In *State of New Jersey v. Cocuzza*, the defendant, a Vietnam veteran who assaulted a police officer was found to be not guilty by reason of insanity.[57] Mr. Cocuzza maintained that he believed he was attacking enemy soldiers, and his claim was supported by the testimony of a police officer that Mr. Cocuzza was holding a stick as if it were a rifle. In another case, *State v. Heads*,[56] the defendant, also a Vietnam veteran, was charged with the shooting death of his sister-in-law's husband, after he entered the victim's residence in search of his estranged wife and began to fire a gun. Although he was found guilty in the first trial, the conviction was reversed on several grounds. In a subsequent trial, he was found not guilty by reason of insanity after testimony about PTSD was offered. The expert gave testimony that Mr. Heads had PTSD, that he had experienced at least one prior dissociative episode, and that there was a resemblance between the scene of the shooting and Vietnam.[63] In the case *State v. Wood*,[58] a 1982 Illinois Circuit Court case, the defendant, again a Vietnam veteran, was found not guilty by reason of insanity in the shooting of the foreman in the factory where he worked. The shooting took place shortly after Mr. Wood was confronted about his alcohol use by the foreman in front of several witnesses. The defense presented expert testimony about PTSD, about Mr. Wood's combat exposures, and about the ways in which the factory environment was reminiscent of combat, contending that the shooting took place while Mr. Wood was in a dissociative state. In yet another case, *Commonwealth v. Tracy*,[22] a 1989 Massachusetts case, Mr. Tracy, a Vietnam veteran who was charged with armed robbery, was found not guilty by reason of insanity based on PTSD. The defense contended that he was in a dissociative state during the robbery, which was triggered by stress and by the sight of a funeral parlor, which was a reminder of his Vietnam experience. Of note, Massachusetts employs the American Law Institute standard for insanity, in which a defendant is not considered criminally responsible if, as a result of mental disease or defect, the defendant lacked the capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.[62] Given that most jury verdicts are unpublished, it is not possible to determine how PTSD testimony has fared overall as a basis for the insanity defense. However, analysis of this selection of jury verdicts indicates that the PTSD phenomenon of dissociation has been successfully presented as a basis for insanity, at least when the American Law Institute standard for insanity was used.

At the appellate level, over the three decades of its existence as a diagnosis, PTSD has received mixed treatment when offered as a basis for insanity. This disparity was particularly noticeable after the widespread reform of insanity defense statutes in 1984, where, in both the federal system and in many states, insanity defense statutes were amended to require the presence of a severe mental disorder, proof of insanity under the *M'Naughten* standard or its variant, and proof of insanity by the defense at the clearand-convincing level. Under the more stringent *M'Naughten* standard, a defendant is not considered criminally responsible if, as a result of mental disease or defect, the defendant lacked the capacity to understand the nature and quality or the wrongfulness of his conduct.[62] The placement of the burden of proof on the defendant constituted a significant shift in many jurisdictions. In the past, the defendant had been required only to present evidence in support of insanity, with the prosecution bearing the burden of showing that the standard for insanity was not met.

With respect to admissibility as a qualifying mental disorder for the insanity defense, in several jurisdictions, a PTSD defense was met with skepticism, particularly after the changes in insanity defense statutes. For example, in *United States v. Duggan*,[19] a 1984 federal case, the district court denied the defendants' pretrial motion for an insanity plea, finding that they failed to offer evidence or clinical findings in support of insanity, and the court questioned whether PTSD is a diagnosis that could ever lead to insanity. The defendants were found guilty of various firearms and explosives charges, which they appealed. The court of appeals upheld the conviction and agreed with the trial court's finding that an

insanity plea based on PTSD was not supported. In *United States v. Whitehead*,[23] a 1990 federal case, Mr. Whitehead, a Vietnam veteran, was charged with bank robbery. He mounted an insanity defense based on PTSD and presented the expert testimony of a psychologist. The district court found that there was insufficient evidence to support a jury instruction on insanity, and Mr. Whitehead was found guilty of his charges. The court of appeals upheld the trial court's decision on the insanity defense, finding that, based on the testimony and evidence presented by the defense, no fact finder found that Mr. Whitehead could not appreciate the nature or wrongfulness of his actions or that his actions were a result of a severe mental illness at the clear-and-convincing standard. In its decision, the court did not specifically address whether PTSD could ever be a qualifying mental disorder for insanity. In *United States v. CartagenaCarrasquillo*,[28] a 1995 federal case, the defendants were charged with cocaine-related offenses. At trial, one defendant gave notice and sought to present PTSD testimony as part of an insanity defense. The district court, after reviewing the expert's report, denied the defense, finding that the report did not show how the defendant, whether he had PTSD or not, did not know right from wrong. The defendants were convicted, and on appeal, the court of appeals affirmed the conviction, as well as the district court's decision to exclude the PTSD testimony, also finding that it was insufficient to support an insanity defense. Finally, in *United States v. Long Crow*,[27] a 1994 federal case, the defendant was charged with assault with a deadly weapon for firing a gun at a party after a confrontation with another individual. He claimed insanity based on PTSD and presented the testimony of a psychiatrist who observed him in court but did not evaluate him. The trial court refused to instruct the jury on the insanity defense, and he was found guilty of several charges. The court of appeals affirmed the conviction and agreed with the district court that there was insufficient evidence to support an insanity defense based on PTSD. In its decision, the court stated that it was unable to find cases in which PTSD was successfully presented as a basis for insanity, although it did not reject the possibility that PTSD could lead to insanity. Taken together, the appellate decisions in these federal cases suggest that the primary reason for the rejection of an insanity defense based on PTSD resulted from a lack of showing by the defense of how PTSD could lead to insanity. It does not appear that the federal courts of appeals found that PTSD was categorically disqualified as a basis for insanity, even after the Insanity Defense Reform Act of 1984.

In fact, some courts explicitly found PTSD to be a qualifying mental disorder that could lead to a defense of insanity. For example, in *United States v. Rezaq*,[29] a District of Columbia district court case, the defendant was charged with aircraft piracy, for which he intended to present an insanity defense based on PTSD. In support of this defense, he offered the opinions of three psychiatrists who diagnosed PTSD. The government sought to exclude this testimony, stating that the defendant's PTSD was not a sufficient basis for insanity. The district court denied the motion, finding that the reports by the defendant's experts "clearly indicate that defendant's diagnosis of PTSD meets the test of insanity as set out" in federal statutes (Ref. 29, p 467). In addition, in several cases that will be discussed later in the article, insanity defenses based on PTSD were found to be compelling by appellate courts in both state and federal jurisdictions. It appears that as a matter of law, some courts have found PTSD to be a sufficiently severe mental disorder that could lead to insanity, but based on the facts of specific cases, it has sometimes been rejected.

In cases in which an insanity defense based on PTSD was allowed, but in which the defendant was convicted and the case was appealed, appellate courts have in some cases upheld the rejection of the insanity defense by juries. This has been the case in jurisdictions that use the *M'Naughten* standard for insanity and in those that use the American Law Institute standard. For example, in *Gentry v. State*,[20] a 1984 Tennessee Court of Criminal Appeals case, Mr. Gentry was charged with the first-degree murder of his girlfriend. He claimed insanity based on PTSD, contending that, after accidentally shooting his girlfriend, he lost touch with reality and shot her again. Mr. Gentry was diagnosed with PTSD by both defense and prosecution experts, but prosecution experts opined that the disorder was not sufficiently severe to render him incapable of

understanding the wrongfulness of his acts or of conforming his conduct to the requirements of the law. The jury found him guilty of first-degree murder, rejecting his insanity defense. The court of appeals upheld the conviction, finding that he did not have a mental disorder sufficient to render him insane under Tennessee's American Law Institute insanity standard. In *State v. Wilson*,[24] a 1991 Louisiana Court of Appeal case, Mr. Wilson was accused of the attempted murder of a couple he knew, after he shot them in their home. The defendant, a Vietnam veteran, claimed insanity based on a PTSD flashback induced by jets flying overhead. He presented the testimony of three psychiatrists who diagnosed PTSD and who opined that he committed the shooting in the context of a flashback. In rebuttal, the prosecution presented the testimony of psychiatrists who evaluated the defendant's competency to stand trial. They were asked questions based on hypotheticals and in response opined that the defendant was able to tell right from wrong. The jury convicted Mr. Wilson, rejecting his insanity defense under Louisiana's *M'Naughten* insanity standard. On appeal, Mr. Wilson asserted that the jury had erred in failing to find him not guilty by reason of insanity. The court of appeal disagreed and affirmed the conviction, finding that there was sufficient evidence for the jury to reject the insanity defense, given that the burden of proof was the defendant's. In *State v. Angel*,[25] a North Carolina Supreme Court case, Mr. Angel was accused of the first-degree murder of his estranged wife. He pleaded not guilty by reason of insanity due to dissociation caused by PTSD and presented lay and expert testimony in support of his defense. In rebuttal, the prosecution in part presented hearsay testimony that the victim feared for her life from the defendant. The defendant was convicted. He appealed on the basis that the hearsay testimony should not have been admitted. Thecourtofappealsaffirmed,findingthatevenifthe admission of the testimony was an error, there was sufficient evidence to reject his insanity defense under North Carolina's *M'Naughten* insanity standard. Finally, in *People v. Rodriguez*,[26] a 1993 New York appellate division court case, the defendant appealed his conviction of five counts of armed robbery on the basis that the jury erred in failing to find him not guilty by reason of insanity related to chronic PTSD under New York's American Law Institute insanity standard. The appellate court affirmed the conviction, finding that there was conflicting but credible expert witness testimony, and it was within the purview of the jury to determine which expert's testimony should be given more weight. These cases demonstratethatinthepresenceofconflictingexpert witness testimony as to a defendant's PTSD diagnosisandsanity,juries'rejectionsoftheinsanitydefense based on PTSD have often been affirmed by appellate courts.

However, in some cases, appellate courts have found an insanity defense based on PTSD to be compelling and at times to be grounds for reversal. For example, in *State v. Percy*,[21] a 1988 Supreme Court of Vermont case, a Vietnam veteran was accused of sexual assault and kidnapping, among other charges. At trial, he did not dispute committing the acts, but he claimed insanity based on having a PTSD flashback during the incident. Defense and prosecution experts all diagnosed PTSD, but disagreed on whether it was related to Mr. Percy's offenses. Defense experts opined that Mr. Percy was experiencing an unconscious flashback during the commission of his crimes and that as a result he was not in control of his thinking and behavior. Under Vermont's American Law Institute insanity standard, Mr. Percy was found guilty by the trial court, and he appealed. The Vermont Supreme Court determined that in reaching its verdict, the trial court improperly considered Mr. Percy's silence after he received the *Miranda* warning. The court reversed and remanded for a new trial, concluding that it was not possible to determine what verdict the trial court would have reached absent the error, as there was conflicting expert witness testimony as to the defendant's sanity.

In summary, in some cases in which the insanity defense based on PTSD was successful or was found by appellate courts to be viable, the defense theory involved dissociative phenomena leading to a break with reality. As has been suggested elsewhere, this is probably the sole PTSD phenomenon that could meet the strict insanity standards in most current jurisdictions that use the *M'Naughten* standard or its variant, with a clear-

and-convincing standard of proof.[1,3,4] However, even dissociative phenomena have been rejected as a valid basis for insanity in some if not most cases.

PTSD and the Unconsciousness Defense

Another exculpating defense in which PTSD has had relevance is that of unconsciousness. In that defense, the defendant claims not to have been conscious during the commission of the criminal act. Therefore, the act was not voluntary, and there was no criminal liability. Unlike insanity, unconsciousness is a complete defense, resulting in exoneration but not in a hospital commitment.[62] Traumatic disorders were the basis for successful unconsciousness defenses even before the introduction of PTSD as a diagnosis.[4,8]

For example, in *People v. Lisnow*,[32] a 1978 California Supreme Court Appellate Department case, Mr. Lisnow was convicted of battery in an apparently unprovoked assault that he engaged in while dining in a restaurant. He claimed unconsciousness, and a defense expert testified that the defendant was unconscious at the time of the incident as a result of a fugue state brought on by a continuing traumatic neurosis related to his service in Vietnam. The trial court struck the expert witness's testimony, resulting in a conviction. The appeals court reversed the judgment, holding that the evidence of Mr. Lisnow's unconsciousness at the time of the incident was admissible and compelling.

In another case, *State v. Fields*,[33] Mr. Fields was charged and convicted of the first-degree murder of his sister's boyfriend, who was allegedly abusive toward the defendant's sister. The defendant presented lay and expert witness testimony that suggested he had PTSD and was in a dissociated state when the homicide took place. The trial court refused to instruct the jury on the unconsciousness defense, and Mr. Fields was found guilty. On appeal, the court found that the evidence presented by the defense tended to show that the defendant was unconscious just before and during the homicide and that the jury should have received instructions on the unconsciousness defense. The court reversed and remanded for a new trial. These cases illustrate that, in addition to relevance to the insanity defense, the PTSD phenomenon of dissociation has been used as a basis for the unconsciousness defense.

PTSD and Self-Defense

Since its introduction, PTSD and related syndromes, such as battered-woman syndrome, have been used in the justification defense of self-defense. The basic elements of self-defense are that the defendant is not the aggressor, the defendant reasonably fears imminent death or great bodily harm that necessitates the use of force to save his life, and the amount of force used by the defendant is reasonably necessary to avert the danger and not more than exigency demands. Self-defense is precluded if a defendant uses excessive force. In perfect self-defense, all elements of self-defense are met and complete exoneration results. In imperfect self-defense, only some of the elements are met, and typically a conviction of a lesser included offense (e.g., manslaughter as opposed to first-degree murder) results.[62]

Expert testimony about PTSD has been used to establish the necessary state-of-mind element of selfdefense (namely that the defendant reasonably feared imminent death or great bodily harm). Such testimony has been most relevant in jurisdictions that have a subjective test of imminent danger, where the trier of fact must determine whether the defendant believed that there was an imminent risk that necessitated the use of force. In most jurisdictions, an additional objective test is used to determine whether a reasonable person under the same circumstances would

have believed that there was imminent risk that necessitated the use of force.[62] The relevance of PTSD in jurisdictions that use an objective test is more limited, although some courts have considered PTSD to be an aspect of the circumstances to be considered in the objective test.

At the appellate level in different jurisdictions, expert witness testimony on PTSD and related syndromes has been deemed relevant to claims of selfdefense, particularly in cases that involved the homicide or attempted homicide of an abuser (i.e., the perpetrator of trauma leading to PTSD). For example, in *State v. Kelly*,[34] a 1984 New Jersey Supreme Court case, Ms. Kelly was charged with the firstdegree murder of her husband. She admitted to the killing, but claimed to have acted in self-defense. In support of this claim, the defense sought to introduce expert witness testimony on battered-spouse syndrome (but not PTSD), given past abuse of the defendant at the hands of her husband, including at the time of the homicide. First described by Dr. Lenore Walker,[1,4–6,34] battered-spouse syndrome is a psychological construct that describes and explains behavior patterns typical of battered spouses. The trial court excluded this testimony as irrelevant, and Ms. Kelly was convicted of manslaughter. On appeal, the court held that the testimony sought by the defense on battered-spouse syndrome was in fact relevant to self-defense. The court reasoned that the testimony was relevant to bolster the credibility of the defendant that she subjectively feared for her life and to aid the jury in determining whether, in the defendant's circumstances, a reasonable person would have feared for her life. The court therefore reversed the conviction and remanded. At the same time, the appellate court allowed the trial court to determine whether the expert testimony on battered-spouse syndrome was sufficiently reliable to admit, given its recent emergence as a syndrome.

In *Rogers v. State*,[36] a 1993 Florida Court of Appeal case, the defendant was convicted of the firstdegree murder of her boyfriend. At trial, she sought to present expert witness testimony about batteredwoman syndrome, which included characterizing the disorder as a form of PTSD. The trial court excluded the testimony as not meeting the standard for admission. On appeal, the court disagreed and found the testimony to be relevant and to meet the standard for admission, noting that PTSD is commonly accepted in the mental health community and that expert testimony on PTSD has been recognized as admissible by Florida courts. The conviction was reversed, and the case was remanded for a new trial.

In *State v. Hines*,[40] a 1997 Superior Court of New Jersey, Appellate Division case, the defendant was charged with the intentional murder and robbery of her father and was convicted of the lesser included charges of manslaughter and theft. At trial, Ms. Hines claimed self-defense, contending that she was sexually abused by her father as a child and that on the day of the offense he made sexual advances toward her and threatened her. She contended that she feared for her safety and as a result struck him repeatedly with a hammer, killing him. To support her defense, Ms. Hines sought to admit expert testimony on PTSD. The trial court excluded the testimony. On appeal, the court found that the exclusion of PTSD testimony was an error, as this testimony would have been relevant to the defendant's claim of self-defense. The conviction was reversed and the case was remanded for a new trial. These cases demonstrate that some appellate courts have viewed testimony on PTSD as relevant to self-defense claims involving the homicide or attempted homicide of abusers.

PTSD testimony has also been proffered by the defense in cases involving the homicide of nonabusers, but it has enjoyed less acceptance by courts in such cases. For example, in *Perryman v. State*,[41] a 1999 Oklahoma Court of Criminal Appeals case, the defendant was convicted of the first-degree murder of a man who he claimed attempted to assault him sexually and then threatened to shoot him when he fought back. The defendant sought to introduce PTSD testimony related to alleged childhood sexual abuse. The trial court excluded the testimony on the grounds of irrelevance. On appeal, the court affirmed theconvictionandtheexclusionofPTSDtestimony, reasoning that the relevance of PTSD to self-defense involving a nonabuser (as opposed to an abuser) is questionable.

Other courts have found testimony on PTSD to be relevant to self-defense claims for the homicide or attempted homicide of nonabusers. For example, in *State v. Mizell*,[42] a 2000 Florida Court of Appeal case, the defendant, a Vietnam veteran, was charged with attempted second-degree murder after he got into a fight with another man at the home of a third person. Mr. Mizell claimed that the victim threatened him and ran his hand over his pocket, at which point he picked up a stick and hit the victim several times. Mr. Mizell sought to introduce testimony about PTSD, which the court allowed. The state appealed the decision to allow such testimony. The court of appeal held that PTSD evidence is admissible and relevant to the question of self-defense.

In cases in which PTSD or related syndrome testimony was allowed, courts have at times refused to instruct juries on self-defense, questioning whether the defense theory based on PTSD was compelling. On appeal of some of those cases, courts have reversed, suggesting that self-defense based on PTSD is a recognized phenomenon in case law. For example, in *State v. Janes*,[37] a 1993 Washington Supreme Court case, 17-year-old Mr. Janes shot and killed his mother's boyfriend, who reportedly had abused Mr. Janes, his mother, and his siblings over a period of 10 years. An argument between the defendant's mother and the victim took place the night before the shooting, but reportedly there was no confrontation between the defendant and the victim at the time of the shooting. At trial, Mr. Janes presented two defenses, self-defense based on the history of abuse and diminished capacity. He presented expert witness testimony that he had PTSD, which led him to believe he was in imminent danger from the victim. The trial court refused to issue self-defense instructions to the jury, because it did not believe that Mr. Janes was in imminent danger of abuse. Mr. Janes was convicted of second-degree murder. On appeal, the lower appellate court reversed the conviction, which the state appealed to the Supreme Court of Washington. In its decision, the court held that testimony on PTSD and battered-child syndrome was admissible and that the trial court erred in failing to consider the subjective element of self-defense in the context of the expert testimony given. The court remanded the case to the trial court to reconsider the self-defense jury instructions.

Appellate courts had similar findings in cases of self-defense claims involving nonabusers. In *State v. Sullivan*,[39] a 1997 Maine Supreme Judicial Court case, Mr. Sullivan was charged with attempted murder and aggravated assault related to his shooting into a crowd in a bar after an altercation with a bar patron. Mr. Sullivan claimed self-defense, which in part involved PTSD. The trial court refused to instruct the jury on self-defense, and Mr. Sullivan was convicted of all three charges of aggravated assault. On the basis of expert witness testimony, the appeals court vacated the convictions, holding that a jury could have reasonably found that Mr. Sullivan acted in self-defense.

A review of appealed jury verdicts in cases in which self-defense based on PTSD was claimed reveals that conviction of a lesser included offense is another potential outcome of such cases. Such outcomes often occurred in jurisdictions that allow imperfect selfdefense. For example, in *Harwood v. State*,[38] a 1997 Texas Court of Appeals case, 16-year-old Mr. Harwood was charged with the murder of a man who had molested him. He claimed self-defense and introduced the testimony of his therapist, who had diagnosed PTSD and testified to his opinion that the shooting was in self-defense. Mr. Harwood was convicted of the lesser included offense of manslaughter. On appeal, the verdict was affirmed, as the court found that the jury most likely believed the defendant's version of events but did not believe it should result in complete exoneration.

In summary, appellate courts have found expert testimony on PTSD to be relevant in cases of selfdefense. This finding has been true for offenses of abusers as well as nonabusers, although for the latter, some courts have excluded PTSD testimony. Selfdefense claims based on PTSD have been offered primarily in jurisdictions that use a subjective test of reasonableness. Finally, in jurisdictions that allow an imperfect self-defense, in which conviction of a lesser included charge is possible, PTSD has been relevant and successfully presented as an element of the defense.

Detailed review of these cases indicates that expert testimony on PTSD as it relates to selfdefense was focused on the PTSD phenomena of

hyperarousal symptoms, increased impulsivity, reexperiencing of psychological distress when confronted with an abuser or reminders of past traumas, and the overestimation of danger.

PTSD and Refuting Mens Rea

In the criminal courts, expert witness testimony on PTSD has also been introduced to refute the requisite state of mind, or *mens rea*, for certain criminal charges. Most U.S. jurisdictions allow mental health expert testimony to refute *mens rea*, whereas some jurisdictions restrict such testimony to the insanity defense.[62] In jurisdictions that allow such testimony, appellate courts have in some cases found testimony about PTSD to be admissible for such purposes and to be compelling. For example, in *United States v. Cebian*,[44] a 1985 federal case, the defendant was charged with cocaine-related offenses. Her defense was that she lacked the ability to form the requisite state of mind for the charged crime as a result of PTSD related to abuse by her spouse, a cocaine dealer. Expert witness testimony to this effect was presented by the defense and was admitted. Although the jury ultimately found the defendant guilty on the basis of prosecution evidence countering the defense claims, the admissibility of such testimony was not questioned on appeal.

In *State v. Warden*,[45] a 1997 Washington Supreme Court case, Ms. Warden, a 41-year-old woman, was charged with the first-degree murder of an 81-year-old woman who had formerly employed her as a housekeeper. She presented the defense of diminished capacity due to PTSD from long-standing abuse by her son. A psychiatric expert testified that the defendant had PTSD with dissociative states and that she lacked the capacity to form specific intent with respect to the charged crime. The judge instructed the jury on first- and second-degree murder, but not on manslaughter. On appeal, the supreme court reversed, finding that there was substantial evidence to support a conviction of the lesser charge of manslaughter on the basis of the expert witness testimony offered. In *State v. Bottrell*,[46] a 2000 Washington Court of Appeals case, Ms. Bottrell was charged with the premeditated murder of an elderly man who had made sexual overtures toward her. The trial court excluded expert testimony on PTSD that the defendant sought to present to supportherdefenseofdiminishedcapacity.Shewasconvicted, but the appeals court reversed, ruling that the exclusion of PTSD testimony was an error. In its decision, the court held that, "Washington case law acknowledges that PTSD is recognized within the scientific and psychiatric communities and can affect the intent of the actor resulting in diminished capacity" (Ref. 46, p 715). In summary, PTSD testimony has been allowed and has been found to be relevant and compelling by some appellate courts when offered in conjunction with a diminished capacity or related *mens rea* defense.

PTSD as a Mitigating Circumstance

In the federal jurisdiction, a mental illness can be a basis for downward departure in sentencing if the defendant committed the offense while in a significantlyreducedmentalstateandifthereducedmental state contributed substantially to the commission of the offense.[62] In some state jurisdictions, the presence of a mental illness as a factor in a crime can similarly mitigate sentencing. Courts have found PTSD to be a relevant diagnosis for such mitigation, and, in some cases, sentences have been reversed because of the exclusion or oversight of such testimony. For example, in *In re Nunez*,[51] a 2009 California Court of Appeal case, the defendant, a juvenile, was convicted of charges related to an attempted kidnapping and firing at police during a high-speed chase. The defendant was sentenced to life imprisonment without the possibility of parole. On appeal, the court found that PTSD evidence should have been considered in sentencing and should have mitigated the sentence, which was excessive. Mr. Nunez's diagnosis was PTSD related to past traumas, including childhood abuse by his father, being the victim of a shooting, and

witnessing the shooting death of his brother only months before the offense. An expert opined that PTSD contributed substantially to his offense, an opinion that the court found compelling. The court therefore vacated the sentence and remanded to the trial court for resentencing.

In *Gilley v. Morrow*,[49] a 2007 federal case, the defendant was convicted of the murder of his parents and sister. No mitigating evidence was introduced during the sentencing phase of his trial. Mr. Gilley filed a petition for a writ of *habeas corpus* for ineffective assistance of counsel, which was granted by the federal district court. The court of appeals affirmed the district court's granting of his petition in the sentencing phase, but not in the trial phase. The court found that evidence about the defendant's PTSD from childhood abuse would have been relevant in sentencing, so that trial counsel rendered ineffective assistance when he failed to present such evidence.

In some cases, courts have chosen not to reduce sentencing on the basis of the presence of PTSD as a factor in the crime, and their rulings have been upheld on appeal. For example, in *United States v. Cope*,[50] a 2008 federal case, the defendant received the maximum sentence for methamphetamine-related charges. The defendant contended that his military service in Vietnam and his related PTSD should have mitigated the sentence, but the trial court opined that "even individuals with this disorder have to take responsibility for their actions " (Ref. 50, p 371). The court of appeals affirmed the sentence, holding that the trial court had the discretion of not considering the presence of PTSD to be a mitigating factor in the sentence.

Finally, in some cases, courts did not find the purported connection between PTSD and the offense to be compelling, thus denying a downward deviation of sentencing. For example, in *United States v. Johnson*,[47] a 1995 federal case, Mr. Johnson was convicted of two cocaine sales charges. He appealed his sentence, in part because he argued that the district court should have reduced his sentence because of his diminished mental capacity related to PTSD. The court of appeals upheld the district court's rejection of Mr. Johnson's diminished mental capacity claim, finding that he failed to show a direct connection between PTSD and the offense. Similarly, in *Hall v. Lee*,[52] a 2009 Georgia Supreme Court case, Mr. Hall and an accomplice broke into a gun store and stole several guns. The defendant then drove to his father's house, planning to kill him; however, his father was not home and the defendant shot his father's girlfriend. Following conviction, sentencing, and appeal, he filed a *habeas* petition for ineffective assistance of counsel, contending that his trial counsel did not sufficiently investigate mitigating circumstances. In support of his argument, he presented expert testimony that he had PTSD. The *habeas* court denied his petition, holding that he had failed to show how PTSD was related to his offense.

In summary, in cases in which PTSD played a role in an offense but did not meet the standard for an exculpating defense, courts have found it to be a mitigating circumstance that permits a reduction in sentencing. In such cases, a wide range of PTSD phenomena have been found to be applicable, including hyperarousal symptoms, impaired impulse control, overestimation of danger, and dissociative phenomena. However, in most jurisdictions, a showing of a direct connection between PTSD and the offense is required.

DISCUSSION

In this article we reviewed U.S. case law relating to the use of PTSD as a criminal defense. Since its introduction in DSM-III,[2] PTSD has been offered as the basis for defenses, including insanity, unconsciousness, self-defense, and diminished capacity and as a mitigating circumstance in sentencing. The diagnosis has received both positive and negative treatment by appellate courts when presented as the basis for each of these defenses. An analysis of the reviewed cases yielded the following conclusions.

Appellate courts in some jurisdictions have found testimony on PTSD to meet both the *Daubert* and *Frye* standards for admissibility. In assessing expert testimony, courts have favorably regarded the direct evaluation of the defendant by the expert, confirmation of the traumatic exposure via collateral information, and the existence of documented PTSD symptomatology and treatment before the occurrence of the criminal act in question.

Appellate courts have found criminal defenses based on PTSD to be viable and compelling when a clear and direct connection between the defendant's PTSD symptoms and the criminal incident was found by the expert. The PTSD phenomena that appellate courts have found to be most relevant to criminal defenses include dissociations, hyperarousal symptoms, hypervigilance symptoms, and the overestimation of danger. Although other PTSD phenomena, such as survivor guilt, a sense of a foreshortened future, and thrill seeking, have been proposed in the literature and in expert testimony as relevant, the case law reviewed in this article suggests that courts have not agreed.[3,4,8]

In the rare instances of crimes committed in the context of dissociative episodes, the exculpating defenses of insanity and unconsciousness have been successfully presented. In such cases, the mental health expert has been called on to determine whether the defendant was indeed in the midst of a PTSD dissociation while committing the offense. PTSD dissociations have been the basis for successfully presented arguments of self-defense, diminished capacity, and other *mens rea* defenses. These defenses have also been successfully based on the PTSD phenomena of overascertainment of danger and hyperarousal symptoms. Finally, for crimes in which PTSD played a role but did not amount to one of these defenses, some courts have found it to be a mitigating circumstance in sentencing.

Several authors have offered recommendations for the forensic expert evaluating PTSD as a potential criminal defense, although these have largely not been research based. For example, in describing two cases of malingered PTSD offered as a basis for criminal defense, Sparr and Atkinson[3] discussed the importance of assessing the veracity of the trauma that is presented as reason for the diagnosis. Recommendations included the use of confirmatory records and being alert to signs of an exaggerated or factitious trauma, such as grandiose stories, esoteric terminology that is difficult to understand, or contradictory stories. Colbach[64] proposed similar recommendations in a paper describing a case of malingered PTSD that was successfully used as a basis for an insanity defense but that was later exposed in a civil suit. In reviewing PTSD as a criminal defense, Sparr[4] proposed characteristics of authentic PTSD dissociations that cause criminal acts. These included the absence of a motive or explanation for the crime, lack of premeditation, similarities between the circumstances of the crime and the trauma causing PTSD, a random or fortuitous victim, and no criminal history. Sparr and Atkinson[3,4] and others[8] have also proposed certain interview techniques in the evaluation of PTSD as a criminal defense, such as beginning with open-ended questions before inquiring about specific PTSD symptoms. The utility of neuropsychological tests in diagnosing PTSD has also been discussed and reviewed by others. Finally, although not yet an aspect of clinical or forensic practices, physiological testing, reviewed elsewhere,[8] has been studied as a potentially useful adjunctive tool to aid in the diagnosis of PTSD.

Analysis of the cases reviewed in this article supports some of the above recommendations. First, accurately diagnosing PTSD is fundamental for the acceptance of expert testimony as reliable by courts. Second, forensic experts should specifically determine whether and how specific PTSD phenomena played a role in the criminal act in question. Particular attention should be directed to whether PTSD phenomena that have been recognized by courts as relevant to criminal defenses were present. The forensic expert should elucidate as clearly as possible how the PTSD phenomena that were present contributed to the act. In doing so, the forensic expert should keep in mind the relevant criminal defenses involved, including insanity, self-defense, and diminished capacity. In numerous cases reviewed in this article, expert testimony has been excluded or deemed irrelevant because of a failure to identify a clear and direct connection between the defendant's PTSD symptoms and the criminal act.

This review has several limitations. First, it is limited to U.S. case law, which is likely to be only partially relevant in other countries. However, as has been suggested by Friel *et al.*,[8] the prevalence of PTSD-based criminal defenses in U.S. courts has very likely been higher than in other countries as a result of the Vietnam War. Because of that, U.S. case law in this area is likely to serve as an important reference point for other jurisdictions. Second, and as discussed earlier, because this review is based on published cases, it cannot address trends in PTSDbased criminal defenses in jury trials. Furthermore, the published decisions examined often contained only short exerpts or brief synopses of expert testimony, such that the complete examination of expert testimonies offered was not possible. Finally, this review describes the extent to which appellate courts have found PTSD and specific phenomena of the disorder to be valid bases for criminal defenses. These findings may differ from those in future empirical research, regarding the validity of PTSD phenomena and their role in criminal behavior.

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Post-Traumatic Stress Disorder (PTSD)

Post-Traumatic Stress Disorder (PTSD) is a mental disorder triggered by trauma considered by the individual experiencing it to be life-threatening. It can present at any age and generally occurs within the first three months following the traumatic experience. PTSD can result from a single episode or multiple exposures occurring over time. It is most often associated with war veterans, military contractors, individuals who have suffered abuse or rape, natural disaster victims, victims of and witnesses to a crime, terrorist act, accident or other tragic event, although it can occur under many circumstances.

The most common symptoms associated with PTSD include depression, anger, anxiety, impulsivity, suicidal thinking, violent behavior, dissociation, paranoia, alcohol and substance abuse, and isolation.

The diagnosis of a PTSD can occur after a person has been exposed to a severe trauma, and finds him or herself repeatedly

reliving the incident (as if it just happened,) avoiding similar situations and withdrawing from their environment. An analysis of treatments for PTSD reveals that there are multiple modalities for which the effectiveness is often unclear.

One model of treatment is to stabilize the individual psychiatrically and medically, provide increased psychosocial supports, and eventually obtain job testing, training and placement.

PTSD in the Courts

Individuals with PTSD are frequently involved in legal proceedings, either in Civil or Criminal Court. Civil proceedings usually involve the determination as to whether a PTSD is present, its etiology, its presentation, severity and impairment. In criminal proceedings, the etiology, presentation, severity and impairment are considered, but more specifically, criminal proceedings address how a PTSD disorder might have influenced the mental state and behavior of the defendant.
Competency and insanity are examples of two criminal proceedings in which PTSD has been considered.

Assessment for drug and alcohol abuse is common as substance abuse frequently co-occurs with PTSD in both Civil and Criminal situations.

A forensic psychiatrist has unique training and experience in assisting the Civil or Criminal Court in its determination as to whether an individual has PTSD . If it is determined that an individual does have a PTSD, a forensic psychiatrist has the unique training and experience to assist in understanding how the PTSD should be considered in a particular suit or criminal allegation.

Civil Forensic Evaluations Criminal Forensic Evaluations Post Traumatic Stress Disorder in Courts Civil Competency Criminal Competency Testamentary Capacity Insanity Defense (NGRI)

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Pro Se Competence in the Aftermath of *Indiana v. Edwards*

Douglas R. Morris and Richard L. Frierson

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Abstract

The right to represent oneself at trial is well-established, but not absolute. Recently, in *Indiana v. Edwards*, the United States Supreme Court considered whether states may demand a higher standard of competence for criminal defendants seeking to represent themselves at trial than that necessary for standing trial with attorney representation. Ultimately, the Court ruled that the Constitution allows states to employ a higher competency standard for *pro se* defendants. In this analysis of the Court's decision, the authors describe the facts of this case, the legal precedents framing the issues facing the Court, and the Court's rationale for its opinion. The ruling is considered in light of available research involving *pro se*

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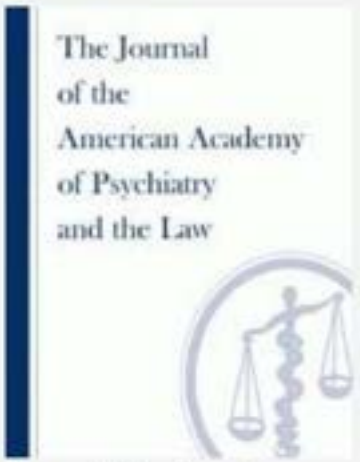

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defendants and whether this ruling is consistent with professional guidelines related to forensic psychiatric practice. Implications of the decision for forensic clinicians and limitations of the decision are discussed.

Among guarantees for the right to a speedy and public trial, an impartial jury in the district of the offense, notice of charges, confrontation of witnesses, and compulsory processes for obtaining witnesses in one's favor, the Sixth Amendment guarantees a criminal defendant the assistance of counsel in making his defense. The United States Supreme Court has further recognized the importance of the assistance of counsel through its subsequent decisions identifying the ability to assist counsel as a necessary component of competence to stand trial[1,2] and ruling that "lawyers in criminal courts are necessities, not luxuries," obligating states to provide attorneys for indigent defendants.[3] However, for a variety of reasons, criminal defendants may seek to forgo the benefits of counsel and represent themselves during their proceedings.

The common adage that one who is his own lawyer has a fool for a client suggests that it is a mistake for a layperson to tread into the legal arena without the assistance of counsel. The Supreme Court has offered such cautions in past decisions[4,5] and noted, "Our experience has taught us that 'a pro se defense is usually a bad defense, particularly compared with a

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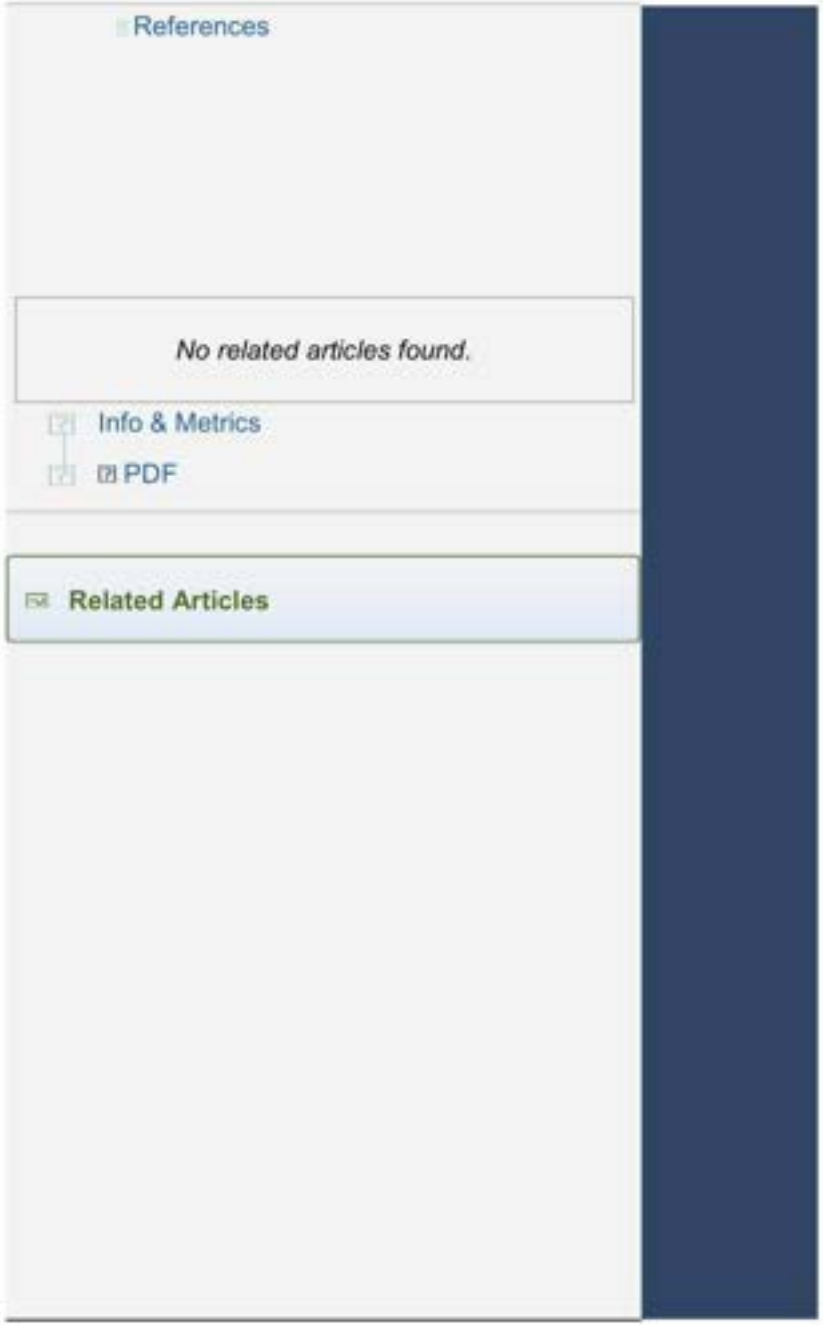
defense provided by an experienced criminal defense attorney' " (Ref. 6, p 161). To what degree does this conventional wisdom hold true?

In 1975, the U.S. Supreme Court recognized in *Faretta v. California*, "a near universal conviction, on the part of our people as well as our courts, that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself" (Ref. 4, p 817). The Court cited federal precedents



recognizing a constitutional right to self-representation, the wording of the Sixth Amendment referring to the *assistance* of counsel (emphasis added), and common law and colonial traditions protecting a defendant's right to proceed without counsel were he voluntarily and intelligently to elect to do so. Mr. Faretta's technical legal knowledge was ruled to be irrelevant in the assessment of his knowing exercise of his right to defend himself, but courts should assure themselves that the waiver of counsel was knowing and voluntary, and a defendant should be made aware of the dangers and disadvantages of self-representation so that the record will establish that "he knows what he is doing and his choice is made with eyes open" (Ref. 6, citing *Adams v. U.S. ex rel. McCann*, 317 U.S., 269, 279 (1942)).

While Anthony Faretta's wisdom in seeking to proceed *pro se* was questioned, there were no specific concerns that he had an underlying mental illness or cognitive deficit that may have affected his decision or ability to represent himself. The Supreme Court dealt with this question in their 1993 *Godinez v. Moran*[7] decision.

Richard Moran, charged with three counts of murder and believed to be marginally competent to stand trial, sought to discharge his attorneys and plead guilty. The trial court found that he was "knowingly and intelligently" waiving counsel and that his waiver was "freely and voluntarily" given. His guilty plea was accepted, and he was sentenced to death. Later, following Mr. Moran's series of federal *habeas* appeals on the grounds that he was incompetent to

represent himself, the Supreme Court ruled that the competency standard for pleading guilty or waiving the right to counsel is the same as that for competency to stand trial.[7] In the majority opinion, Justice Thomas wrote that the decision to plead guilty was no more complicated than the sum of the decisions one must make during a trial. The competence

necessary to waive counsel was specifically noted to be that required to waive the right, not that needed to represent oneself.

While the right to represent oneself at trial is well established, the Supreme Court has recognized limitations to this right. In *McKaskle v. Wiggins*, the Court ruled that judges may appoint standby counsel over a *pro se* defendant's objection.[8] In 2000, the Court unanimously ruled in *Martinez v. Court of Appeals of California* that there was no constitutional right to self-representation during appeal of a criminal conviction.[6] In this opinion, the Court also questioned whether the historical precedents of self-representation underlying the *Faretta* decision were as pertinent in the modern era when attorneys are more available and are standard participants in legal proceedings. Appellate decisions have further denied or limited defendants' requests to proceed *pro se* when defendants have disrupted proceedings, have appeared to move for self-representation as a delay tactic, have made a *pro se* request in an untimely manner, or have insisted on hybrid representation (defendant and attorney alternate in conducting different parts of the defense).[9,10]

Indiana v. Edwards

The question posed in *Indiana v. Edwards* is as follows: May a state adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?[11]

In 1999, Ahmad Edwards fired three shots at a department store officer who had seen him steal a pair of shoes. The officer was grazed and a bystander was struck in the ankle. An FBI agent in the vicinity pursued Mr. Edwards into

drop his weapon. Mr. Edwards was subsequently apprehended and charged with several crimes, including attempted murder.

After his arrest, Mr. Edwards received a diagnosis of schizophrenia, was found incompetent to stand trial, and was hospitalized at Indiana's forensic state hospital for competency restoration. His mental condition eventually became the subject of three competency proceedings and two self-representation hearings. Five years after the offense and following two hospitalizations for competency restoration, Mr. Edwards began trial for his criminal charges. He asked to represent himself at that time, but his request was denied because he claimed to need a continuance to proceed *pro se*. He was convicted of criminal recklessness and theft, but the jury could not reach a verdict on the charges of battery with a deadly weapon and attempted murder.

Indiana sought to retry Mr. Edwards on the remaining charges, and he again asked to represent himself. The trial judge denied his request, appointing counsel to represent him after ruling that Mr. Edwards remained competent to stand trial but was not competent to defend himself. A jury convicted him of the remaining charges, and he was sentenced to 30 years' imprisonment.

On appeal to Indiana's appellate court, Mr. Edwards claimed that his Sixth Amendment right to represent himself was improperly violated. The appellate court agreed with him, citing the *Faretta* decision. After Indiana appealed the ruling, the Indiana Supreme Court upheld the appellate court decision. Although this court sympathized with the trial court judge's reasoning, it believed it was bound by both *Faretta* and *Godinez*. The U.S. Supreme Court granted *certiorari* to consider whether the trial court was constitutionally required to allow Mr. Edwards to represent himself.

Before the Supreme Court hearing on this matter, 19 states, the federal government, the American Bar Association, the American Psychiatric Association (APA), the American Academy of Psychiatry and the Law (AAPL) and others filed *amicus* briefs supporting Indiana in seeking a higher standard of competence for self-representation than is necessary to stand trial with the assistance of counsel. In their brief, APA and AAPL argued that there was professional recognition that competency was not a unitary concept and that individuals may have some competencies but not others.[12] These organizations noted that more than competence to stand trial is needed when a defendant seeks to proceed *pro se*, because a defendant would be required to play a much larger role in this capacity. The brief further reasons that the *Faretta* right to self-representation is subject to being overridden to prevent a defendant's mental illness from destroying the reliability of the adversarial process and notes that public interest is strong in this context. APA and AAPL further argued that the *Godinez* decision was not applicable to the *Edwards* case, because *Godinez* did not involve contesting criminal charges against which the defendant would actively represent himself. Finally, APA and AAPL argued that the underlying capabilities relevant to self-representation were subject to professional evaluation and were extensions of capabilities already addressed in evaluations of competency to stand trial.

Supreme Court Decision

The Supreme Court ruled that the Constitution does not forbid states from insisting on representation by counsel for those competent enough to stand trial but who are impaired by severe mental illness to the point that they are not competent to conduct trial proceedings by themselves. The Court agreed

that its precedents framed, but did not answer the question of whether states may adopt a higher standard of competency to represent oneself than to stand trial with the assistance of counsel. In ruling that the Constitution allows states to set this higher standard, the Court cited its prior insistence in *Dusky v. U.S.*[1] and *Drope v. Missouri*[2] that, in addition to an understanding of the nature and objectives of the proceedings, sufficient ability to consult with and assist counsel is required for a defendant to be competent to stand trial. The majority believed that this requirement suggests that forgoing counsel presents different circumstances than does the mental competency determination for standing trial with counsel.

The Court reasoned that neither the *Faretta* nor the *Godinez* decisions defined the scope of the self-representation right. It noted that the conclusion in *Faretta* was, in part, based on previous state cases either consistent with or specifically adopting competency limitations on the self-representation right and that subsequent self-representation decisions "made clear that the right of self representation is not absolute" (Ref. 11, p 5). The *Godinez* decision did not deal with a defendant's ability to conduct a defense, only his competence to *waive the right*' (Ref. 11, p 7), and this case's holding that a state may permit a borderline competent defendant to proceed *pro se* did not answer whether a state "may *deny* a gray-area defendant the right to represent himself" (emphases in original; Ref. 11, p 8).

The Court recognized that mental illness varies in degree, can vary over time, and may affect an individual's functioning at different times in different ways, thus cautioning against a single competency standard for standing trial with the assistance of counsel and standing trial *pro se*. Finally, the majority believed that allowing a mentally incompetent defendant to represent himself, who hasn't adequate ability to do so, would not "affirm the dignity" of

the defendant, and could undermine the Constitution's overriding insistence that an individual receive a fair criminal trial. Trial judges were often believed to be best able to evaluate an individual's specific competencies and make more fine-tuned competency determinations. Thus, the Indiana Supreme Court decision was vacated and remanded.

Analysis

There are several reasons that a criminal defendant might choose to represent himself: little trust in the fairness of the legal system (belief that public defenders are overworked or concern that they are employees of the state), too much trust in the system (faith that their innocence will result in a not guilty verdict), a desire to promote a political agenda, a belief that one can explain one's defense better than an attorney, or the desire to avoid attorney fees (nonindigent defendants).[13] There are also potential strategic advantages to representing oneself, including the opportunity to speak to a jury without undergoing cross-examination and the possible belief that one is more apt to win a jury's sympathy without an attorney. Additional potential advantages of *pro se* representation include the defendant's ability to confront and cross-examine accusers directly, the potential to establish better rapport with jurors, and the possibility of receiving greater latitude in allowed behavior and questioning than would be given a defense attorney.[14]

Twenty years after *Faretta*, in his criticism of the "chaos," "mockery of justice," and "disrupt[ion of] courtroom procedure" he believed resulted from this decision, Decker[9] cited more subversive and misguided motives behind defendants' requests to proceed *pro se*. He argued, "Some defendants may proceed *pro se* to symbolize their lack of respect for any kind of authority, … or because they are unable to get their way and so represent themselves as

an act of defiance" (Ref. 9, p 485). He noted that *pro se* defendants may "have committed such heinous atrocities that life imprisonment or the death penalty is the most likely result," "may be cleverly manipulating the criminal justice system for their own secret agenda," or "to proceed *pro se* may be the means to a radical political scheme that the defendant wants to advance" (Ref. 9, pp 486–7). Decker also opined that "[w]hile some *pro se* defendants may not harbor a hidden motive behind the request, they are so totally out of touch with reality that they believe they can do it all themselves" (Ref. 9, p 487).

Research on *Pro Se* Defendants

While the legal literature contains numerous articles and appellate cases regarding criminal defendants who choose to represent themselves, there is little empirical research that might indicate whether these defendants are mentally ill or merely foolish.[10,15] Justice Breyer bemoaned this lack of empirical evidence in his *Martinez* concurrence, noting, "I have found no empirical research, however, that might help determine whether, in general, the right to represent oneself furthers, or inhibits, the Constitution's basic guarantee of fairness" (Ref. 6, Breyer J., concurring, p 164).

To better identify the reasons why individuals seek to discharge their attorneys, Miller and Kaplan[16] evaluated 100 consecutive individuals admitted to a Wisconsin forensic hospital for evaluation of or treatment to regain competence to stand trial (CST). Twenty-four of these defendants sought to discharge their attorneys, 11 expressed a desire to waive counsel and represent themselves, and the other 13 wished merely to fire their current attorneys, but not to represent themselves. All 11 of the individuals

who sought to represent themselves were found incompetent to stand trial (ICST). The authors noted, however, that the findings were based not on the defendants' desire to represent themselves, but on the individuals' multiple competency-related deficits. Of the 13 individuals who wished merely to fire their current attorneys, 11 were judged CST, a higher competency rate than that among both those seeking to waive counsel and those accepting their current attorneys. The reasons the individuals sought to waive counsel tended to be egocentric, such as "I'm better than any lawyer," and "It's my constitutional right." Individuals sought to fire their current attorneys for more self-protective and practical reasons, such as concerns that the defendant's attorney was not spending enough time with him, would not listen to the defendant or verify his story, or wanted the defendant to plead guilty or not guilty by reason of insanity against the defendant's wishes. Higher rates of competence in those defendants seeking a different attorney for practical or strategic reasons are consistent with a study of public defenders' perceptions of their clients' competence and participation in their defense, where the defenders reported that among their clients whose competence was doubted, the defendants were less involved in decision-making and, overall, were passive participants in their cases.[17]

Mossman and Dunseith[14] attempted to better characterize *pro se* defendants by surveying the print media portrayals from 1997 to 1999 of 49 *pro se* criminal defendants. Media accounts of these proceedings allowed the authors to characterize defendants' reasons for representing themselves into three broad categories: eccentric, the decision to proceed without representation was one of many behavioral or emotional peculiarities reported; ideological, the alleged offenses reflected a defendant's feelings about larger ideological concerns (e.g., Dr. Jack Kevorkian and his advocacy of assisted suicide); and personal, the defendants desired to exercise more

control over their cases. The authors noted that these *pro se* defendants had a broad range of educational backgrounds and when compared with the population at large, men, attorneys, persons with other advanced degrees, and unemployed persons were disproportionately represented in the sample. *Pro se* defendants also faced a wide range of charges, although homicide was the most common. Many of these individuals had reasonable motives for seeking self-representation, such as dissatisfaction with their attorneys or the belief that they could do just as well without representation. While print media accounts of these defendants often contained reports of the defendants' having significant mental problems or displaying bizarre courtroom behavior, in some cases, *pro se* defendants were skillful and successful in representing themselves.

A recent novel study sought to evaluate *pro se* defendants empirically to test the validity of the commonly held assumption that these defendants are either foolish or mentally ill.[15] The author evaluated existing federal and state databases, documenting trial outcomes and type of counsel at case termination, and created an additional database (the Federal Docketing Database) using data contained in federal court docket sheets maintained by clerks of the court for each federal jurisdiction. These docket sheets documented written filings and oral motions made in court, and, from them, data were collected on 208 federal defendants who chose *pro se* representation at case disposition.

The outcomes of *pro se* defendants in state courts were at least as good as those for represented defendants with 50 percent of *pro se* defendants convicted of a charge, compared with a 75 percent conviction rate for represented defendants. Eventual felony convictions for *pro se* defendants were also less frequent than for represented defendants (26% versus 63%).

While *pro se* federal felony defendants did not fare as well as their state court counterparts, acquittal rates for *pro se* and represented federal felony defendants were nearly identical (.64% and .61%, respectively). Thus, *pro se* federal felony defendants did not seem to fare significantly worse than did the represented defendants. Finally, based on federal docketing sheets and with a court-ordered competency evaluation used as a proxy for the presence of outward signs of mental illness, 80 percent of *pro se* defendants were not believed to have displayed signs of mental illness, as only 20 percent of this sample were ordered to undergo competency evaluation. Furthermore, dissatisfaction with current counsel appeared to be a prominent reason that defendants in the Federal Docketing Database chose self-representation, as more than half of them requested new counsel before invoking their right to self-representation.

These studies of *pro se* defendants, though few in number, indicate that many such defendants seek to represent themselves for legitimate reasons. Voicing dissatisfaction with counsel was a rationale for seeking to dismiss counsel noted in all of these studies, and voicing displeasure about counsel perceived as ineffective may be viewed as an appropriate self-protective behavior for defendants facing serious legal charges. These studies cast doubt on the view that all *pro se* defendants are either mentally ill or foolish.

Competency to Stand Trial *Pro Se*

While the Court held that states may demand a higher standard of competence for *pro se* defendants, it did not articulate specific standards that defendants must meet to represent themselves at trial. Because the Court was unsure how a standard based on a defendant's ability to communicate would work in practice, it also rejected Indiana's proposal that a

defendant not be allowed to proceed *pro se* if he cannot communicate effectively with a court or a jury. Although the Indiana Supreme Court had previously held that trial courts should generally hold a pretrial hearing to evaluate a defendant's competency to proceed *pro se* and to establish a record of the defendant's waiver of counsel,[18] it is unclear what standard would differentiate a defendant who is merely competent to stand trial from one who is competent both to stand trial and to represent himself.

As outlined in the "AAPL Practice Guideline for Evaluation of Competency to Stand Trial," some jurisdictions have set forth specific factors to consider when evaluating a proposed waiver of counsel.[10] The Rhode Island Supreme Court asks trial courts to consider a defendant's age, education, experience, background, behavior at the hearing, mental and physical health, contact with lawyers before the hearing, and knowledge of the proceedings and possible sentence that may be imposed.[19] That court also viewed as important considerations of whether mistreatment or coercion had taken place and whether the defendant may be attempting to manipulate the proceedings. The Wisconsin Court of Appeals ruled that trial courts should consider a defendant's education, literacy, fluency in English, and physical or psychological disabilities that may significantly affect communication.[20]

These considerations are consistent with inquiries into a defendant's background, mental health, knowledge of the nature of the proceedings against him, and ability to assist counsel that are routinely evaluated in CST examinations. As the APA and AAPL argued in their *amicus* brief, competency to proceed *pro se* evaluations based on these factors would extend the evaluation of defendant abilities commonly examined in CST evaluations.[12] With general criteria such as these, forensic evaluators could provide useful information to courts regarding defendants' abilities to

communicate, process information, maintain attention and concentration, and behave appropriately in the courtroom. However, in both *Faretta* and *Edwards*, the trial judges questioned the defendants extensively about specific legal points, including *voir dire* and evidentiary rules. Defendants who represent themselves face numerous potential challenges: jury selection, evidentiary pretrial hearings, opening and closing arguments, direct and cross examination of witnesses, and planning trial strategy. Knowledge of these points of law lie outside of the training and expertise of most forensic clinicians, and it is questionable whether forensic clinicians could ethically testify to such matters.

Many defendants choose to represent themselves because they view the public defender system as inadequate. Others have had prior undesired outcomes in criminal cases in which they had legal representation. In both situations, the motive for self-representation lies in the defendant's value judgment regarding legal representation. However, forensic evaluators may find it difficult at times to distinguish such value judgments from thinking rooted in mental illness, especially illnesses that are manifested by delusions and/or paranoia.

Protection of Defendants' Rights

Writing in dissent, Justice Scalia criticized the majority's decision because he believed it would permit "a State to substitute its own perception of fairness for the defendant's right to make his own case before the jury—a specific right long understood as essential to a fair trial" (Ref. 11, Scalia, J., dissenting, p 1). While the *Edwards* decision hinges on these competing constitutional principles—namely, the defendant's autonomy interest in

making his own defense against government charges versus the state's interest in maintaining the dignity and reliability of its proceedings—Justice Scalia raises an important question regarding whether Mr. Edwards was improperly denied the right to choose, rather than merely conduct, his defense. Mr. Edwards sought to claim self-defense. His counsel preferred a defense focusing on lack of intent. With counsel appointed to speak for him, Mr. Edwards was denied not only the opportunity to conduct his defense, but also the autonomy to decide what basic type of defense would be used to answer the charges against him. As the *Faretta* Court cautioned, "An unwanted counsel 'represents' the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense" (Ref. 4, p 821). Forcing a criminal defendant to accept his attorney's defense strategy also appears inconsistent with the past precedent that a trial judge may not force an insanity defense on a competent defendant who intelligently and voluntarily elects to decline this defense.[21]

Professional Guidelines

The "AAPL Ethics Guidelines for the Practice of Forensic Psychiatry" note that forensic psychiatrists are "called upon to practice in a manner that balances competing duties to the individual and to society" (Ref. 22, p 1). In doing so, they are to be "bound by underlying ethical principles of respect for persons, honesty, justice, and social responsibility" (Ref. 22, p 1). *Edwards v. Indiana* involves all of these principles. The central conflict in this case weighed whether respecting a defendant's right to proceed *pro se* might render his trial unfair, usurping a basic principle of justice. Likewise, it

is foreseeable that courts will increasingly call on forensic clinicians as they attempt to discern whether a given defendant has the capacity to proceed *pro se*. In lending their expertise to courts in these matters, psychiatrists may demonstrate social responsibility by objectively aiding the courts' search for justice while educating courts on an individual's unique abilities and limitations. In doing so, clinicians must be cautious and claim expertise "only in areas of actual knowledge, skills, training, and experience" (Ref. 22, p 4) as an individual's competency to proceed *pro se* may hinge on legal abilities or points of law outside the scope of experience of most forensic psychiatrists.

American Academy of Psychiatry and the Law

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Rebecca Potter, LMHC
Certified Disability Advocate
Licensed Mental Health Counselor
Email: tlc211@gmail.com
Phone: (561)267-3831

REPORT AND REQUEST FOR ADAA ACCOMMODATION

NAME: **SCOTT HUMINSKI**
CASE NO: **17-ca-421**
17-mm-815
17-ca-943
DATE: **JANUARY 26, 2018**

*******THIS REPORT CONTAINS PRIVATE MEDICAL INFORMATION AND MUST BE KEPT FROM PUBLIC VIEW.**

The REPORT is to request that Mr. Huminski, who suffers from disabilities which prohibit equal access to the Court. Mr. Huminski has asked this writer to prepare this report for the Court. It contains private protected health information and is provided to the Court to ensure the necessity of accommodations for Mr. Huminski, guaranteeing he has equal access to the Court and receives fair due process. The report/accommodation request is protected by the Health Insurance Portability and Accountability Act of 1996 (HIPPA) Pub law 104.191.

The Americans with Disabilities Act, 42 USC Section 12131 requires that states insure that disabled citizens are provided with necessary accommodations to services, programs and agencies. To guarantee equal access, these citizens must be provided with reasonable accommodations to protect the compromised citizen from discrimination. If the accommodations are not provided, the disabled citizen is at an unfair disadvantage.

This report has been compiled from personal, telephonic conferences, email correspondence, review of court records, legal documents, review of medical records, mental status examination, structured interviews and assessments.

The ADAA defines in part....

Section 35.150(b)(2)-- Safe harbor

The "program accessibility" requirement in regulation implementing title II of the Americans with Disabilities Act requires that each service, program, or activity, *when viewed in its entirety,* be readily accessible to and usable by individuals with disabilities. 28CFR 35.150(a)

35.178 State Immunity.

A state shall not be immune under the eleventh amendment to the Constitution of the United State from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

PRESENTING PROBLEM:

Mr. Huminski has been involved in protracted litigation. He suffers from a cognitive disability and has to represent himself in this litigation. He is struggling to communicate to the Court. The physical effects of his disability interfere with his ability to process information and to communicate when he is symptomatic. Mr. Huminski becomes symptomatic when he encounters the stress created by the Court when there is not appropriate accommodations. There is no effective cure to his disability and he must be allowed accommodations to reduce his physical symptom responding in order to have equal access to the Court and due process.

His diagnosis by Dr. Leonard Lado, MD, RPh, ABPN is as follows:

Axis I	**Post Traumatic Stress Disorder** **Generalized Anxiety Disorder** **Social Phobia**
Axis II	**Deferred**
Axis III	**Hip Replacement, both hips**
Axis IV	**legal and social stressors**
Axis V	**Due to complex legal stressors: 60**

The Court has not given Mr. Huminski reasonable accommodations to allow access to the Court and due process. He has struggled to communicate to the Court his needs and the Court has reacted to his inability to clearly communicate.

Due process is a right guaranteed by The US Constitution and a disabled litigant is unable to access the legal system without appropriate accommodations.

He requires the following accommodations:

1. The use of audio and/or videotaping of all proceedings.
a. He will not be able to affectively process information when he becomes symptomatic. The Court has not worked effectively with Mr. Huminski and has now become an additional source of fear which activates his adrenal responses, causing loss of cognition and communication. These services are therefore necessary to review material presented in court proceeding and meetings.

b. Disabled litigants are financially compromised and may not be able to access court transcripts due to the cost. Without a means to review the court proceedings at a later time when he is not symptomatic, he is not able to participate fully in the court process.

2. He must be given extended deadlines to participate in the Court.

a. He becomes symptomatic when he reviews court documents/correspondence and is unable to process the information while he is physically compromised.

b. He is pro se litigant and is not trained in court rules and deadlines. The Court has set deadlines for the attorney profession and not a cognitively disabled litigant. These deadlines must be extended to allow him to cognitively process and fairly engage in litigation.

c. Each time that Mr. Huminski must present to court, prepare for court or review court documents and correspondence, he becomes symptomatic.

d. Mr. Huminski will need additional time to make any decision regarding legal matters to ensure he is not symptomatic and able to cognitively understand the consequences of any decision and to ensure that he has a cognitive capacity to understand his decision.

3. All court correspondence and documents need to be accessible to Mr. Huminski. All Court staff must respond to his questions and requests.

a. Mr. Huminski needs to be provided timely service of court documents.

b. Mr. Huminski must have access to court personnel and receive return phone calls and communication from the court personnel.

c. Many of the court records have not been provided to Mr. Huminski and he is unable to access many of these records within the electronic files. He must be provided with all documents in order to fully engage in the legal process.

d. All court records need to be accurate. If a document is altered, or back dated, it is a violation of FSS 415.101-115. Court personnel need to ensure he is not exploited and the court record is not used as an means to deceive a vulnerable adult.

e. Mr. Huminski reports, the current docket is missing factual documentation, i.e. pleading cycles, motions, opposition to motions. The misrepresentation on a public document leads to confusion/ exploitation to the litigant. The record and docket must be factual to allow equal access to the Court. Non factual records will cause increase in adrenal responding and will affect the disabled litigant's ability to cognitively process and proceed with litigation.

4. Court hearings must be on different days.

a. Mr. Huminski needs time, several days, between any court hearing to heal from the physical symptoms which cause loss of effective cognition and communication.

b. He is unable to recover from the powerful physical nervous system responding that the court process creates. He requires several days between any court meeting or hearing. allowing his nervous system to recover. Without this accommodation, he does not have the cognitive capacity to participate in court proceedings.

5. .Sheriff Scott's staff will not be in attendance at any hearings and/or trials which involve the vulnerable disabled litigant. He requires a safe venue where the staff of Sheriff Scott will not be present and he will not be intimidated by all court personnel.

a. There is a protective order against Mr. Huminski and he is barred (for life) from contact and communication with the Sheriff or his staff (the Lee County Sheriffs and Sheriff Scott-- i.e. court security officers and bailiffs). Mr. Huminski is in fear of violating this protective order and he requires a safe venue to obtain due process.

b. Security personnel and bailiffs are members of the Lee County Sheriff Department. Mr. Huminski has metal hips which set off the security alarms and he would not be able to explain or communicate his medical condition to the personnel in the circuit court.

c. Without safe accommodation and a safe venue to conduct his hearing, he is being denied equal access to the Lee Court complex staffed by Sheriff Scott's deputies. It is not a safe venue and denial of equal access to the court and due process for Mr. Huminski if he is unable to communicate with court personnel.

d. He has been denied access to Lee County Sheriff and reports he is fearful of entering the courtroom without being arrested. He is unable to have equal access to the court and due process under a physical threat from the Sheriff's office.

e. Without this accommodation, Mr. Huminski is under threat of intimidation, direct violation of FSS 415.101(13). If this accommodation is not given, all court personnel are mandatory reporters and need to report this violation to the appropriate authorities.

6. Mr. Huminski requires competent legal representation.

a. Mr. Huminski suffers from a cognitive disorder. He is not able to control the neurological physical responding of his body.

b. He is unable to effectively communicate or process information while he is symptomatic.

c. He requires a legal representative to ensure he has equal access and due process in the court agencies.

d. He has been denied access to Lee County Sheriff and reports he is fearful of entering the courtroom without being arrested. He is unable to have equal access to the court and due process under a physical threat from the Sheriff's office. He requires competent legal representation to assure he has access to the Court and will not lose his freedom while in the legal process.

e. Mr. Huminski reports that he has not received vital court orders and orders have been changed. It is necessary for Mr. Huminski to have competent legal

representation to ensure court compliance to all rules and regulations. This accommodation will ensure equal access and due process to Mr. Huminski and will discourage any appearance of deception. Many pro se litigants do not have access to the internet and do not have the ability to access court records online. The electronic records systems are a "new" science and are not completely reliable.

CONCLUSION"

The following report is respectfully submitted to the Court to provide reasonable accommodations for Mr. Scott Huminski, a disabled citizen who qualifies for these accommodations under the Americans With Disabilities Act.

The State of Florida guarantees additional protection to persons because of disabilities. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. FSS 415.101-115.

The above FSS, defines "deception" as a misrepresentation or concealment of a material fact relating to services rendered.... The requested accommodations are to protect the litigant and the Court from any perception of neglect, abuse, exploitation, intimidation and denial of equal access to the court agencies.

** Please also note that the FSS 415-101-115 requires mandatory reporting from all court representatives/officers of any exploitation, neglect, abuse, or intimidation of a vulnerable adult.

_____

Rebecca Potter,LMHC

Submitted to the Twentieth Judicial Circuit In and For Lee County, Florida -- Civil/Criminal Division on this _____ day of _____ 2018.

DIn The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO SUMMARILY DISMISS BOTH APPEALS WITH PREJUDICE
IN THE CIRCUIT COURT AND 2DCA
THEY ARE JURISDICTIONALLY INFIRM OR WRITS OF PROHIBITION SHOULD ISSUE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

17-ca-421, ON APPEAL IN THE 2DCA

A 120 page show cause order was filed. Huminski was served with only 3 pages of show cause and only the 3 served pages were filed in the Circuit Court. Nothing on the docket indicates that the Circuit Court was divested of jurisdiction of the contempt charge. Incomplete and insufficient services. Jurisdiction questionable.

17-mm-815, ON APPEAL IN THE CIRCUIT COURT

No show cause order was served upon Huminski and filed in the case. The docket does not contain any version of the 120 page show cause order. A court clerk printed out an old 3-page-long order from 6/5/17 that had never been served, the clerk then hand moidified Judge Krier's 6/5/17 order, did not have it served and filed it as an original and valid order on 6/30 to allegedly initiate a criminal prosecution. No jurisdiction, No servive at all.

Dated at Bonita Springs, Florida this 21st day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 21st day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF INDIGENCY CONCERNING THE CRIMINAL CONTEMPT SET FORTH IN 17-CA-421 and regarding the very insufficiently plead CRIMINAL CONTEMPT IN 17-MM-815

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Case 17-ca-421 is the only valid case with proper charging information and some service that the State is relying upon. The collateral case has no valid charging information ant absolutely no proof of service. See attached indigency form.

Dated at Bonita Springs, Florida this 21st day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.comnelson

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 21st day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT/COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA vs.
Scott Humiski
Defendant/Minor Child

For Both Contempt Cases

CASE NO. 17-CA-421
17-MM-815
Both Criminal Contempt

APPLICATION FOR CRIMINAL INDIGENT STATUS

X I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER OR

___ I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENCE STATUS FOR COSTS

Notice to Applicant: The provision of a public defender/court appointed lawyer and costs/due process services are not free. A judgment and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for whom you are making this application. There is a $50.00 fee for each application filed. If the application fee is not paid to the Clerk of the Court within 7 days, it will be added to any costs that may be assessed against you at the conclusion of this case. If you are a parent/guardian making this affidavit on behalf of a minor or tax-dependent adult, the information contained in this application must include your income and assets.

1. **I have** 0 **dependents.** *(Do not include children not living at home and do not include a working spouse or yourself.)*

2. **I have a take home income of $** 0 paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly ( ) yearly
*(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, **minus** deductions required by law and other court ordered support payments)*

3. **I have other income** paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly (X) yearly: *(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No.")*

Social Security benefits	Yes $ 1481	No	Veterans' benefit	Yes $	No
Unemployment compensation	Yes $	No	Child support or other regular support from family members/spouse	Yes $	No
Union funds	Yes $	No	Rental income	Yes $	No
Workers compensation	Yes $	No	Dividends or interest	Yes $	No
Retirement/pensions	Yes $	No	Other kinds of income not on the list	Yes $	No
Trusts or gifts	Yes $	No			

4. **I have other assets:** *(Circle "yes" and fill in the value of the property, otherwise circle "No")*

Cash	Yes $ 200	No	Savings	Yes $	No
Bank account(s)	Yes $ 160	No	Stocks/bonds	Yes $	No
Certificates of deposit or money market accounts	Yes $	No	*Equity in homestead real estate	Yes $	No
*Equity in motor vehicles	Yes $ 1200	No	*Equity in non-homestead real estate	Yes $	No
*Equity in boats/other tangible property	Yes $ 58	No			

*include expectancy of an interest in such property

5. **I have a total amount of liabilities and debts in the amount of $** 49500

6. **I receive:** *(Circle "Yes" or "No.")*
Temporary Assistance for Needy Families-Cash Assistance ...Yes (No) Supplemental Security Income (SSI) ...(Yes) No
Poverty- related veterans' benefits ...Yes (No)

7. **I have been released on bail in the amount of $** 0 **Cash** ____ **Surety** ____ **Posted by**: Self ____ Family ____ Other ____

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 27.52, F.S., commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. **I attest that the information I have provided on this Application is true and accurate.**

2/21/18
Signed on

12-1-59
Date of Birth

4327
Last four digits of Driver's License or ID Number

Signature of applicant for indigent status
Print full legal name: Scott A Humiski
Address: 2544 Kinkaid
City, State, Zip: Cape Coral FL 33904
Phone number: 239 300 6156
E-mail Address: S-Humiski@live.com

CLERK DETERMINATION

_____ Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent

_____ The Public Defender is hereby appointed to the case listed above until relieved by the Court.

Dated this ___day of_____, 20__

LINDA DOGGETT
Clerk of the Circuit Court, by Deputy Clerk

This form was completed with the assistance of:

Clerk/Deputy Clerk/Other authorized person

APPLICANTS FOUND NOT INDIGENT MAY SEEK REVIEW BY ASKING FOR A HEARING TIME. Sign here if you want the judge to review the clerk's decision of not indigent.

Florida Supreme Court Form 3.984, Updated 11/23/15

IN THE CIRCUIT/COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

State of Florida

vs

Case No: 17-MM-000815

Huminski, Scott A

NOTICE OF CLERK'S REVIEW

Pursuant to Rules of Judicial Administration 2.420, the Clerk of Court in and for Lee County hereby gives notice of review of a Notice of Confidential Information within Court Filing for the above referenced case on 2/16/18.

It is determined that:

☒ The document provided with the Notice of Confidential Information within Court Filing does not meet the criteria of a confidential filing pursuant to subdivision (d)(1)(B) of this rule. Please submit a "Motion to Determine Confidentiality" of the court records and obtain an order directing the sealing of the documents.

☐ The Notice of Confidential Information within Court Filing for the above referenced case does not identify the precise location of the confidential information within the document as required in subdivision (d)(2) of this rule.

☐ The Notice of Confidential Information within Court Filing does not indicate which subsection of this rule applies. Please site the specific subsection of Fla.R.Jud.Admin. 2.420 (d)(1)(B) that authorizes the clerk to keep this information confidential.

If the document provided did not meet the criteria of a confidential filing pursuant to Fla.R.Jud.Admin. 2.420(d)(1)(B) the Clerk of Court will maintain the information as confidential for ten days or until the court rules on a Motion to Determine Confidentiality of the information, if one has been filed.

Dated: February 22, 2018

LINDA DOGGETT, CLERK OF COURT

BY: _____

Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING SUCCESSIVE MOTIONS TO APPOINT COUNSEL

THIS CAUSE comes before the Court on Defendant's "Motion To Set Nelson – Faretta Hearing With Compulsatory [sic] Process," "Motion To Dismiss – Denial Of Right To A Nelson And Faretta Hearing" filed February 14, 2018, and "Second Motion For Nelson – Faretta Hearing" filed February 16, 2018. The Court has already ruled on the issues raised in these motions, and the motions are successive. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 21 day of February, 2018.

James Adams
James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 2nd day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS REGARDING CIRCUIT COURT CASE

THIS CAUSE comes before the Court on Defendant's "Motion To Stay To Allow The Circuit Court To Determine Jurisdiction As To the Contempt Charges" and "Motion To Dismiss – Judge McHugh Declared The Protective Orders Void" filed February 14, 2018. Defendant has demonstrated no legal entitlement to a stay. To the extent that the civil case was dismissed, such does not affect the continuation of this contempt proceeding, which was initiated prior to the dismissal. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 21 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 22nd day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION REGARDING SERVICE AND FILING

THIS CAUSE comes before the Court on Defendant's "Second Brady Motion For State To Divulge Names Of The Person Who Doctored Judge Krier's Order Of 6/5/2017 And Filed It On 6/30" filed February 15, 2018. The Court has already ruled on this issue, and the motion is successive. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 21 day of February, 2018.

James Adams
James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 22nd day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION TO SANCTION SHERIFF SCOTT

THIS CAUSE comes before the Court on Defendant's "Motion To Sanction Sheriff Scott" filed February 13, 2018. As the objected-to conduct occurred in the Circuit Court case, Defendant must direct a motion to initiate contempt proceedings to that Court. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 21 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 22nd day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION TO STRIKE

THIS CAUSE comes before the Court on Defendant's "Motion To Strike" filed February 15, 2018. No witnesses have been stricken by the Court, the Court has only held Defendant to the proper procedure for obtaining and issuing subpoenas. Defendant has demonstrated no legal entitlement to striking the State's discovery. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 21 day of February, 2018.

James Adams
James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 22nd day of February, 2018.

LINDA DOGGETT
Clerk of Court

By: L Balmores
Deputy Clerk

In The

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 18-AP- 0003
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR APPOINTMENT OF COUNSEL

NOW COMES, Scott Huminski, ("Huminski") and moves a set forth above in this case of indirect criminal contempt. Attached hereto is

Huminski's indigency form.

Dated at Bonita Springs, Florida this 16th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 16th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT/COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA vs. Scott Humiski
Defendant/Minor Child

For Both Contempt Cases

CASE NO. 17-CA-421
17-MM-815
Both Criminal Contempt

APPLICATION FOR CRIMINAL INDIGENT STATUS

X I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER OR

___ I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENCE STATUS FOR COSTS

Notice to Applicant: The provision of a public defender/court appointed lawyer and costs/due process services are not free. A judgment and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for whom you are making this application. There is a $50.00 fee for each application filed. If the application fee is not paid to the Clerk of the Court within 7 days, it will be added to any costs that may be assessed against you at the conclusion of this case. If you are a parent/guardian making this affidavit on behalf of a minor or tax-dependent adult, the information contained in this application must include your income and assets.

1. **I have** 0 **dependents.** *(Do not include children not living at home and do not include a working spouse or yourself.)*

2. **I have a take home income of $** 0 paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly ( ) yearly
*(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, **minus** deductions required by law and other court ordered support payments)*

3. **I have other income** paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly (X) yearly: *(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No.")*

Social Security benefits	Yes $ 1481	No	Veterans' benefit	Yes $	No
Unemployment compensation	Yes $	No	Child support or other regular support from family members/spouse	Yes $	No
Union funds	Yes $	No			
Workers compensation	Yes $	No	Rental income	Yes $	No
Retirement/pensions	Yes $	No	Dividends or interest	Yes $	No
Trusts or gifts	Yes $	No	Other kinds of income not on the list	Yes $	No

4. **I have other assets:** *(Circle "yes" and fill in the value of the property, otherwise circle "No")*

Cash	Yes $ 200	No	Savings	Yes $	No
Bank account(s)	Yes $ 160	No	Stocks/bonds	Yes $	No
Certificates of deposit or money market accounts	Yes $	No	*Equity in homestead real estate	Yes $	No
*Equity in motor vehicles	Yes $ 1200	No	*Equity in non-homestead real estate	Yes $	No
*Equity in boats/other tangible property	Yes $ 50	No			

*include expectancy of an interest in such property

5. **I have a total amount of liabilities and debts in the amount of $** 49500

6. **I receive:** *(Circle "Yes" or "No.")*
Temporary Assistance for Needy Families-Cash Assistance ...Yes No
Poverty- related veterans' benefits.....Yes No
Supplemental Security Income (SSI).....Yes No

7. **I have been released on bail in the amount of $** 0 **Cash** ____ **Surety** ____ **Posted by**: Self ____ Family ____ Other ____

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 27.52, F.S., commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. **I attest that the information I have provided on this Application is true and accurate.**

2/21/18
Signed on

12-1-59
Date of Birth

4327
Last four digits of Driver's License or ID Number

Signature of applicant for indigent status
Print full legal name: Scott A Humiski
Address: 2544 Kinkaid
City, State, Zip: Cape Coral
Phone number: 239 300 6156
E-mail Address: S-Humiski@live.com

CLERK DETERMINATION

_____ Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent

_____ The Public Defender is hereby appointed to the case listed above until relieved by the Court.

Dated this ___day of_____, 20__

LINDA DOGGETT
Clerk of the Circuit Court, by Deputy Clerk

This form was completed with the assistance of:

Clerk/Deputy Clerk/Other authorized person

APPLICANTS FOUND NOT INDIGENT MAY SEEK REVIEW BY ASKING FOR A HEARING TIME. Sign here if you want the judge to review the clerk's decision of not indigent.

Florida Supreme Court Form 3.984, Updated 11/23/15

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF WAIVER OF CONFIDENTIALITY
CONCERNING THE RECORDS IN BOTH ABOVE DOCKETED CASES

NOW COMES, Scott Huminski ("Huminski"), and, notices as above. Huminski considers no materials filed in the two above captioned cases to be confidential to himself and waives all confidentiality concerns.

Dated at Bonita Springs, Florida this 22nd day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.comnelson

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 12th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF ORDERS ENTERED AFTER NOTICE OF APPEAL ARE VOID AB INITIO

NOTICE OF CIVIL CLAIM AGAINST JUDGE ADAMS FOR MALICIOUS PROSECUTION AND ABUSE OF PROCESS and INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND NEGLIGENCE

Supplemental NOTICE OF APPEAL REGARDING VOID AB INITIO ORDERS

NOW COMES, Scott Huminski ("Huminski"), and, moves as above and notices of appeal concerning the void ab ignition orders issued by the Court in complete absence of all authority. See below authority.

374 So.2d 1135 (1979)

PALMA SOLA HARBOUR CONDOMINIUM, INC., Appellant,
v.
James C. HUBER and Joyce W. Huber, Husband and Wife, Appellees.
James C. HUBER and Joyce W. Huber, His Wife, Appellants,
v.
PALMA SOLA HARBOUR CONDOMINIUM, INC., Appellee.

Nos. 78-1403, 78-1882 and 79-300.

District Court of Appeal of Florida, Second District.

September 14, 1979.

1136*1136 Clyde H. Wilson, Jr. and John S. Jaffer of Wilson, Wilson & Namack, Sarasota, for Palma Sola Harbour Condominium, Inc.

William A. Dooley, of Conley & Dooley, Sarasota, and Gregory C. Meissner and Douglas A. Wallace, Bradenton, for the Hubers.

SCHEB, Judge.

These consolidated appeals concern the phased development of Palma Sola Harbour Condominium. In 78-1403 and 78-1882 Palma Sola Harbour Condominium, Inc., the condominium association, contests final and amended final judgments in favor of James C. Huber and Joyce W. Huber, owners of the undeveloped portion of Palma Sola. Those judgments declared easement rights and encroachment liabilities with respect to the condominium property and determined ownership interests in condominium recreational facilities. We remand for a determination of Palma Sola's entitlement to damages for the encroachment; otherwise we affirm those judgments.

While these appeals were pending, on motion of the Hubers this court relinquished jurisdiction to the trial court to determine if Palma Sola should be required to amend its Declaration of Condominium. Instead, the trial court declared that a condominium unit which had been improperly located by the Hubers was a part of Palma Sola's common elements. In appeal 79-300 the Hubers argue that the trial court's order exceeded the scope of our relinquishment. We agree and reverse the order granting supplemental relief.

Beginning in 1974, I.Z. Mann & Associates, Inc., developed Sections 1 through 3 and partially developed Section 4 of the Palma Sola complex and built units 1 through 141 in these sections. Mann then ceased operations because of financial difficulties. At that time Mann had not started construction of units 142 to 151 in Section 4 or of 24 units planned as Section 5. In 1977 the Hubers acquired title to the undeveloped portion of Section 4 and all of Section 5 from the Westside National Bank of Bradenton which had received a conveyance of these sections from Mann in lieu of foreclosure.

1137*1137 The Hubers sued Palma Sola seeking a declaratory judgment that they had a right of access to Sections 4 and 5 across the common elements of Sections 1 through 3 which were then occupied. The Hubers also sought to require Palma Sola to amend its Declaration of Condominium to include Sections 4 and 5 in the complex.

Palma Sola answered and counterclaimed for a declaratory judgment that the Hubers could not build an eleventh unit on Section 4 because the Declaration permitted only 10 units in that section. Despite warnings from Palma Sola, the Hubers proceeded with construction of 11 new units on Section 4. At trial the evidence revealed that the 10 authorized units under construction (units 142-151) exceeded the boundaries of those units as platted although it did not establish the precise difference. Palma Sola then amended its pleadings to seek removal of all 11 units under construction on the ground that they encroached upon its common elements.

At the conclusion of the trial, the court found that the 10 units in Section 4 did not violate the Declaration which stipulated that the unit boundary lines would be the "as actually built" lines.[1] The court, however, declared the eleventh unit to be an encroachment on Palma

Sola's common elements and reserved jurisdiction to determine damages for the encroachment.

I. ENCROACHMENT REMEDIES

Palma Sola appealed contending that the trial court erred in refusing to order removal of the 11 units. Palma Sola argues that the trial court erred in failing to order removal of the 10 authorized units because the units were not located according to the boundaries set out in the plat and exceeded the size of the units as platted. The court, however, because of its conclusion that the "as actually built" clause controlled, not only refused to order removal of these units but declined as well to award damages for their encroachment on the common elements even though the units also exceeded in size the platted units.

The purpose of an "as built" clause is not to eliminate any possibility of encroachment on common elements where a declaration of condominium contains such a clause, but is to ensure that minor irregularities in the location or size of units do not become a cloud on the titles of individual units. Thus, we reject the Hubers' argument that there could have been no encroachment in this case. We accept, however, the Hubers' rationale that relocation of the units was required to align these units with units 1 to 141 which had previously been built by Mann, the original developer, but not in accordance with their platted location.

Unfortunately, the record does not indicate the magnitude of the size deviation, and we are unable to determine whether damages are appropriate. If the deviation was de minimis, then the trial court was within its discretion in withholding damages. If it was material, that is, if the actual size exceeded substantially the platted size, then the court should have awarded damages for the encroachment. We believe the trial judge erred in failing to determine the materiality of that deviation.

The court did find an award of damages appropriate for the encroachment of the eleventh unit. Palma Sola, however, contends that the trial court was required to order removal of this unit because its construction was an intentional encroachment which occurred after warning. We do not think the trial court sitting as a court of equity erred in concluding that an award of damages would be appropriate. In doing so the court fashioned a remedy to fit the Hubers' violation of Palma Sola's rights.[2]

*1138*1138* *II. TRIAL COURT'S DECLARATION ON RELINQUISHED JURISDICTION*

Nevertheless, we agree with the Hubers' contention on cross-appeal, not because the trial court erred in declaring the eleventh unit to be a part of Palma Sola's common elements, but because the court was without jurisdiction to do so.

While Palma Sola's appeal of the trial court's refusal to order removal of the 11 units was pending, this court relinquished jurisdiction to the trial court upon motion of the Hubers. The trial court was directed to consider the Hubers' request that Palma Sola be required to amend its Declaration to include Sections 4 and 5. The court did not grant this relief, but declared instead that the eleventh unit constructed by the Hubers on Section 4 was not authorized by the condominium plat and had become a part of the common elements

belonging to Palma Sola. The Hubers then appealed this order which, as noted, we have consolidated with the original appeals.

This order cannot stand because a trial court is divested of jurisdiction upon notice of an appeal except with regard to those matters which do not interfere with the power and authority of the appellate court or with the rights of a party to the appeal which are under consideration by the appellate court. *State v. Florida State Turnpike Authority*, 134 So.2d 12 (Fla. 1961); *Crichlow v. Equitable Life Assurance Society*, 113 Fla. 668, 152 So. 849 (1933). When this court relinquished jurisdiction, it was for the express purpose of permitting the trial court to determine if Palma Sola should be ordered to amend its Declaration to include units 142 through 151. The trial court's order on supplemental relief declaring that the eleventh unit, unit 152, was a part of the common elements did not address units 142 through 151.an

Florida Rule of Appellate Procedure 9.600(b) provides "[w]hen the jurisdiction of the lower tribunal has been divested by an appeal from a final order, the court by order may permit the lower tribunal to proceed with specifically stated matters during the pendency of the appeal." The trial court's order was beyond the scope of "specifically stated matters" this court authorized for consideration on its relinquishment of jurisdiction and consequently was invalid. This is true even though the trial court had reserved jurisdiction in its amended final judgment to determine the issue of damages with regard to unit 152.

Accordingly, we reverse the order declaring unit 152 to be a common element inasmuch as the court was without jurisdiction to make that determination. We remand appeal 79-300 and direct the trial court to determine damages to which Palma Sola is entitled for the encroachment of unit 152.

We reverse the trial court's determination in appeals 78-1403 and 78-1882 that units 142 through 151 did not encroach on common elements. We remand for a determination of whether the encroachment was material and, if so, for assessment of appropriate damages. Otherwise, the amended judgment is affirmed.

GRIMES, C.J., and BOARDMAN, J., concur.

[1] The Declaration provides that "[n]otwithstanding the survey location of the walls, ceilings and floors, each unit consists of the space bounded by the vertical projections of the unit boundary lines *as actually built* and between the horizontal planes at the unfinished floor and ceiling elevations *as actually built*. (Emphasis added.)

[2] For example, on relinquishment of jurisdiction, the trial court, even though acting outside the scope of this court's order, followed the general rule that buildings and other structures placed on or affixed to the soil without the landowner's consent become part of the land and belong to the landowner. See *Voss v. Forgue*, 84 So.2d 563 (Fla. 1956); *McCreary v. Lake Boulevard Sponge Exchange Co.*, 133 Fla. 740, 183 So. 7 (1938).

Dated at Bonita Springs, Florida this 22nd day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.comnelson

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 12th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

PETITION TO THE CIRCUIT COURT TO COMMENCE CONTEMPT PROCEEDINGS AGAINST JUDGE JAMES ADAMS FOR CONTNIUING TO RULE AFTER A NOTICE OF APPEAL WAS FILED DIVESTING HIM OF ALL JURISDICITION IN 17-MM-815

NOW COMES, Scott Huminski ("Huminski"), and, petitions as above. The docket in 17-mm-815 sets forth *per se* contempt for the authority, power and jurisdiction of the Circuit Court by Judge Adams, willingness of Judge Adams to risk his job is a *per se* indication on an animus, bias or impropriety concerning his conduct towards Huminski. Judge Adams' willful disrespect of the rule of law divesting him of jurisdiction upon filing of a notice of appeal is an affront to the dignity of the court and is prejudicial to the administration of justice. Huminski, notes his filing of indigency of 2/21/18 is on the record should this be instituted as a new matter. "This order cannot stand because a trial court is divested of jurisdiction upon notice of an appeal..." See below

374 So.2d 1135 (1979)

PALMA SOLA HARBOUR CONDOMINIUM, INC., Appellant,
v.
James C. HUBER and Joyce W. Huber, Husband and Wife, Appellees.
James C. HUBER and Joyce W. Huber, His Wife, Appellants,
v.
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SCHEB, Judge.

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While these appeals were pending, on motion of the Hubers this court relinquished jurisdiction to the trial court to determine if Palma Sola should be required to amend its Declaration of Condominium. Instead, the trial court declared that a condominium unit which had been improperly located by the Hubers was a part of Palma Sola's common elements. In appeal 79-300 the Hubers argue that the trial court's order exceeded the scope of our relinquishment. We agree and reverse the order granting supplemental relief.

Beginning in 1974, I.Z. Mann & Associates, Inc., developed Sections 1 through 3 and partially developed Section 4 of the Palma Sola complex and built units 1 through 141 in these sections. Mann then ceased operations because of financial difficulties. At that time Mann had not started construction of units 142 to 151 in Section 4 or of 24 units planned as Section 5. In 1977 the Hubers acquired title to the undeveloped portion of Section 4 and all of Section 5 from the Westside National Bank of Bradenton which had received a conveyance of these sections from Mann in lieu of foreclosure.

1137*1137 The Hubers sued Palma Sola seeking a declaratory judgment that they had a right of access to Sections 4 and 5 across the common elements of Sections 1 through 3 which were then occupied. The Hubers also sought to require Palma Sola to amend its Declaration of Condominium to include Sections 4 and 5 in the complex.

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At the conclusion of the trial, the court found that the 10 units in Section 4 did not violate the Declaration which stipulated that the unit boundary lines would be the "as actually built" lines.[1] The court, however, declared the eleventh unit to be an encroachment on Palma Sola's common elements and reserved jurisdiction to determine damages for the encroachment.

I. ENCROACHMENT REMEDIES

Palma Sola appealed contending that the trial court erred in refusing to order removal of the 11 units. Palma Sola argues that the trial court erred in failing to order removal of the 10 authorized units because the units were not located according to the boundaries set out in the plat and exceeded the size of the units as platted. The court, however, because of its conclusion that the "as actually built" clause controlled, not only refused to order removal of these units but declined as well to award damages for their encroachment on the common elements even though the units also exceeded in size the platted units.

The purpose of an "as built" clause is not to eliminate any possibility of encroachment on common elements where a declaration of condominium contains such a clause, but is to ensure that minor irregularities in the location or size of units do not become a cloud on the titles of individual units. Thus, we reject the Hubers' argument that there could have been no encroachment in this case. We accept, however, the Hubers' rationale that relocation of the units was required to align these units with units 1 to 141 which had previously been built by Mann, the original developer, but not in accordance with their platted location.

Unfortunately, the record does not indicate the magnitude of the size deviation, and we are unable to determine whether damages are appropriate. If the deviation was de minimis, then the trial court was within its discretion in withholding damages. If it was material, that is, if the actual size exceeded substantially the platted size, then the court should have awarded damages for the encroachment. We believe the trial judge erred in failing to determine the materiality of that deviation.

The court did find an award of damages appropriate for the encroachment of the eleventh unit. Palma Sola, however, contends that the trial court was required to order removal of this unit because its construction was an intentional encroachment which occurred after warning. We do not think the trial court sitting as a court of equity erred in concluding that an award of damages would be appropriate. In doing so the court fashioned a remedy to fit the Hubers' violation of Palma Sola's rights.[2]

1138*1138 II. TRIAL COURT'S DECLARATION ON RELINQUISHED JURISDICTION

Nevertheless, we agree with the Hubers' contention on cross-appeal, not because the trial court erred in declaring the eleventh unit to be a part of Palma Sola's common elements, but because the court was without jurisdiction to do so.

While Palma Sola's appeal of the trial court's refusal to order removal of the 11 units was pending, this court relinquished jurisdiction to the trial court upon motion of the Hubers. The trial court was directed to consider the Hubers' request that Palma Sola be required to amend its Declaration to include Sections 4 and 5. The court did not grant this relief, but declared instead that the eleventh unit constructed by the Hubers on Section 4 was not authorized by the condominium plat and had become a part of the common elements belonging to Palma Sola. The Hubers then appealed this order which, as noted, we have consolidated with the original appeals.

This order cannot stand because a trial court is divested of jurisdiction upon notice of an appeal except with regard to those matters which do not interfere with the power and authority of the appellate court or with the rights of a party to the appeal which are under consideration by the appellate court. *State v. Florida State Turnpike Authority*, 134 So.2d 12 (Fla. 1961); *Crichlow v. Equitable Life Assurance Society*, 113 Fla. 668, 152 So. 849 (1933). When this court relinquished jurisdiction, it was for the express purpose of permitting the trial court to determine if Palma Sola should be ordered to amend its Declaration to include units 142 through 151. The trial court's order on supplemental relief declaring that the eleventh unit, unit 152, was a part of the common elements did not address units 142 through 151.an

Florida Rule of Appellate Procedure 9.600(b) provides "[w]hen the jurisdiction of the lower tribunal has been divested by an appeal from a final order, the court by order may permit the lower tribunal to proceed with specifically stated matters during the pendency of the appeal." The trial court's order was beyond the scope of "specifically stated matters" this court authorized for consideration on its relinquishment of jurisdiction and consequently was invalid. This is true even though the trial court had reserved jurisdiction in its amended final judgment to determine the issue of damages with regard to unit 152.

Accordingly, we reverse the order declaring unit 152 to be a common element inasmuch as the court was without jurisdiction to make that determination. We remand appeal 79-300 and direct the trial court to determine damages to which Palma Sola is entitled for the encroachment of unit 152.

We reverse the trial court's determination in appeals 78-1403 and 78-1882 that units 142 through 151 did not encroach on common elements. We remand for a determination of whether the encroachment was material and, if so, for assessment of appropriate damages. Otherwise, the amended judgment is affirmed.

GRIMES, C.J., and BOARDMAN, J., concur.

[1] The Declaration provides that "[n]otwithstanding the survey location of the walls, ceilings and floors, each unit consists of the space bounded by the vertical projections of the unit boundary lines *as actually built* and between the horizontal planes at the unfinished floor and ceiling elevations *as actually built*. (Emphasis added.)

[2] For example, on relinquishment of jurisdiction, the trial court, even though acting outside the scope of this court's order, followed the general rule that buildings and other structures placed on or affixed to the soil without the landowner's consent become part of the land and belong to the landowner. See *Voss v. Forgue*, 84 So.2d 563 (Fla. 1956); *McCreary v. Lake Boulevard Sponge Exchange Co.*, 133 Fla. 740, 183 So. 7 (1938).

Dated at Bonita Springs, Florida this 22nd day of February, 2018.

-/S/- Scott Huminski

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Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF *PER SE* CRIMINAL CONTEMPT JUDGE ADAMS

NOW COMES, Scott Huminski ("Huminski"), and, notices that the below is a true and correct representation of the docket showing Judge Adams' criminal contempt of the appellate court and contempt or the rule of law in every jurisdiction in the United States (ie. that a notice of appeal divests jurisdiction from a trial court). Four days after the appellate court retained jurisdiction, Judge Adams entered into a scheme to engage in criminal contempt of the appellate court and rule of law. It is believed that Judge Adams is responsible for the forgery of a duplicate modified order of Judge Krier on 6/30/2018 and the back-dating of a bogus fake order of Judge Krier found/manufactured on 9/22/2017 and back-dated to 8/14/2017.

02/18/2018	Notice of Appeal Filed	2	
02/18/2018	Notice Filed	2	
02/18/2018	Notice of Appeal Filedduplicate Comments: duplicate	2	☐

02/18/2018	Notice Filedof indigency Comments: of indigency	3
02/19/2018	Notice of Appeal Filed	3
02/19/2018	Memorandum	8
02/19/2018	Motion Filed	2
02/19/2018	Motion Filed	57
02/20/2018	Motion Filed	2
02/20/2018	Affidavit Filed	55
02/21/2018	Motion Filed	2
02/21/2018	Notice Filed	3
02/21/2018	Other Document Filed	1
02/22/2018	Notice of Clerk's Review	1
02/22/2018	Notice of Clerk's Review	
02/22/2018	Order Denying Motion FiledSuccessive Motions to Appoint Counsel Comments: Successive Motions to Appoint Counsel	1
02/22/2018	Order Denying Motion FiledRegarding Circuit Court Case Comments: Regarding Circuit Court Case	1
02/22/2018	Order Denying Motion FiledRegarding Service And Filing Comments: Regarding Service And Filing	1
02/22/2018	Order Denying Motion Filedto Sanction Sheriff Scott Comments: to Sanction Sheriff Scott	1
02/22/2018	Order Denying Motion Filedto Strike Comments: to Strike	1

Dated at Bonita Springs, Florida this 23rd day of February, 2018.

-/S/- Scott Huminski

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Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
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SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF *PER SE* CRIMINAL CONTEMPT JUDGE ADAMS 2

NOW COMES, Scott Huminski ("Huminski"), and, notices that the below is a true and correct representation of the docket showing Judge Adams' intends to hold a hearing in March in spite of the lack of all jurisdiction and in criminal contempt of the appellate court. His judicial assistant refused to return 3 calls and messages I left concerning the illegal hearing from 2/20/2018 thru 2/23/2018.

Date	Hearing	Time
03/06/2018	Trial - Adams, James R	8:30 AM
02/13/2018	Trial - Adams, James R	1:00 PM
01/08/2018	Trial - Adams, James R	8:30 AM
12/21/2017	Docket Sounding - Adams, James R	8:30 AM
11/17/2017	Docket Sounding - Adams, James R	8:30 AM
11/13/2017	Motions - Adams, James R	2:00 PM

11/06/2017	CANCELED-Per Judge's Office Motions - Adams, James R	2:00 PM
10/27/2017	Docket Sounding - Adams, James R	8:30 AM
09/22/2017	Docket Sounding - Adams, James R	8:30 AM
09/18/2017	Motions - Adams, James R	2:00 PM
09/11/2017	CANCELED-Per Judge's Office Motions - Adams, James R	2:00 PM
09/01/2017	Docket Sounding - Adams, James R	8:30 AM
08/15/2017	Case Management Conference - Krier, Elizabeth V	1:00 PM

Dated at Bonita Springs, Florida this 23rd day of February, 2018.

-/S/- Scott Huminski

_____

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-/s/- Scott Huminski

_____

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKE,T NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF WAIVER OF CONFIDENTIALITY
CONCERNING THE RECORDS IN BOTH ABOVE DOCKETED CASES

NOW COMES, Scott Huminski ("Huminski"), and, notices as above. Huminski considers no materials filed in the two above captioned cases to be confidential to himself and waives all confidentiality concerns.

Dated at Bonita Springs, Florida this 22nd day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
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- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – NO JURISDICTION

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, because, the Court's statement that the case was transferred from Circuit to County Court by an "administrative transfer" is not legal under any Statute, Rule or other Florida authority. This Court has no jurisdiction.

Dated at Bonita Springs, Florida this 27th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

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AND FOR THOSE SIMILARLY SITUATED,	)	
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS CRIMINAL CONTEMPT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, because, The Florida Supreme Court has held that "where the act is necessarily innocent or justifiable, it would be preposterous to hold it a cause of imprisonment." Ex Parte Senior, 19 So. 652,653 (Fla. 1896). If an act is "only the assertion of the undoubted right of the party, it will not become a criminal contempt by being adjudged so." Id. See, also, Lindman v. Ellis, 658 So.2d 632(Fla. 2d DCA 1995)

All acts of Huminski related to this case were a response to the death threats sent to him and his family by Trevor Nelson of Glendale AZ and any alleged communictions were protected by Huminski's First Amendment rights.

Dated at Bonita Springs, Florida this 27th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – AT BEST THIS IS A CIVIL CONTEMPT CASE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, because, of the below definitions of the Florida Supreme Court between civil and criminal contempt.

347 So.2d 422 (1977)

Rocco PUGLIESE, Petitioner,
v.
Tina PUGLIESE, Respondent.

No. 49908.

Supreme Court of Florida.

June 9, 1977.

423*423 Steven L. Sommerfield, Venice, for petitioner.

Robert G. Jacobson, Farr, Farr, Haymans, Moseley & Odom, Punta Gorda, for respondent.

SUNDBERG, Justice.

This is a petition for writ of certiorari to review a decision of the District Court of Appeal, Second District, reported at 336 So.2d 614 (Fla.2d DCA 1976), which is alleged to be in conflict with *Demetree v. State*, 89 So.2d 498 (Fla. 1956), and its progeny with respect to the distinction between civil and criminal contempt, direct and indirect criminal contempt, and the procedural requirements for criminal contempt proceedings. Jurisdiction vests in this Court pursuant to Article V, Section 3(b)(3), Florida Constitution.

On November 4, 1975, the Circuit Court for Charlotte County, Florida, entered its final judgment dissolving the marriage of Rocco and Tina Pugliese. That judgment ordered Rocco, the petitioner, to vacate, by November 7, 1975, the portion of the marital duplex residence he had been occupying during the action. Rocco was then a 70-year-old immigrant from Italy not completely fluent in the English language. Subsequent to entry of the judgment, petitioner was advised by his counsel that motion for new trial, stay of execution, and notice of hearing thereon had been filed, and, consequently, the provisions of the final judgment requiring surrender of the premises were stayed pending final determination of those motions at the assigned hearing. Based on such advice, Rocco declined to evacuate. Tina Pugliese, respondent, filed a motion for contempt order and notice of hearing. The motion and notice of hearing were served upon counsel for petitioner and not petitioner himself.

On November 18, 1975, the contempt hearing was held before the circuit judge. As of that date, the trial court had entered no supersedeas so as to excuse petitioner from compliance with the terms of the final judgment of dissolution of marriage. At the hearing, petitioner was held in contempt of court for willfully refusing to vacate the premises as required by the final judgment and was sentenced to 13 days in the Charlotte County jail. The order did not provide a means by which petitioner could purge his contempt prior to the expiration of the 13-day jail sentence by complying with the acts required by the final judgment.

On appeal from the contempt order, the District Court of Appeal, Second District, 424*424 affirmed the trial court per curiam without opinion, citing *Branzburg v. Hayes*,408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972), and *Morgan v. State*, 325 So.2d 40 (Fla.2d DCA 1975).

To review properly the decision of the District Court of Appeal, we must determine the nature of the contempt for which petitioner was found guilty and the proceedings culminating in the entry of the order of contempt. Initially, we must ascertain whether the order is for civil or criminal contempt and, if for criminal contempt, whether it is direct or indirect.

If the purpose of the proceedings is to coerce action or non-action by a party, the order of contempt is characterized as civil. This type contempt proceeding is ordinarily instituted by one of the parties to the litigation who seeks to coerce another party to perform or cease performing an act. The order of contempt is entered by the court for the private benefit of the offended party. Such orders, although imposing a jail sentence, classically provide for termination of the contemnor's sentence upon purging himself of the contempt. The sentence is usually indefinite and not for a fixed term. Consequently, it is said that the contemnor "carries the key to his cell in his own pocket." See *Demetree v. State*,supra; *Faircloth v. Faircloth*, 321 So.2d 87 (Fla.1st DCA 1975); and *In re S.L.T.*,180 So.2d 374 (Fla.2d DCA 1965).

On the other hand, a criminal contempt proceeding is maintained solely and simply to vindicate the authority of the court or to punish otherwise for conduct offensive to the public in violation of an order of the court. *Ex Parte Earman*, 85 Fla. 297, 95 So. 755 (1923); *Demetree v. State*, supra. Accordingly, while the conduct in the case at bar could be the subject of civil contempt proceedings at the instance of the wife to coerce the petitioner to vacate the premises, it could also be the basis for criminal contempt proceedings in the event the trial court determined the conduct to be obstinate and sought simply to vindicate

the authority of the court by punishing the petitioner. It is apparent then that the nature of the conduct is not determinative of the character of the order. However, a determination of whether an order is civil or criminal must be made. If the purpose of the proceedings was the latter, greater procedural due process safeguards are involved. This principle is recognized in Fla.R.Crim.P. 3.830[1] and 3.840.[2] 425*425 The rule appropriate to the proceedings is determined by whether the contemptuous conduct is direct or indirect.

Where the act constituting the contempt is committed in the immediate presence of the court, this contempt is defined as direct. Where an act is committed out of the presence of the court, the proceeding to punish is for indirect (sometimes called constructive) contempt. A review of the Rules of Criminal Procedure set forth in footnotes 1 and 2, supra, reflects the greater procedural due process safeguards imposed when proceedings are for indirect criminal contempt.

With the foregoing principles in mind, we proceed to review the contempt order entered in the instant case and the proceedings which led to such order. The record of the hearing culminating in the order under review is ambivalent upon the issue of whether it was intended to be for civil or criminal contempt. After pronouncing the sentence he would impose, the trial judge made the following conflicting statements:

THE COURT: ... But this is directly in violation of the Court's order. And I want him moved off the premises and stay there.
It is a direct violation of the Court order and I think he should learn a little bit better than that.
* * * * * *
[COUNSEL FOR RESPONDENTTINA:] This order that the Court is entering is not that type of an order. This is an order of punishment for civil contempt on the part of this Respondent.
THE COURT: It is a clear violation of civil contempt if I ever seen one and that's true. And the order stands so you remain right here.

The former statement by the judge makes it appear that the sentence was intended to punish, not to coerce. The latter statement clearly characterizes the order as being for civil contempt.

Because the record yields no meaningful insight into the problem, we must look next to the face of the contempt order. After reciting the contemptuous conduct of petitioner, the order states simply:

ORDERED AND ADJUDGED that ROCCO PUGLIESE is in contempt of this Court; that he is hereby sentenced to serve thirteen (13) days in the Charlotte County Jail as punishment for contempt.

The absence of any provision allowing the petitioner to purge himself of the contempt and thereby terminate the sentence makes it appear that the order is for criminal contempt.

On the other hand, the manner in which the proceedings were initiated tends to belie the conclusion that the order sought to punish criminal contempt. Rather than having 426*426 been initiated by the judge "of his own motion or upon affidavit of any person having knowledge of the facts," the hearing and consequent order were provoked by a motion of the wife for contempt order. This is the classic method for gaining coercive relief by a private party to litigation.

Respondent maintains that the procedure here utilized is of no moment because counsel for the petitioner received the motion for contempt order, and petitioner appeared at the hearing with counsel at which time he admitted to violating the terms of the judgment earlier entered. She relies on a statement from *In re S.L.T.*, supra, to the effect that formal pleading may become unnecessary even in proceedings for indirect criminal contempt if the person charged is given notice of the charge and a hearing. This position is untenable for two reasons. First, *In re S.L.T.* predates Fla. R.Crim.P. 3.840 [see *Weech v. State*, 309 So.2d 246 (Fla.4th DCA 1975)]. Second, even though petitioner, through counsel, received notice of a hearing for contempt order, he had no reason to believe at the time of the hearing that it was for other than civil contempt. He was not appraised that he would be required to stand ready to answer a charge of criminal contempt. See *Aaron v. State*, 284 So.2d 673 (Fla. 1973). It is questionable that petitioner would have taken the stand and testified unabashedly to his violation of the terms of the final judgment had he known that criminal penalties were involved. Since the procedural requirements of Fla.R.Crim.P. 3.840 had not been observed, petitioner had no means of suspecting the consequences of the hearing.

Respondent further asserts that petitioner misapprehends the rule applicable to the case at bar. She suggests that the order was for punishment of direct criminal contempt and, therefore, the less stringent procedure of Fla.R.Crim.P. 3.830 is applicable. Respondent arrives at this conclusion upon the premise that since petitioner admitted in the presence of the court that he had defied the terms of the judgment, the judge "heard the conduct constituting the contempt committed in the actual presence of the court," and, therefore, the judge could punish him summarily. Were this contention accepted, the distinction between direct and indirect criminal contempt would be obliterated because the judge must always hear some testimony in his presence at a hearing on indirect contempt concerning conduct which took place outside his presence. We reject any such notion that would expunge the distinction between direct and indirect contempt.

In the final analysis, the order under review cannot stand whether it be characterized as criminal or civil contempt. As explained above, the conduct complained of did not take place in the presence of the court, so at most it constituted indirect contempt. This being so it would be error to enter an order of indirect criminal contempt without adhering to the requirements of Fla.R.Crim.P. 3.840 which admittedly were not complied with. Furthermore, the order may not be sustained as being for civil contempt because no opportunity to purge was afforded.

We emphasize that in any instance where the trial court can reasonably anticipate that conduct of such a nature is present as will invoke the criminal contempt powers of the court to punish the offender, procedural due process of law demands that the proceedings be conducted in conformity with Fla.R.Crim.P. 3.840. If the trial court is of a mind in cases such as here presented to punish rather than coerce, then counsel for an offended party should be so advised when he makes application for an order of contempt so that proper affidavit and order to show cause can be secured to comply with the requirements of the rule. It is possible to convert civil contempt proceedings to criminal contempt proceedings after a hearing is commenced. Such a conversion would mandate the continuation of the hearing to provide for issuance of an order to show cause that complies with the rule with fair opportunity to the respondent to prepare and be heard. However, such practice flirts with procedural due process flaws. Accordingly, better practice suggests that such situations

be 427*427 anticipated in advance wherever possible so that the full due process safeguards required by Fla.R.Crim.P. 3.840 will be afforded.

The petition for writ of certiorari is granted, the decision of the District Court of Appeal, Second District, is quashed, and this cause is remanded to the District Court with instructions to remand to the trial court for proceedings not inconsistent with the views expressed herein.

It is so ordered.

BOYD, ENGLAND and KARL, JJ., concur.

OVERTON, C.J., dissents.

[1] "RULE 3.830. *Direct Criminal Contempt*

"A criminal contempt may be punished summarily if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. The judgment of guilt of contempt shall include a recital of those facts upon which the adjudication of guilt is based. Prior to the adjudication of guilt the judge shall inform the defendant of the accusation against him and inquire as to whether he has any cause to show why he should not be adjudged guilty of contempt by the Court and sentenced therefor. The defendant shall be given the opportunity to present evidence of excusing or mitigating circumstances. The judgment shall be signed by the judge and entered of record. Sentence shall be pronounced in open court."

[2] "RULE 3.840. *Indirect Criminal Contempt*

"(a) Indirect (Constructive) Criminal Contempt. A criminal contempt except as provided in the preceding subsection concerning direct contempts, shall be prosecuted in the following manner:

"(1) *Order to Show Cause.* The judge, of his own motion or upon affidavit of any person having knowledge of the facts, may issue and sign an order directed to the defendant, stating the essential facts constituting the criminal contempt charged and requiring him to appear before the court to show cause why he should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for preparation of the defense after service of the order on the defendant.

"(2) *Motions; Answer.* The defendant, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars or answer such order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the judge. A defendant's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

"(3) *Order of Arrest; Bail.* The judge may issue an order of arrest of the defendant if the judge has reason to believe the defendant will not appear in response to the order to show cause. The defendant shall be admitted to bail in the manner provided by law in criminal cases.

"(4) *Arraignment; Hearing.* The defendant may be arraigned at the time of the hearing, or prior thereto upon his request. A hearing to determine the guilt or innocence of the defendant shall follow a plea of not guilty. The judge may conduct a hearing without assistance of counsel or may be assisted by the prosecuting attorney or by an attorney appointed for that purpose. The defendant is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and may testify in his own defense.

"All issues of law and fact shall be heard and determined by the judge.

"(5) *Disqualification of Judge.* If the contempt charged involves disrespect to or criticism of a judge he shall disqualify himself from presiding at the hearing. Another judge shall be designated by the chief justice of the Supreme Court.

"(6) *Verdict; Judgment.* At the conclusion of the hearing the judge shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the defendant has been found and adjudicated guilty.

"(7) *The Sentence; Indirect Contempt.* Prior to the pronouncement of sentence, the judge shall inform the defendant of the accusation and judgment against him and inquire as to whether he has any cause to show why sentence should not be pronounced. The defendant shall be afforded the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the defendant."

Dated at Bonita Springs, Florida this 27th day of February, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
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SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – DENIAL OF COMPULSORY PROCESS 6TH Amendment and BILL OF PARTICULARS

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, because, the Court has refused to issued orders affording Huminski compulsory process. Complusory process, at the cost of the State, is handled by the Public Defender and Conflict Counsel's office. That is the current procedure for compulsory process in Florida. The Court has stated that Huminski has failed to follow procedures regarding compulsory process, there exists no procedure for indigent pro se parties to achieve compulsory process at the cost of the State. Denial of Huminski's request for a Bill or Particulars also demands dismissal, see below opinion. The denial of a Bill of Particulars is fatal to this prosecution as is the refusal to issue court orders allowing Huminski compulsory process.

284 So.2d 673 (1973)

Fred AARON, Petitioner,
v.
STATE of Florida, Respondent.

No. 42439.

Supreme Court of Florida.

July 11, 1973.
Rehearing Denied November 30, 1973.

674*674 Henry R. Barksdale of Barksdale, Mayo & Murphy, Pensacola, for petitioner.

Robert L. Shevin, Atty. Gen., and Richard W. Prospect, Asst. Atty. Gen., for respondent.

BOYD, Justice.

This cause is before us on petition for writ of certiorari to review the decision of the District Court of Appeal, First District, reported at 261 So.2d 515, which affirmed the judgment of the Circuit Court of the First Judicial Circuit in and for Escambia County. Our jurisdiction is based on conflict between the decision sought to be reviewed and State ex rel. Brocato v. Purdy.[1]

The following are the facts in this case:

On August 13, 1970, the Escambia County Grand Jury issued a presentment charging that petitioner had attempted to influence the action of a Grand Juror, Mrs. Jennie F. Rosenbaum. On August 17, 1970, the Circuit Court issued an order for petitioner to appear before said Court on August 20, 1970, and to show cause why he should not be held in contempt, said order being served on Aaron on August 18, 1970. Petitioner filed a motion for a continuance on August 19, 1970, and a continuance to August 26, 1970, was granted. A demand for trial by jury was filed on behalf of petitioner on August 21, 1970, and said motion was denied that same day. On August 24, 1970, motions were filed in behalf of petitioner seeking an order to take the deposition of Mrs. Jennie F. Rosenbaum, for a continuance of the cause, and for a bill of particulars. Each of these motions was denied without hearing on August 25, 1970. On August 26, 1970, a letter requesting the voluntary statement of Mrs. Jennie F. Rosenbaum was filed and on the same day a statement of Mrs. Rosenbaum's refusal to give the voluntary statement to petitioner's attorney was also filed in the Circuit Court for Escambia County, Florida.

On August 26, 1970, petitioner entered a plea of not guilty and was that day tried, convicted and sentenced to four months in the County Jail and fined $250.00 for contempt, said trial conducted before the Judge as the trier of the facts and law, without benefit of jury.

On the foregoing facts, the District Court of Appeal, First District, was presented with the following points of law:

(a) Whether or not the refusal of the trial court to grant defendant's motion for a trial by a jury resulted in the denial of due process of law guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 22 and Article 1, Section 9 of the Florida Constitution.

On this point of law the Court affirmed the judgment of the trial court holding that under the applicable law one must look in retrospect to the actual sentence imposed and by doing so in the present case the offense for which petitioner was found guilty was a "petty" offense as distinguished from a "serious" offense as he was sentenced to less than six months in the County Jail and therefore was not entitled to the benefit of a trial by jury as demanded.

(b) Whether or not the trial court erred in refusing to grant a motion for continuance 675*675 and thereby greatly prejudiced the defendant by failing to provide sufficient time for the presentation of an adequate defense.

On this point of law the Court affirmed the judgment of the trial court holding that this ground was "without substantial merit."

(c) Whether or not the trial court erred in failing to grant the motion for a bill of particulars filed in behalf of the defendant and thereby greatly prejudiced the preparation of the case for the defense.

On this point of law the Court affirmed the judgment of the trial court holding that said point was "without substantial merit."

(d) Whether or not the trial court erred in refusing to enter an order to allow defendant to take the deposition of Mrs. Jennie Rosenbaum, witness for the state.

On this point of law the Court affirmed the judgment of the trial court holding that said point was "without substantial merit."

Upon careful examination of the record and argument of counsel we are compelled to reverse the decision of the District Court of Appeal for the following reasons.

Historically, criminal contempt, both direct and indirect, has been punishable by fines and imprisonment. Although the trials have been, and still are, handled in a summary fashion, to assure speedy judicial progress without interruption, these proceedings are effectively criminal in nature and persons accused of contempt are as much entitled to the basic constitutional rights as are those accused of violating criminal statutes.[2]

In Bloom v. Illinois,[3] the Supreme Court of the United States held that prosecutions for serious criminal contempts are subject to the jury trial provisions of Article III, § 2, of the Federal Constitution, and of the Sixth Amendment, which is made binding upon the states by virtue of the due process clause of the Fourteenth Amendment.

Duncan v. Louisiana[4] distinguished between serious and petty crimes, in relation to the necessity for trial by jury, and the Supreme Court of the United States specifically held that a crime punishable by two years in prison is a serious crime, thus invoking the right to jury trial. The distinctions between serious and petty crimes were further amplified in Baldwin v. New York,[5] where the Court stated:

"The question in this case is whether the *possibility* of a one-year sentence is enough *in itself* to require the opportunity for a jury trial. We hold that it is."[6]

The Court further held that:

"We cannot ... conclude that ... administrative conveniences ... justify denying an accused the important right to trial by jury where the *possible* penalty exceeds six months' imprisonment."[7]

The Court has, in the past, required a jury trial for contempt, Dade County Classroom Teachers Association, Inc. v. Rubin.[8] However, at the time of that decision, the applicable Florida Rule of Criminal Procedure, 33 F.S.A., in effect also 676*676 stated such a requirement.[9] Since that decision, the Rule has been amended to permit the judge to hear and determine both the law and the facts.[10]The question before this Court then, is whether the present rule, F.R.C.P. 3.840(a)(4), does, in light of the foregoing federal decisions, pass constitutional muster. We hold that it does not — to the extent that it authorizes a judge to impose a sentence of six months' imprisonment, or greater, without empanelling a jury to try the facts.

The District Court of Appeal, in affirming the conviction, relied upon *Bloom* and Cheff v. Schnackenberg,[11] for the proposition that, in contempt trials, the result would be viewed retroactively to determine if the right to a jury trial existed at the time of trial. That is, if the defendant was, as in the instant case, the recipient of a sentence of less than six months, he was not entitled to a jury of his peers at the inception of trial. The District Court of Appeal apparently bases its decision on the following language found in *Bloom*:

"[C]riminal contempt is not a crime of the sort that requires the right to jury trial regardless of the penalty involved... . [W]hen the legislature has not expressed a judgment as to the seriousness of an offense by fixing a maximum penalty which may be imposed, we are to look to the penalty actually imposed as the best evidence of the seriousness of the offense."[12]

We believe, however, that the District Court of Appeal erred in assuming that such a situation exists in this State, as an examination of the following statutes will show.

Section 38.22 of the Florida Statutes, F.S.A., authorizes courts to impose imprisonment and fines for contempt, but states no maximum time for such imprisonment.[13] Section 775.01 of the Florida Statutes, F.S.A., provides that the common law crimes of England are crimes in Florida.[14] Section 775.02 of the Florida Statutes, F.S.A., provides that when no maximum punishment is prescribed for criminal contempt, the maximum shall not exceed one year imprisonment and a fine of $500.00.[15]

Therefore, we must conclude that criminal contempt is a crime under Florida law, with the possible maximum punishment exceeding six months' imprisonment. In light of this conclusion, we hold that F.R.C.P. 3.840(a) (4), authorizing the judge to be the trier of both the law and the facts, is limited in its application to situations in which the judge contemplates, if a finding of guilt be made, the imposition of a sentence of less than six months' imprisonment. A judge's denial of a pre-trial motion for trial by jury will mean that he cannot impose a sentence of six months' 677*677 imprisonment, or greater, should there be a finding of guilt. If the judge contemplates the imposition of a sentence of six months' imprisonment, or greater, he must empanel a jury to try the facts, unless the defendant has made a waiver thereof. Had a sentence of six months' imprisonment, or greater, been imposed upon the petitioner, the invalidity of the rule beyond the six-month limit would require reversal. However, petitioner's sentence of four months' imprisonment was properly imposed by the judge, as trier of both law and fact, in that the sentence falls within the constitutional limitations upon the operation of the rule we announce today.[16]

In the case before us, petitioner was denied the right to take the deposition of the primary State's witness against him — the woman whom he was charged with attempting to influence as a member of the Grand Jury. Additionally, the Judge denied petitioner's motion

for a bill of particulars. The right of persons accused of serious offenses to know, before trial, the specific nature and detail of crimes they are charged with committing is a basic right guaranteed by our Federal and State Constitutions. The foregoing federal cases lead us to conclude that this right is extended to those persons charged with criminal contempt. We, therefore, hold that the trial court's denial of petitioner's motions to take Mrs. Rosenbaum's deposition and for a bill of particulars was error[17] — error which deprived petitioner of his rights to due process and a fair trial.[18]

In this opinion we deal only with indirect criminal contempt. Although persons so charged are entitled to the foregoing constitutional protections, we recognize that the orderly administration of justice requires such proceedings be handled as expeditiously as the circumstances and law may permit.

For the foregoing reasons, the decision of the District Court of Appeal, First District, is quashed and this cause is remanded for further action in the trial court in conformance with this opinion.

It is so ordered.

CARLTON, C.J., and ERVIN and McCAIN, JJ., concur.

ADKINS, J., dissents with opinion.

ROBERTS and DEKLE, JJ., dissent and concur with ADKINS, J.

[1] 251 So.2d 309 (Fla.App. 3rd 1971), wherein the Court stated at footnote 1: "The requirement for a hearing and an opportunity to resist the charge [indirect criminal contempt] includes the right to reasonable notice and a reasonable opportunity to present a defense."

[2] Cf. State ex rel. Argersinger v. Hamlin, 236 So.2d 442, 445 (Fla. 1970), rev'd 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972): "From the inside all jails look alike." (Boyd, J., dissenting).

[3] 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968).

[4] 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

[5] 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970).

[6] Id. at 69, 90 S.Ct. at 1888 (Emphasis supplied.)

[7] Id. at 73-74, 90 S.Ct. at 1890-1891. (Emphasis supplied.)

[8] 217 So.2d 293 (Fla. 1968).

[9] F.R.C.P. 1.840(a) (4) provided at that time: "All issues of law shall be heard and determined by the judge; all issues of fact shall be heard and determined by a jury of six persons selected as in criminal cases... ."

[10] F.R.C.P. 3.840(a) (4) provides: "All issues of law and fact shall be heard and determined by the judge."

[11] 384 U.S. 373, 86 S.Ct. 1523, 16 L.Ed.2d 629 (1966).

[12] 391 U.S. at 211, 88 S.Ct. at 1487.

[13] "Every court may punish contempts against it whether such contempts be direct, indirect, or constructive... ." The statute further empowers the judge to hear and determine all questions of law and fact. It would appear that the same constitutional infirmities that are present within F.R.C.P. 3.840(a) (4) also infect this portion of the statute.

[14] "The common law of England in relation to crimes, except so far as the same relates to the modes and degrees of punishment, shall be of full force in this state where there is no existing provision by statute on the subject."

[15] "When there exists no such provision by statute, the court shall proceed to punish such offense by fine or imprisonment but the fine shall not exceed five hundred dollars, nor the imprisonment twelve months."

[16] In so holding, we deal only with the provisions of F.R.C.P. 3.840(a) (4), provisions which concern indirect criminal contempt. Under the facts of this case we have no occasion to consider the Rule concerning direct criminal contempt, F.R.C.P. 3.830.

[17] See State v. Gillespie, 227 So.2d 550 (Fla.App.2d 1969). See also F.R.C.P. 3.140(n); F.R.C.P. 3.220(f); F.R.C.P. 3.840(a) (2).

[18] "The adversary system is still the core of our Anglo-American concept of the truth-finding process; and constitutional concern demands ... that such process be fair... . [T]he underlying principle supporting the whole idea of criminal pre-trial discovery ... is fairness." Id. at 553.

92 So.2d 811 (1957)

Santo TRAFFICANTE, Jr., and Henry Trafficante, Appellants,
v.
STATE of Florida, Appellee.

Supreme Court of Florida, en Banc.

January 23, 1957.
Rehearing Denied March 13, 1957.

812*812 Whitaker Brothers, Mark R. Hawes and John R. Parkhill, Tampa, for appellants.

Richard W. Ervin, Atty. Gen., and Jos. P. Manners, Asst. Atty. Gen., for appellee.

PER CURIAM.

Appellants here seek review of their conviction of violating the bribery laws of the State of Florida.

They first contend that the trial court erred in permitting the State Attorney directly or indirectly to comment upon the fact that appellants failed to take the witness stand and testify in their own behalf. The basis for this contention is found in certain remarks made by the State Attorney in his final argument to the jury, which remarks were in part as follows:

"* * * All right. The testimony here is uncontradicted, uncontradicted, by these two Trafficantes, this was said in the car. They were both there, is there anyone, is there any statement here in evidence that either one of them contradicted, regardless of who said it? They have their right * * *."

It is urged by appellants that these remarks were in violation of F.S. § 918.09, F.S.A., which provides in part as follows:

"* * * nor shall any prosecuting attorney be permitted before the jury or court to comment on the failure of the accused to testify in his own behalf * * *."

This statute has been on the books for many years, and this court is firmly committed 813*813 to the rule that a violation of it cannot be cured by our harmless error statute. In Way v. State, Fla., 67 So.2d 321, 323, we stated in part:

"When it appears that there has been a violation of Section 918.09, supra, our harmless error statute does not come into play because Section 918.09, supra, was designed to protect the defendant in a criminal case from having the jury consider his failure to take the witness stand in his own behalf as even the slightest suggestion of guilt. When such impression has been made on the minds of the jurors it cannot by this Court be said `that the error complained of has [not] resulted in a miscarriage of justice.'"

See also Simmons v. State, 139 Fla. 645, 190 So. 756.

The State urges that the remarks objected to in the instant case should not be construed as a comment upon the failure of the appellants to take the witness stand, since they might have been construed as referring to a conversation which took place between appellants and a State witness before the trial. Upon the whole record, however, we believe that the average juror would have considered the prosecutor's remarks at least as an indirect reference to the fact that appellants did not take the witness stand in their defense. Before making the statement we have quoted, the prosecutor had reviewed the evidence, and the most obvious construction of the quoted remarks would be that appellants had contradicted none of this evidence, although, by testifying, they would have had a right to do so. It is significant that the construction urged by the State is presented here for the first time, and the record is innocent of any similar explanation by the State Attorney in answer to appellants' objections and motions for a mistrial. We conclude that the jury would have adopted the construction contended for by appellants.

As for the guarded nature of the remarks, we have hitherto held that a similarly indirect statement by the prosecutor constituted a violation of the statute. In Rowe v. State, 87 Fla. 17, 98 So. 613, 617, we said:

"This statement by the state attorney, to the effect that there were `five eyewitnesses to the homicide; two were dead; two were the defendants; and the fifth, Leonard Wingate, had testified in this trial,' called to the attention of the jury that the two defendants had not testified.
"In this instance the court took no action but merely said he would `instruct the jury at the proper time as to the law of the case.' Even if the trial judge had stopped the state attorney and told the jury not to consider the failure of the defendants to testify, it would not have cured the error."

See also Way v. State, supra, 67 So.2d 321. The law of other states is similar. In the Alabama case of Broadway v. State, 257 Ala. 414, 60 So.2d 701, 703, the court stated:

"It is our opinion that such statements not having direct reference to the failure of the defendant to testify should be interpreted in the light of what has transpired in the case, the nature of the evidence against the defendant, the burden of proof fixed by law, and any other circumstances which may have occurred during the trial having a tendency to show that the solicitor was directing his remarks to the failure of the defendant to testify rather than to a failure to submit the testimony of other witnesses, which may have been peculiarly subject to his call and known to defendant to be available to him."

814*814 See also Smith v. State, 87 Miss. 627, 40 So. 229, wherein the same reasoning was applied by the Supreme Court of Mississippi, and 53 Am.Jur., Trial, Section 471, pp.

376-377. In the instant case the witness Dietrich was relating a conversation which took place between him and the two appellants. No one else was present "in the car" during said conversation. Consequently the remarks of the State Attorney could not have been directed "to a failure to submit the testimony of other witnesses."

In summary, our law prohibits any comment to be made, directly or indirectly, upon the failure of the defendant to testify. This is true without regard to the character of the comment, or the motive or intent with which it is made, if such comment is subject to an interpretation which would bring it within the statutory prohibition and regardless of its susceptibility to a different construction. The comment of the State Attorney herein might merely have been lapsus linguae in the heat of argument, but it constituted a violation of F.S. § 918.09, F.S.A., supra.

Next, it appears from the record that the State witness Dietrich had testified before the grand jury of Pinellas County prior to the trial of this case. The appellants made two efforts to secure a transcript of Dietrich's grand jury testimony. Prior to the trial, appellants made a motion in accordance with F.S. § 905.27, F.S.A., for production of the transcript. F.S. § 905.27, F.S.A. prohibits disclosure by certain persons of testimony given before a grand jury "except when required by a court to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that of the witness given before the court * * *." F.S. § 905.17, F.S.A. provides in part that transcriptions of testimony before a grand jury "shall be opened and released by the clerk upon the order of the trial judge for use pursuant to the provisions of § 905.27, [Florida Statutes] * * *."

Later, at the trial, when the witness Dietrich was tendered to defense counsel for cross-examination, appellants presented to the court a sworn application for subpoena duces tecum to be directed to the official court reporter. This application set out that the official reporter had reported and transcribed the witness Dietrich's testimony before the grand jury, and that said testimony was material and relevant to, and in conflict with, the testimony of this witness given on direct examination at the trial. Appellants offered to prove these facts. The application and offer of proof were denied by the trial court.

Appellants contend that they had a right to the issuance of the subpoena duces tecum to compel the court reporter to appear as a defense witness and to bring with her the transcript of the witness Dietrich's testimony as given before the grand jury, making same available to defense counsel in order that it might be utilized in cross-examination of the witness Dietrich. In support of their contention, appellants rely upon our opinions in Vann v. State, Fla., 85 So.2d 133, and State ex rel. Brown v. Dewell, 123 Fla. 785, 167 So. 687, as well as the case of United States v. Aaron Burr, Fed.Cas.No. 14,692d. They also contend that they were denied their rights under the 14th Amendment to the Federal Constitution and Section 11 of the Declaration of Rights of the Florida Constitution, F.S.A., the latter of which provides that in all criminal prosecutions the accused "shall * * * have compulsory process for the attendance of witnesses in his favor." The State contends, however, that these authorities do not compel the result sought by appellants because, in the State's view, the witness Dietrich's testimony before the grand jury was not material to the issues in this case, and the grand jury 815*815 presentment or findings had not been made public at the time of trial.

We cannot accept the contention of the State herein. Appellants' sworn application for the subpoena, as we have stated, sets up the materiality of the evidence sought to be reached

by the subpoena and must be taken for the purpose of this appeal as proving materiality to the extent necessary to warrant examination of the transcript by the court with a view to making final determination of its materiality. See Vann v. State, supra, 85 So.2d 133, and Coco v. State, Fla., 62 So.2d 892. Moreover, the record abounds with evidence that the grand jury had returned its presentment and made its findings public prior to the trial of this cause.

The right of an accused in a criminal case to compulsory process for attendance of witnesses on his behalf, as we have seen, stems from the express terms of our constitution. This provision was inserted because of the fundamental unfairness which results from placing a man on trial on a criminal charge and denying him the means to compel the attendance of witnesses, within the jurisdiction of the court, who are in possession of material facts which show or tend to show his innocence of the charge.

In State ex rel. Brown v. Dewell, supra, 167 So. 687, we held that an accused on trial is entitled to the issuance of a subpoena duces tecum to reach the testimony of a State's witness given before a grand jury when it is shown that such testimony is or may be material to the issues in the trial. In that case, in seeking to be informed as to the application of the rule, we reached back to the celebrated Aaron Burr case wherein Chief Justice Marshall stated in part:

"It is believed that such a subpoena, as is asked, ought to issue, if there exists any reason for supposing that the testimony may be material, and ought to be admitted." 25 Fed.Cas. p. 38, No. 14,692d.

Very recently, in Vann v. State, supra, 85 So.2d 133, we had occasion to consider a related problem, and we held that it is the duty of the trial judge, on proper application, to examine documents sought to be subpoenaed, and to apply tests of relevancy or privilege which we there stated, in order that an enlightened ruling might be made upon the application. Such procedure was not followed in the instant case.

Other points are raised, but since the contentions which we have discussed above require a reversal in any event, we shall not consider them. The judgment appealed from must be, and it is hereby, reversed and the cause remanded for a new trial.

TERRELL, C.J., and THOMAS, HOBSON, and DREW, JJ., concur.

THORNAL, and O'CONNELL, JJ., concur specially.

ANDERSON, Associate Justice, dissents.

THORNAL, Justice (concurring specially).

I concur in the judgment of reversal on the basis of the first point covered by the main opinion. A cautious examination of the record leads to the inescapable conclusion that the remarks of the State Attorney were condemned by F.S. § 918.09, F.S.A. and our decisions Way v. State, 67 So.2d 321 and Rowe v. State, 87 Fla. 17, 98 So. 613. The Legislature had made this a rule of law by statute. We are not permitted to change it by judicial decree.

I do not agree that denial of access to the grand jury records was reversible error in the situation presented by this record.

For the reason above stated I concur only in the judgment of reversal.

816*816 O'CONNELL, J., concurs.

ANDERSON, Associate Justice (dissenting).

I dissent. To my mind there is no more damning evidence of guilt than the failure of a defendant, in a criminal case, to take the stand, face his accusers, the judge, the jury, and the prosecuting attorney and say, "I am not guilty." I am thoroughly mindful of the fact that the Constitution gives him that right and that the statute protects him against the prosecuting attorney commenting on his failure to testify in his own behalf. I do not approve judicial legislation. Neither do I approve carrying a privilege of this kind any further than the plain language of the statute. The state attorney did not *directly* comment on the failure of the accused to testify. And the statute does not denounce *indirect* reference to such failure to testify. The harm, if any, thereby done could be cured by appropriate instructions. The remarks of the state attorney in this case were certainly susceptible of the construction that the statement made in the automobile had not been denied — that is to say, that no person who was in the automobile was asked if Trafficante, or someone else, had denied the statement that is alleged to have been made. Now, it may be that the state attorney was *going* to comment on the defendant's failure to testify. But counsel "jumped the gun," objected to what the state attorney had said, and moved for a mistrial. We do not give juries credit for enough enlightenment. It was obvious that appellants had not testified. Surely someone on the jury noted that fact. And surely attention was called to it in the jury's deliberations and would have been called to it if the state attorney had never made the statement objected to. To hold otherwise is to ignore the plain facts of life. As I said above, it is just damning evidence of guilt.

Without intending any play on words, the Court went a long way in the Way case. Way v. State, 67 So.2d 321. Now it goes a step farther. What the future holds out I hesitate to forecast.

When I consider the overwhelming proof of the appellants' guilt together with the fact that the sufficiency of the evidence to sustain the conviction has not been challenged, I find myself unable to agree to reversal.

Dated at Bonita Springs, Florida this 27th day of February, 2018.

-/S/- Scott Huminski

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Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 27th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MEMORANDUM CONCERNING VIOLATION OF HUMINSKI'S SIXTH AMENDMENT RIGHTS

NOW COMES, Scott Huminski ("Huminski"), and, notes that Huminski's counsel lied to him about deposition of witnesses in contempt proceedings (see formerly filed case law) and his counsel did not even know the facts of the case well enough to know there was an arraignment and his counsel subsequently filed 3 waivers of arraignment after the arraignment revealing a complete lack of knowledge by counsel of the criminal proceedings (or reveals a mechanized robotic practice of law)and sets forth as follows:

Confrontation of Adverse Witnesses

The Sixth Amendment guarantees defendants the right to be confronted by witnesses who offer testimony or evidence against them. The Confrontation Clause has two prongs. The first prong assures defendants the right to be present during all critical stages of trial, allowing them to hear the evidence offered by the prosecution, to consult with their attorneys, and otherwise to participate in their

defense. However, the Sixth Amendment permits courts to remove defendants who are disorderly, disrespectful, and abusive (Illinois v. Allen, 397 U.S. 337, 90 S. Ct. 1057, 25 L. Ed. 2d 353 [1970]). If an unruly defendant insists on remaining in the courtroom, the Sixth Amendment authorizes courts to take appropriate measures to restrain him. In some instances, courts have shackled and gagged recalcitrant defendants in the presence of the jury (Stewart v. Corbin, 850 F.2d 492 [9th Cir. 1988]). In other instances, defiant defendants have been removed from court and forced to watch the remainder of trial from a prison cell, through closed-circuit television.

The second prong of the Confrontation Clause guarantees defendants the right to face adverse witnesses in person and to subject them to cross-examination. Through cross-examination, defendants may test the credibility and reliability of witnesses by probing their recollection and exposing any underlying prejudices, biases, or motives to distort the truth or lie. Confrontation and cross-examination are vital components of the U.S. adversarial system.

Although defendants are usually given wide latitude in exercising their rights under the Confrontation Clause, courts retain broad discretion to impose reasonable restrictions on particular avenues of cross-examination. Defendants may be forbidden from delving into areas that are irrelevant, collateral, confusing, repetitive, or prejudicial. Similarly, defendants may not pursue a line of questioning

solely for the purpose of harassment. For example, courts have prohibited defendants from cross-examining alleged rape victims about their sexual histories because such questioning is frequently demeaning and is unlikely to elicit answers that bear more than a remote relationship to the issue of consent (Bell v. Harrison, 670 F.2d 656 [6th Cir. 1982]).

In exceptional circumstances, defendants may be prevented from confronting their accusers face-to-face. If a judge determines that a fragile child would be traumatized by testifying in front of a defendant, the Sixth Amendment authorizes the court to videotape the child's testimony outside the presence of the defendant and later replay the tape during trial (Spigarolo v. Meachum, 934 F.2d 19 [2d Cir. 1991]). However, counsel for both the prosecution and defense must be present during the videotaped testimony. If neither the defendant nor her attorney are permitted the opportunity to confront a witness, even if the witness is a small child whose welfare might be harmed by rigorous cross-examination, the Sixth Amendment has been violated (Tennessee v. Deuter, 839 S.W.2d 391 [Tenn. 1992]).

Compulsory Process for Favorable Witnesses

As a corollary to the right of confrontation, the Sixth Amendment guarantees defendants the right to use the compulsory process of the judiciary to subpoena witnesses who could provide exculpatory testimony or who have other information that is favorable to the defense. The Sixth Amendment guarantees this right even if

an indigent defendant cannot afford to pay the expenses that accompany the use of judicial resources to subpoena a witness (United States v. Webster, 750 F.2d 307 [5th Cir. 1984]). Courts may not take actions to undermine the testimony of a witness who has been subpoenaed by the defense. For example, a trial judge who discourages a witness from testifying by issuing unnecessarily stern warnings against perjury has violated the precepts of the Sixth Amendment (Webb v. Texas, 409 U.S. 95, 93 S. Ct. 351, 34 L. Ed. 2d 330 [1972]).

A statute that makes particular persons incompetent to testify on behalf of a defendant is similarly unconstitutional. At issue in Washington v. Texas, 388 U.S. 14, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967), was a state statute prohibiting accomplices from testifying for one another. Overturning the statute as a violation of the Sixth Amendment Compulsory Process Clause, the U.S. Supreme Court wrote that the defendant was denied the right to subpoena favorable witnesses "because the state arbitrarily denied him the right to put on the stand a witness who was physically present and mentally capable of testifying to events that he had personally observed and whose testimony was relevant and material to the defense."

Under certain circumstances, the prosecution may be required to assist the defendant in locating potential witnesses. In Roviaro v. United States, 353 U.S. 53, 77 S. Ct. 623, 1 L. Ed. 2d 639 (1957), the defendant was charged with the illegal

sale of heroin to "John Doe." When the prosecution refused to disclose the identity of John Doe, the U.S. Supreme Court concluded that the Sixth Amendment had been abridged because the disclosure of Doe's identity may have produced "testimony that was highly relevant and ... helpful to the defense."

Defendants also have a Sixth Amendment right to testify on their own behalf. Before the American Revolution, defendants were not permitted to take the witness stand in Great Britain and in many of the colonies. The common law presumed all defendants to be incompetent to give reliable or credible testimony on their own behalf because of their vested interest in the outcome of the trial. Each defendant, regardless of his innocence or guilt, was declared incapable of offering truthful testimony when his life, liberty, or property was at stake. The Sixth Amendment laid this common law rule to rest in the United States. The amendment permits, but does not require, a defendant to testify on his own behalf.

Right to Counsel

Because of the law's complexity and the often substantial deprivations that a criminal conviction can produce, the Sixth Amendment provides criminal defendants with a Right to Counsel. A defendant's Sixth Amendment right to counsel attaches when the government initiates adversarial criminal proceedings, whether by way of formal charge, Preliminary Hearing, indictment, information, or Arraignment (United States v. Larkin, 978 F.2d 964 [7th Cir. 1992]). Unlike the

right to a speedy trial, this Sixth Amendment right does not arise at the moment of arrest unless the government has already filed formal charges (Kirby v. Illinois, 406 U.S. 682, 92 S. Ct. 1877, 32 L. Ed. 2d 411 [1972]). However, defendants may assert a Fifth Amendment right to consult with an attorney during Custodial Interrogation by the police, even though no formal charges have been brought and no arrest has been made (miranda v. arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 [1966]).

The U.S. Supreme Court has ruled that the denial of counsel during a critical stage amounts to an unconstitutional deprivation of a fair trial, warranting the reversal of conviction (United States v. Cronic, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 [1984]).

Courts also generally agree on a number of instances that do not constitute critical stages. For example, pretrial scientific analysis of fingerprints, blood samples, clothing, hair, handwriting, and voice samples have all been ruled to be noncritical stages (United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 [1967]). Nor is a Probable Cause hearing sufficiently critical to trigger the right to counsel (Gerstein v. Pugh, 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54 [1975]). Each of these noncritical stages has been described as a preliminary facet of criminal prosecution that is largely unassociated with the more adversarial phases invoking the right to counsel.

If a defendant cannot afford to hire an attorney, the Sixth Amendment requires that the trial judge appoint one on her behalf (gideon v. wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 [1963]). In instances where an indigent defendant has some financial resources, she may be required to reimburse the government for a portion of the fees paid to the court-appointed lawyer. The Sixth Amendment right of indigent criminal defendants to receive a court-appointed lawyer applies to every case involving a felony offense and to all other cases in which the defendant is actually incarcerated for any length of time, regardless of whether the crime is categorized as a misdemeanor or petty offense (Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 [1972]).

Dated at Bonita Springs, Florida this 27th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.comnelson

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 27th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STAY PENDING DISPOSITION IN RUSSELL V. WATERMAN BROADCASTING

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, because, the Circuit Court case presided over by the chief judge of the 12th Circuit is determining whether the protective orders in this case are void ab initio. A finding of void ab initio would per se invalidate the criminal contempt case. This Court is a Court of inferior and limited jurisdiction whereas the Circuit Court is a court of superior and general jurisdiction. The Circuit Court should be allowed to opine on issues central to this case. See attached motion filed in the circuit court sans exhibits.

to the extent that funds are specifically appropriated by law for such purposes.

Dated at Bonita Springs, Florida this 27th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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(239) 300-6656
S_huminski@live.comnelson

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-/s/- Scott Huminski

Scott Huminski

<ATTACHMENT>

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil Division -

STEPHEN RUSSELL,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-CA-943
WATERMAN BROADCASTING CORP., ET AL.	)	
DEFENDANTS.	)	

MOTION TO VACATE COURTHOUSE BANISHMENT as VOID AB INITIO

NOW COMES, Scott Huminski ("Huminski"), intervenor, and moves to vacate the protective order of Sheriff Mike Scott as *void ab initio* because it banishes Huminski from the Lee court complex, it forbids all contact and communication with the Sheriff or his staff who act as security screeners and bailiffs at the Lee court complex effectively banishing Huminski in violation of Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005) and his Due Process rights in this proceeding.

The Judge issuing the banishment order recused off the case because improper ex parte contacts resulting in an improper judicial bias and animus in violation of judicial cannons. The order is attached hereto as Exhibit "A"

Dated at Bonita Springs, Florida this 26th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
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(239) 300-6656
S_huminski@live.comnelson

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

Attachment(s)

EXHIBIT “A”

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR STATE'S DISCLOUSURE OF MEDICAL WITNESSES CONCENING HUMINSKI'S COMPETENCE TO ACT AS HIS OWN ATTORNEY WITH HIS DISABILITIES

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, because, the State has failed to proffer any evidence or a medical professional to refute that Huminski is incompetent to act as his own attorney, although, he is competent to stand trial with effective assistance of ounsel.

Dated at Bonita Springs, Florida this 27th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MEMORANDUM SUPPORTING STAY WHILE INTERLOCUTORY APPEALS ARE PENDING IN THE CIRCUIT COURT AND THE DCA and MOTION TO DISMISS

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because Florida Rule of Appellate Procedure 9.130(f) prohibits a lower tribunal from entering an order disposing of a case during the pendency of an interlocutory appeal. Final judgments and subsequent orders entered during the pendency of an interlocutory appeal are entered without jurisdiction and are "a nullity." Connor Realty, Inc. v. Ocean Terrace N. Condo. Ass'n, 572 So. 2d 4, 4 (Fla. 4th DCA 1990); see also McKenna v. Camino Real Vill. Ass'n, 8 So. 3d 1172, 1175 (Fla. 4th DCA 2009).

Pursuit of this case risks the possibility of burdening the parties and the courts with potentially moot proceedings and is prejudicial to the administration of justice. The Circuit Court was never divested of jurisdiction related to the criminal contempt charges and the County Court's description of an "administrative

transfer" from Circuit to County courts is illegal and not supported by Rule, Statute or Florida authority. The County Court never had jurisdiction. If the State dismissed the Circuit Court criminal matter and filed a proper charging information in the County Court, these proceedings may have been valid or if the Chief Circuit judge referred the matter to the Florida Supreme Court for temporary assignment, a County judge could have temporarily presided, see,

F.S. 26.57 Temporary designation of county court judge to preside over circuit court cases.—A county court judge may be designated on a temporary basis to preside over circuit court cases by the Chief Justice of the Supreme Court upon recommendation of the chief judge of the circuit. He or she may be assigned to exercise all county and circuit court jurisdiction in the county, except appeals from the county court. In addition, he or she may be required to perform the duties of circuit judge in other counties of the circuit as time may permit and as the need arises, as determined by the chief judge of the circuit. A county court judge designated to preside over circuit court cases shall receive the same salary as a circuit court judge, to the extent that funds are specifically appropriated by law for such purposes.

The invention of an "administrative transfer" scheme by the prosecutor was executed solely to undermine F.S. 26.57. The unclean hands of the State with regard to this scheme to undermine statutory law is cause for dismissal under the unclean hands doctrine.

Dated at Bonita Springs, Florida this 27th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.comnelson

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR ORDER TO SHOW CAUSE HOW JUDGE ADAMS IS NOT IN CONTEMPT OF THE JURISDICTION OF THE CIRCUIT COURT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, because, the Circuit Court was never divested of jurisdiction concerning the contempt charges. This Court is proceeding with complete disrespect for the power, authority and jurisdiction of the Circuit Court. This is indirect criminal contempt.

Dated at Bonita Springs, Florida this 27th day of February, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 27th day of February, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION FOR COMPETENCY EXAMINATION

THIS CAUSE comes before the Court on Defendant's "Second Motion For Competency Exam Re: Competence To Conduct His Own Defense, Huminski Is Competent To Stand Trial With Counsel," filed February 16, 2018. Defendant has made no allegations which demonstrate that Defendant is incompetent pursuant to Fla. Stat. §916.12. Defendant has made no allegations, and the Court has made no observations, which would cause this Court to have a reasonable belief Defendant may be incompetent. It is

ORDERED AND ADJUDGED that Defendant's motion is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 28 day of February, 2018.

James Adams
James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 1 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION TO STAY PROCEEDINGS

THIS CAUSE comes before the Court on Defendant's "Motion To Stay County And Circuit Court Cases Pending Disposition Of Appeals" filed February 19, 2018. The Court declines to exercise its discretion to issue a stay, pursuant to Fla. R. App. P. 9.310.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion to stay is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 28 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 1 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING SUCCESSIVE MOTIONS

THIS CAUSE comes before the Court on Defendant's "Motion To Dismiss – Judge Has Admitted Mens Rea Abolished For This Case," "Motion To Dismiss – Defendant Is Incompetent To Conduct A Trial," "Motion To Dismiss – No Procedure Exists In Florida To Assure Compulsory Process For Non-Represented Indigents," filed February 16, 2018, and "Motion To Dismiss As The Allegations Are, At Best Civil Contempt" filed February 19, 2018. The Court has already ruled on the issues raised in these motions, and the motions are successive. It is

ORDERED AND ADJUDGED that Defendant's motions are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 28 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 1 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER DENYING MOTION TO ISSUE BENCH WARRANTS

THIS CAUSE comes before the Court on Defendant's "Motion In Lieu Of Issuance Of Court-Ordered Subpoena, Defendant Moves For Issuance Of Bench Warrants To Mandate The Attendence [sic] Of Defense Witnesses For Compulsive Process At Trial And At Competency Hearing" filed February 16, 2018. A bench warrant is only issued for a defendant or subpoenaed witness who fails to appear. No subpoenaed witnesses have failed to appear, and Defendant is not entitled to request a bench warrant in order to secure the attendance of witnesses. It is

ORDERED AND ADJUDGED that Defendant's motion is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 28 day of February, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 1 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

IN AND FOR LEE COUNTY, FLORIDA

CASE NUMBER(S): 17-000815MM

STATE OF FLORIDA vs.

Huminski, Scott Alan
Defendant / Minor Child

APPLICATION FOR CRIMINAL INDIGENT STATUS

☒ I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER

OR

☐ I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENCE STATUS FOR COSTS

Notice to Applicant: The provision of a public defender / court appointed lawyer and costs / due process services are not free. A judgement and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for whom you are making this application. There is a $50.00 fee for each application filed. If the application fee is not paid to the Clerk of the Court within 7 days, it will be added to any costs that may be assessed against you at the conclusion of the case. If you are a parent / guardian making this affidavit on behalf of a minor or tax-dependent adult, the information contained in this application must include your income and assets.

1. **I have 0 dependants.** *(Do not include children not living at home and do not include a working spouse or yourself)*
2. **I have a take home income of $0.00 paid**
   *(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similiar payments, **minus** deductions required by law and other court ordered support payments)*
3. **I have other income paid** : *(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")*

Social Security benefits	Yes X	$1,481.00	No	Veterans' benefit	Yes	$0.00	No X
Unemployment compensation	Yes	$0.00	No X	Child support or other regular support from family members / spouse	Yes	$0.00	No X
Union Funds	Yes	$0.00	No X				
Workers compensation	Yes	$0.00	No X	Rental income	Yes	$0.00	No X
Trusts or gifts	Yes	$0.00	No X	Dividends or interest	Yes	$0.00	No X
Retirement / pensions	Yes	$0.00	No X	Other kinds of income not on the list	Yes	$0.00	No X

4. **I have other assets**: *(Circle "yes" and fill in the of the property, otherwise circle "No")*

Cash	Yes X	$200.00	No	Savings	Yes X	$100.00	No
Bank account(s)	Yes	$0.00	No X	Stocks / bonds	Yes	$0.00	No X
Certificate of deposit or money market account(s)	Yes	$0.00	No X	*Equity in homestead real estate	Yes	$0.00	No X
*Equity in Motor vehicle(s)	Yes X	$1,200.00	No	*Equity in non-homestead real estate *include expectency of an interest in such property	Yes	$0.00	No X
*Equity in boats / other tangible property	Yes X	$50.00	No				

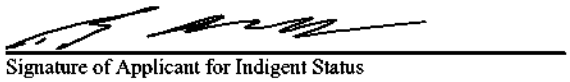
5. **I have a total amount of liabilities and debts in the amount of $11,500.00**
6. **I receive:** *(Circle "Yes" or "No")*

Temporary Assistance for Need;y Families-Cash Assistance	Yes	$0.00	No X
Poverty- related veterans' benefits	Yes	$0.00	No X
Supplemental Security income (SSI)	Yes	$0.00	No X

7. **I have been released on bail in the amount of $0.00** ☐ Cash ☐ Surety **Posted by:** ☐ Self ☐ Family ☐ Other

A person who knowingly provides false information to the clerk of the court in seeking a determination of indigent status under s. 27.52, F.S. commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S. **I attest that the information provided on this Application is true and accurate.**

02/27/2018
Signed on


Signature of Applicant for Indigent Status

12/01/1959
Date of Birth

Print full name: Scott Alan Huminski

Address: 24544 Kingfish Street, Bonita Springs, FL 34134

9176
Last four digits of Driver's License or ID Number

Phone: (239) 300-6656 Cell Phone: (239) 300-6656

Email Address:

CLERK'S DETERMINATION

Based on the information in the Application, I have determined the applicant to be ☒ **Indigent** ☐ **Not Indigent**

☒ The Public Defender is hereby appointed to the case listed above until relieved by the Court.

Dated this: February 27, 2018

Clerk of the Circuit Court

This form was completed with the assistance of : */ Alic Walker /*

Alic Walker
Clerk/Deputy Clerk/Other authorized person

APPLICANTS FOUND NOT INDIGENT MAY SEEK REVIEW BY ASKING FOR A HEARING TIME. Sign here if you want the Judge to review the clerk's decision of not indigent. _____

Florida Supreme Court Form 3.984, Updated 11/23/2015

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – NO NELSON/FARETTA INQUIRY

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, because Huminski was stripped of counsel without the requisite Nelson/Faretta inquiry. Both prior counsel of Huminski recused because of conflict of interest and Huminski never requested self representation. See below paper from the Florida Bar Journal. In reply to the Faretta inquiry below Huminski responds as follows:

What is the defendant's age, education, and background? A: 58, no legal education, disabled

• What is the defendant's mental condition? A: PTSD, Generalized Anxiety Disorder, Social Phobia, see affidavit of mental health provider

• Does the defendant understand the dangers and disadvantages of self-representation, including: A: Yes, this is why Huminski opposes self-representation

a) the nature and complexity of the case?

b) the seriousness of the charge?

c) the potential sentence?

d) the possibility of sentence enhancement, such as habitual offender, use of a firearm, or use of a mask?

• What is the defendant's experience in the criminal justice system? A: A dismissed charge 20 years ago.

• Does the defendant understand the requirement to abide by the rules of courtroom procedure? A: No, Huminski has no knowledge of courtroom procedure

• Was the defendant represented by counsel before trial? A: Yes

• Is the waiver the result of coercion or mistreatment? A: Huminski has not waived any 6th Amendment Right

Self-Representation and Ineffective Assistance of Counsel: How Trial Judges Can Find Their Way Thro

by Angela D. McCravy

Page 44

Requests for self-representation and claims of ineffective assistance of court-appointed counsel present a real quagmire to the trial judges who must deal with them. Such difficulties are understandable, since the case law in these areas is voluminous, complex, and at times downright inconsistent. Judge Chris Altenbernd of the Second District Court of Appeal attempted to assist trial judges by giving them a skeleton procedural outline to follow in his concurring opinion in *Jones v. State*, 658 So. 2d 122 (Fla. 2d DCA 1995). However, the issue became even more confusing when the same court receded from portions of that procedural guide less than a year later in *Bowen v. State*, 677 So. 2d 863 (Fla. 2d DCA 1996). This article is intended to sort out some of the confusion and assist trial judges who are increasingly confronted with these issues by criminal defendants.

When Defendants Complain About Court-Appointed Counsel

The trial judge must first conduct a *Nelson*[1] inquiry to determine whether trial counsel has in fact been ineffective. As part of this hearing, the judge should inquire of both the defendant and the court-appointed counsel about the circumstances surrounding the complaint. Only after inquiring of both the defendant and counsel can the judge determine whether the omission or act occurred, and whether it constitutes a "specific, serious deficiency measurably below that of professionally competent counsel."[2]

There is no easy formula for determining whether an attorney's particular act or omission constitutes ineffective assistance. In general, Florida courts have made this determination on a case-by-case basis. But one of the most prevalent claims made by defendants about their court-appointed attorney is that the attorney has not made sufficient visits to the jail to discuss the case. If this is the extent of the defendant's complaints and he or she raises no instance of incompetency or inadequacy in the handling of the defense, the trial judge is not required even to conduct a *Nelson* inquiry.[3]

Sometimes a defendant will voice complaints about his or her attorney that, at the root, are nothing more than a reflection of personality differences between the defendant and attorney. In such a situation, the judge should remember that an accused is not entitled to the appointment of counsel of his or her choice,[4] and that the Sixth Amendment does not guarantee a meaningful relationship between the accused and counsel.[5] The judge's inquiry should focus on the adversarial process, not on the harmoniousness of the attorney-client relationship.[6]

After the *Nelson* inquiry, if the judge determines that the court-appointed counsel has in fact been ineffective, the judge should make a finding to that effect on the record and appoint a substitute attorney. The new attorney should be allowed adequate time to prepare for trial.

Alternatively, if the judge determines that the attorney has not been ineffective, that finding should also clearly be made on the record. The judge should then advise the defendant that if he or she discharges the original counsel, the state may not be required to appoint another one. If the defendant continues to demand dismissal of the court-appointed counsel, then it is presumed that the defendant is exercising the right to self-representation.[7] The trial judge may then discharge the attorney and require the defendant to proceed without representation. But the judge must first conduct a *Faretta*[8] inquiry to determine if the defendant's waiver is knowing and intelligent. The proper procedure for conducting a *Faretta* hearing is discussed below.

The best course for a judge to follow is to advise a defendant about the right to self-representation anytime the defendant complains about the court-appointed counsel.[9] But the requirement to give a defendant this advice does not mandate reversal every time a court fails to do so upon learning that a defendant has expressed dissatisfaction with counsel, "a daily occurrence in many trial courts."[10]

When Defendants Request Self-Representation

Initially, trial judges should be aware that the right of self-representation may be lost if it is not timely asserted. *See, e.g.*, *Horton v. Dugger*, 895 F.2d 714 (11th Cir. 1990) (upholding denial of self-representation request made after jury was empaneled but before trial began). However, at least one Florida court has held otherwise. *See Smith v. State*, 677 So. 2d 370 (Fla. 2d DCA 1996) (conviction reversed where trial court advised defendant he had "no choice" but to proceed with court-appointed attorney or return to his cell while the trial continued without him, when he sought to discharge his

court-appointed attorney after the state rested its case but before the defense case-in-chief). Because of the conflicting law in this area, it is probably best for a trial judge to err on the side of caution and conduct a *Nelson* and/or *Faretta* inquiry anytime complaints about counsel or requests for self-representation are made, regardless of what point they occur during trial.

What is the defendant's age, education, and background?

• What is the defendant's mental condition?

•Does the defendant understand the dangers and disadvantages of self-representation, including:

a) the nature and complexity of the case?

b) the seriousness of the charge?

c) the potential sentence?

d) the possibility of sentence enhancement, such as habitual offender, use of a firearm, or use of a mask?

•What is the defendant's experience in the criminal justice system?

•Does the defendant understand the requirement to abide by the rules of courtroom procedure?

•Was the defendant represented by counsel before trial?

•Is the waiver the result of coercion or mistreatment?

A trial judge is only required to conduct a *Faretta* inquiry when there is an unequivocal request for self-representation.[11]The purpose of a *Faretta* hearing is to determine whether a defendant is knowingly and intelligently waiving the right to counsel. These are the factors a trial judge should consider in determining whether a defendant's waiver of counsel is knowing and intelligent:[12]

•

There are no particular words required to establish that the defendant is making an informed decision. The issue depends on the facts and circumstances of each case.[13] The ultimate test is not the trial court's express advice, but rather the defendant's understanding.[14]

The most prevalent mistake made by trial judges during a *Faretta* hearing is inquiring into the defendant's legal skills and ability to actually conduct his or her defense. A defendant's technical legal knowledge is irrelevant to determining whether his or her waiver is knowing and intelligent.[15] Additionally, the Second District Court of Appeal has held that once a trial judge determines that a defendant's waiver is knowing and intelligent, the judge may not proceed to inquire into whether there are other "unusual circumstances" which would deny a fair trial to a defendant who represents himself or herself. *Bowen v. State*, 677 So. 2d 863 (Fla. 2d DCA 1996), *aff'd*, 22 Fla. L. Weekly S208 (April 24, 1997). The import of the *Bowen*decision appears to be that Florida's pre-*Faretta* "unusual circumstances" test for self-representation established in *Cappetta v. State*, 204 So. 2d 913 (Fla. 4th DCA 1967), and approved by the Florida Supreme Court at 216 So. 2d 749 (Fla. 1968), was overruled by *Faretta*.[16]

On the other hand, the Fourth District has suggested that trial judges should inquire about the fairness of a trial without counsel when conducting a *Faretta* hearing, because the inquiry serves the purpose of making the defendant "aware of the disadvantages under which he is placing himself by waiving counsel."[17] The Fourth District also continues to hold that a trial judge may properly deny self-representation based on "unusual circumstances" such as the state of the defendant's health, as long as the "unusual circumstance" is something other than lack of legal knowledge.[18]

In his concurring opinion of the Florida Supreme Court's review of the *Bowen* decision, Justice Wells noted that Florida Rule of Criminal Procedure 3.111(d)(3) may not follow the mandates of *Faretta* and *Nelson* with sufficient clarity. The rule provides that "[n]o waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of a mental condition, age, education, experience, the nature or complexity of the case, or other factors." To clarify the rule and harmonize it with the Supreme Court's interpretations of *Faretta* and *Nelson*, Justice Wells has suggested that the Criminal Procedure Rules Committee of The Florida Bar review the rule. He has also suggested that the Florida Conference of Circuit Court Judges develop a colloquy for trial judges to use when questioning defendants who wish to waive the assistance of counsel.

If the trial judge concludes after a *Faretta* inquiry that the defendant's waiver is knowing and intelligent, then the defendant must be permitted to represent himself or herself at trial. The trial judge should renew the offer of assistance of counsel at each subsequent stage of the proceedings.[19] If the judge determines that the defendant's waiver is not knowing and intelligent, the judge should explain on the record the factors leading to the decision and then proceed to trial with the defendant represented by appointed counsel.

Occasionally a trial judge will be confronted with a defendant whose behavior and complaints regarding court-appointed counsel are completely unfounded and disruptive to courtroom procedure. In such a situation, the judge is not compelled to allow the defendant to delay and continually frustrate the trial. The judge may presume that the defendant's actions constitute a request to proceed pro se.[20] The best course would be to confirm the waiver of counsel by conducting a *Faretta* inquiry. But the failure to do so does not automatically require reversal. *See Waterhouse v. State*, 596 So. 2d 1008 (Fla. 1992), *cert. denied*, 506 U.S. 957 (1992) (conviction affirmed despite lack of *Faretta* hearing. "Waterhouse's manipulation of the proceedings and his attempts to delay show an obvious understanding of the proceedings against him. Under these facts, we find the requirements of *Faretta* were met.")

Hybrid Representation

Often a defendant seeking self-representation will request that standby counsel be appointed to assist the defendant in conducting the defense. The appointment of standby counsel under *Faretta* is constitutionally permissible, but not constitutionally required. Standby counsel may be denied when the defendant refuses to cooperate with the trial court or with court-appointed counsel in their efforts to provide legal

assistance.[21] But a judge should use caution in denying standby counsel, because a defendant may waive the right to self-representation if the defendant later abandons his or her initial request to proceed pro se. *Brown v. Wainwright*, 665 F.2d 607, 611 (5th Cir. 1982) (en banc). The trial judge is not required to allow a nonlawyer to assist a pro se defendant in lieu of a licensed attorney. *See Bauer v. State*, 610 So. 2d 1326 (Fla. 2d DCA 1992).

Even if standby counsel is appointed, the defendant must be permitted to control the organization and content of his or her defense, make motions, argue points of law, participate in voir dire, question witnesses, and address the court and the jury at appropriate points. The defendant has the entire responsibility for his or her own defense.[22]

Sometimes a defendant will resist the appointment of standby counsel even though the trial judge believes an attorney's assistance might at some point become necessary. A trial judge can appoint standby counsel over the defendant's objection to relieve the judge of the need to explain and enforce basic rules of courtroom procedure or to assist the defendant in overcoming routine obstacles to reach his or her goal. However, the judge must not permit standby counsel's participation over the defendant's objection to substantially interfere with any significant tactical decisions, or to control the questioning of witnesses, or to speak on any matter of importance. Outside the presence of the jury, the defendant must be freely permitted to address the court on his or her own behalf. On disagreements between the counsel and the defendant, the trial judge must resolve the disagreement in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel.[23]

Occasionally a defendant will insist on acting as co-counsel with a court-appointed attorney. But *Faretta* does not require a trial judge to permit this type of "hybrid" representation. A defendant does not have the right to partially represent himself or herself and at the same time be partially represented by counsel. Neither does a defendant have a constitutional right to choreograph the attorney's appearance.[24]

Conclusion

It is understandable that trial judges might be inclined to resist allowing a defendant to represent himself or herself at trial. To allow such pro se representation requires an exorbitant amount of patience and vigilance on the part of the judge as well as the prosecutor. It can also generate tremendous anxiety in victims of violent crimes at the prospect of being subjected to questioning by their attackers. Even so, the Sixth Amendment has guaranteed that a defendant who makes a knowing and intelligent waiver of counsel has the right to represent himself or herself. This is true even though it "seems to cut against the grain of [the United States Supreme Court]'s decisions holding that the Constitution requires that no accused can be convicted and imprisoned unless he has been accorded the right to assistance of counsel."[25]

Under certain circumstances, the trial court may properly deny self-representation or the appointment of different counsel. But the key to having those decisions upheld is in conducting a

thorough inquiry into the effectiveness of court-appointed counsel and the nature of the defendant's waiver. q

[1] *Nelson v. State,* 274 So. 2d 256 (Fla. 4th D.C.A. 1973).
[2] *Phillips v. State,* 608 So. 2d 778 (Fla. 1992), *cert. denied*, 509 U.S. 908.
[3] *Kenney v. State*, 611 So. 2d 575 (Fla. 1st D.C.A. 1992); *Augsberger v. State*, 655 So. 2d 1202 (Fla. 2d D.C.A. 1995).
[4] *Wheat v. United States*, 486 U.S. 153 (1988).
[5] *Morris v. Slappy*, 461 U.S. 1 (1983).
[6] *United States v. Cronic*, 466 U.S. 648 (1984).
[7] *Hardwick v. State*, 521 So. 2d 1071 (Fla. 1988), *cert. denied*, 488 U.S. 871 (1988).
[8] *Faretta v. California*, 422 U.S. 806 (1975).
[9] *Capehart v. State*, 583 So. 2d 1009 (Fla. 1991), *cert. denied,* 502 U.S. 1065 (1992).
[10] *Causey v. State*, 623 So. 2d 617 (Fla. 4th D.C.A. 1993), *rev. denied,* 634 So. 2d 623 (Fla. 1994); *State v. Craft,* 685 So. 2d 1292 (Fla. 1996).
[11] *Augsberger v. State*, 655 So. 2d 1202 (Fla. 2d D.C.A. 1992); *see also Weems v. State,* 645 So. 2d 1098 (Fla. 4th D.C.A. 1994), *rev. denied,* 654 So. 2d 920 (Fla. 1995).
[12] *Faretta v. California,* 422 U.S. 806 (1975); *see also Fitzpatrick v. Wainwright,* 800 F.2d 1057 (11th Cir. 1986).
[13] *Fitzpatrick v. Wainwright,* 800 F. 2d 1057 (11th Cir. 1986); *Payne v. State*, 642 So. 2d 111 (Fla. 1st D.C.A. 1994).
[14] *Fitzpatrick v. Wainwright*, 800 F. 2d 1057 (11th Cir. 1986).
[15] *Faretta v. California*, 422 U.S. 806 (1975).
[16] The *Cappetta* test includes "whether the accused, by reason of age, mental derangement, lack of knowledge, or education, or inexperience in criminal procedures would be deprived of a fair trial if allowed to conduct his own defense, or in any case, where the complexity of the crime was such that in the interest of justice legal representation was necessary." *Cappetta,* 204 So. 2d at 918.
[17] *Morris v. State*, 667 So. 2d 982 (Fla. 4th D.C.A. 1996), *appeal dism.*, 673 So. 2d 29 (Fla. 1996).
[18] *Id.*
[19] Fla. R. Crim. P. 3.111(d)(5).
[20] *State v. Young,* 626 So. 2d 655 (Fla. 1993).
[21] *Jones v. State,* 449 So. 2d 253 (Fla. 1984), *cert. denied,* 469 U.S. 893 (1984).
[22] *McKaskle v. Wiggins,* 465 U.S. 168 (1984); *Behr v. Bell,* 665 So. 2d 1055 (Fla. 1996).
[23] *McKaskle v. Wiggins*, 465 U.S. 168 (1984).
[24] *Id.*; *Sheppard v. State,* 391 So. 2d 346 (Fla. 5th D.C.A. 1980).
[25] *Faretta,* 422 U.S. at 832

Dated at Bonita Springs, Florida this 1st day of March, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – FIRST AMENDMENT – WASSERMAN V. STATE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, and attaches hereto Wasserman v. State (FL 2DCA 1996) in support thereof. Allegations of the State concerning Huminski's conduct is protected under the Federal and State Constitutions.

Dated at Bonita Springs, Florida this 1st day of March, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

C Wasserman v. State
Fla.App. 2 Dist.,1996.

District Court of Appeal of Florida,Second District.
Phillip R. WASSERMAN, Appellant,
v.
STATE of Florida, Appellee.
No. 94-03113.

April 12, 1996.

Defendant was convicted in the Circuit Court, Pinellas County, B.J. Driver, Senior Judge, for indirect criminal contempt. Defendant appealed. The District Court of Appeal held that attorney's out-of-court statements to judicial assistant did not constitute clear and present danger to orderly administration of justice and, thus, could not be punished as indirect criminal contempt.

Reversed and remanded with directions.

West Headnotes

[1] Contempt 93 ⚿30

93 Contempt
93II Power to Punish, and Proceedings Therefor
93k30 k. Nature and Grounds of Power. Most Cited Cases
Courts of justice are vested, by their very creation, with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates.

[2] Contempt 93 ⚿7

93 Contempt
93I Acts or Conduct Constituting Contempt of Court
93k7 k. Disturbance of Proceedings of Court. Most Cited Cases
Test to determine whether an out-of-court statement is contemptuous is whether it constitutes clear and present danger to orderly administration of justice. U.S.C.A. Const.Amend. 1.

[3] Contempt 93 ⚿7

93 Contempt
93I Acts or Conduct Constituting Contempt of Court
93k7 k. Disturbance of Proceedings of Court. Most Cited Cases
Identification of out-of-court statement as constituting clear and present danger to administration of justice, and thus subject to punishment by criminal contempt, can only be made after taking into account setting in which statement is made. U.S.C.A. Const.Amend. 1.

[4] Contempt 93 ⚿30

93 Contempt
93II Power to Punish, and Proceedings Therefor
93k30 k. Nature and Grounds of Power. Most Cited Cases
Purpose of contempt power is to protect proper administration of justice and not to satisfy offended judge.

[5] Contempt 93 ⚿10

93 Contempt
93I Acts or Conduct Constituting Contempt of Court
93k10 k. Misconduct as Officer of Court. Most Cited Cases
Attorney's out-of-court statements to judicial assistant, in which he called her "little motherf---" and called judge a "motherf--- son of a b--," did not constitute clear and present danger to orderly administration of justice, and thus could not be punished as indirect criminal contempt, despite fact that judicial assistant was so upset she had to go home for the day, particularly where judge did not set forth any findings of fact indicating how conduct or affairs of court were disrupted, and there was no evidence to support such a finding. U.S.C.A. Const.Amend. 1.

[6] Attorney and Client 45 ⚿59.13(1)

45 Attorney and Client
45I The Office of Attorney

45I(C) Discipline
45k59.1 Punishment; Disposition
45k59.13 Suspension
45k59.13(1) k. In General. Most Cited Cases
(Formerly 45k58)

Constitutional Law 92 ⚿2120

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(V) Judicial Proceedings
92XVIII(V)3 Contempt
92k2120 k. Attorneys. Most Cited Cases
(Formerly 92k90.1(1.5))

Constitutional Law 92 ⚿2046

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(S) Attorneys, Regulation of
92k2046 k. Statements Regarding Judge or Court Officials. Most Cited Cases
(Formerly 92k90.1(1.5))

Contempt 93 ⚿10

93 Contempt
93I Acts or Conduct Constituting Contempt of Court
93k10 k. Misconduct as Officer of Court. Most Cited Cases
Right to free speech protected attorney from punishment for indirect criminal contempt for statements made to judicial assistant, although same right did not protect attorney from disciplinary suspension from practice of law. U.S.C.A. Const.Amend. 1.

***847** Appeal from the Circuit Court for Pinellas County; B.J. Driver, Senior Judge.
Phillip R. Wasserman, Clearwater, pro se.
Robert A. Butterworth, Attorney General, Tallahassee, and Katherine V. Blanco, Assistant Attorney General, Tampa, for Appellee.
PER CURIAM.
Phillip Wasserman appeals his conviction for indirect criminal contempt. We reverse because Mr. Wasserman's conduct, while ill-mannered and reprehensible, does not constitute indirect criminal contempt as a matter of law.

The facts underlying the contempt adjudication are as follows. Mr. Wasserman, a lawyer, failed to appear at a court hearing before Judge John Lenderman in response to a subpoena issued to compel production of a file in Mr. Wasserman's possession. Judge Lenderman instructed his judicial assistant, Cindy Decker, to prepare an order to show cause for Mr. Wasserman's failure to appear.

About an hour after the hearing, Mr. Wasserman called the judge's chambers and spoke to Ms. Decker, who informed him that the judge had directed that an order to show cause be issued. Mr. Wasserman became angry and asked to speak to Judge Lenderman. The judge was still in court and, when Ms. Decker sent him a message, he declined to speak to Mr. Wasserman *ex parte*. Ms. Decker testified that Mr. Wasserman began screaming at her, calling her a "little motherf-----" and calling the judge a "motherf------ son of a b----." Mr. Wasserman, on the other hand, contended that either he used no obscenities or Ms. Decker hung up the phone before he used any foul language.

According to Judge Lenderman, when he returned to his chambers from the courtroom, Ms. Decker was visibly upset. She told him that Mr. Wasserman had been very abusive and that she needed to go home. The judge returned to his courtroom and presided over hearings until 5 p.m. or later. At approximately 6 p.m. that evening, the judge called Ms. Decker at home and asked her what Mr. Wasserman had said to her. Subsequently, Judge Lenderman issued a second order to show cause which included the contempt issue now on appeal.

The contempt hearing was presided over by a judge other than Judge Lenderman. At ***848** the conclusion of the hearing, the trial court entered a judgment of indirect criminal contempt and sentenced Mr. Wasserman to serve 30 days in the county jail, the last 20 days to be suspended upon the condition that Mr. Wasserman attend and successfully complete a class on ethics as approved by the Florida Bar.

[1] It is clear that the sole conduct which forms the basis of the contempt charge before us is Mr.

Wasserman's utterance of vulgar comments made to a judicial assistant out of the presence of the trial judge. We must determine whether such utterances may be punished by indirect criminal contempt. In order to make this determination, we are called upon to examine the limitations imposed on the trial court's contempt power by the First Amendment to the United States Constitution.[FN1] However, before we begin we emphasize that this opinion does not address the power of direct criminal contempt because the power of a court to punish for in-court contempts stands on a different footing than contempts occurring out of the presence of the court. It has long been recognized that "courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect and decorum in their presence, and submission to their lawful mandates." *Anderson v. Dunn,* 19 U.S. (6 Wheat.) 204, 227, 5 L.Ed. 242, 247 (1821).

> FN1. We do not address the arguments presented concerning whether the conduct comes within the statutory definition of contempt because we have recognized that, notwithstanding statutory limitations, our courts have inherent contempt power. *See Walker v. Bentley,* 660 So.2d 313 (Fla. 2d DCA 1995), *review granted,*670 So.2d 941 (Fla.1996).

[2] The test to be applied to determine whether an out-of-court statement is contemptuous is whether it constitutes a clear and present danger to the orderly administration of justice. *Wood v. Georgia,* 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962). The "clear and present danger" standard is defined in *Bridges v. State of California,* 314 U.S. 252, 263, 62 S.Ct. 190, 194, 86 L.Ed. 192 (1941), as "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished." Its proper application is described in *Craig v. Harney,* 331 U.S. 367, 373-376, 67 S.Ct. 1249, 1253-1255, 91 L.Ed. 1546 (1947), wherein the Court explains that whether speech constitutes a clear and present danger is measured not by the content of the remark but by the impact on judicial action:

The history of the power to punish for contempt (see *Nye v. United States,* [313 U.S. 33, 61 S.Ct. 810, 85 L.Ed. 1172 (1941)] supra; *Bridges v. State of California,* [314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192 (1941)] supra) and the unequivocal command of the First Amendment serve as constant reminders that freedom of speech and of the press should not be impaired through the exercise of that power, unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice.

....

The vehemence of the language used is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil.

[3][4] Thus, it necessarily follows that a careful distinction must be made between communications which are merely personally offensive and those which pose an imminent threat of interference with the trial court's business. Consequently, the identification of a statement as constituting a clear and present danger to the administration of justice can only be made after taking into account the setting in which the statement is made. This approach recognizes the purpose of the contempt power, which is to protect the proper administration of justice and not to satisfy an offended judge. *Ex parte Earman,* 85 Fla. 297, 95 So. 755 (1923).

[5] Applying these principles to the case before us, we observe that the trial court did not apply the "clear and present danger" standard. Instead, the judgment of contempt is based on a finding that Mr. Wasserman's***849** comments "were intended to demean and degrade the dignity, authority and respect for the office of circuit judge." The order does contain the additional finding that:

Mr. Wasserman's conduct resulted in disrupting the conduct of the Court as presided over by Judge Linderman [sic] in that Ms. Decker became so upset and disturbed that she found it necessary to leave the office for the balance of the day with the consequent disruption of the affiars [sic] of the Court.

However, the trial court did not set forth any findings of fact that indicate how the conduct or affairs of the trial court were disrupted. We need not decide whether this conclusory finding of disruption meets the clear

and present danger test because our review of the transcript discloses no evidence to support it. In fact, Judge Lenderman testified that the incident did not hinder the performance of any judicial functions. Because there is no evidence to support a finding that Mr. Wasserman's statements constituted a clear and present danger to the orderly administration of justice, we hold that the power of indirect criminal contempt may not be used to punish their utterance.

[6] We fully agree with the Florida Supreme Court's conclusion that the right to free speech under the United States and Florida constitutions does not protect Mr. Wasserman from his much deserved disciplinary suspension from the practice of law in the State of Florida.[FN2] We, however, are not dealing with the area of disciplinary proceedings but instead with the narrow issue of criminal contempt. In this context we are bound by the restraints imposed by the First Amendment on the use of criminal contempt. Our reversal of the judgment of contempt should not be read as condoning Mr. Wasserman's conduct. Mr. Wasserman's conduct, as determined by the trial court, was clearly unprofessional, disrespectful and totally without civility and common courtesy.

> FN2. *The Florida Bar v. Wasserman,* Nos. 83,818, 83,438, 84,814, ---So.2d ---- [1996 WL 122174] (Fla. Mar. 21, 1996).

Reversed and remanded with directions to vacate the judgment of contempt.

FRANK, A.C.J., and PARKER and FULMER, JJ., concur.
Fla.App. 2 Dist.,1996.
Wasserman v. State
671 So.2d 846, 21 Fla. L. Weekly D902

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Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MEMORANDUM OF LAW – EXERCISE OF A RIGHT IS NOT CONTEMPT – Ex Parte SENIOR

NOW COMES, Scott Huminski ("Huminski"), and, further supports his motion to dismiss under Wasserman v. State (FL 2DCA 1996) with the attached Ex Parte SENIOR, clearly setting forth that exercise of a right is not contempt.

Dated at Bonita Springs, Florida this 1st day of March, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

CEX PARTE SENIOR
Fla. 1896

Supreme Court of Florida.
Ex parte SENIOR.
Feb. 28, 1896.

Habeas corpus by Ed. Senior, Jr., for a discharge from imprisonment under a conviction of contempt. Prisoner remanded.

West Headnotes

Elections 144 ⚿313

144 Elections
144XI Violations of Election Laws
144k313 k. Illegal Voting. Most Cited Cases
Rev.St. § 2787, providing that whoever casts, knowingly, an illegal vote at an election held according to law, shall be punished by imprisonment in the state prison not exceeding six months, or by fine not exceeding $100, applies to illegal voting at municipal elections.

Habeas Corpus 197 ⚿528.1

197 Habeas Corpus
197II Grounds for Relief; Illegality of Restraint
197II(C) Relief Affecting Particular Persons or Proceedings
197k528 Contempt
197k528.1 k. In General. Most Cited Cases
(Formerly 197k92(3))
The supreme court will review, on habeas corpus, an order made in the circuit court adjudging petitioner guilty of contempt, so far as to determine whether the alleged contemptuous conduct constitutes a contempt, but will not review the correctness of conclusions as to matters of fact, or questions of mere procedure.

Witnesses 410 ⚿305(1)

410 Witnesses
410III Examination
410III(D) Privilege of Witness
410k305 Waiver of Privilege
410k305(1) k. In General. Most Cited Cases
One who votes at an election to which applies Rev.St. § 2787, imposing a punishment for illegal voting, and who, with full knowledge of his rights, testifies, in a suit wherein the validity of that election is in issue, that he did vote at that election, and that his ballot was received by the judges and inspectors, thereby waives his privilege as to giving incriminatory testimony, and must submit to a regular cross-examination as to his qualifications as a voter.

Syllabus by the Court

1. The rule stated in Ex parte Edwards, 11 Fla. 174, that in the absence of statutory limitations or restrictions the power of the several courts over contempt is omnipotent, and its exercise is not to be inquired into by any other tribunal, is subject to the qualification that the conduct charged as constituting the contempt must be such that some degree of delinquency or misbehavior can be predicated of it; for if the act be plainly indifferent or meritorious, or if it be only the assertion of an undoubted right of the party, it will not become a criminal contempt by being adjudged to be so.

2. The ancient maxim of the common law, 'Nemo tenetur seipsum prodere,' is imbedded in the provision in the twelfth section of the bill of rights of our constitution, that no person shall be compelled in any criminal case to be a witness against himself; and such provision should be broadly and liberally construed, to secure the protection designed to be accomplished by it.

3. The purpose of the provision mentioned is to exempt one from being compelled, in any judicial or other proceeding against himself, or upon the trial of issues or investigation of facts between others, to disclose facts or circumstances that can be used against him as admissions tending to prove guilt, or connection with any criminal offense, of which he may then or afterwards be charged, or the sources from which, or the means by which, evidence of its commission, or his connection with it, may be

obtained.

4. The right of privilege against disclosure of incriminatory statements or evidence is personal to the witness, he alone being entitled to invoke its protection, and it may be waived by him.

5. While the witness must judge of the effect of his answer, and should not be required to explain how it will criminate him, yet the court must determine, under all the circumstances of the case, whether such will be its tendency, from the question asked; and where, from the nature of the investigation and the character of the testimony sought, it reasonably appears that the answer may criminate, or tend to criminate, the witness has the right to claim his privilege, and is not bound to answer.

6. The court should inform a witness of his right of privilege when the circumstances of the case call for it, but when he, with full knowledge of his rights, consents to testify about the very matter that may criminate him, without claiming his privilege, he must submit to a full, legitimate cross-examination in reference thereto.

7. Section 2787, Rev. St., providing that whoever casts, knowingly, an illegal vote at an election in this state held according to law, shall be punished by imprisonment in the state prison not exceeding six months, or by fine not exceeding $100, applies to illegal voting at municipal elections in this state; and a party who votes at such an election is not compelled to testify as to his vote when examined as a witness in a suit involving the validity of the election, but if, with full knowledge of his rights, he consents to testify that he did vote, and his ballot was received by the judges and inspectors of the election, he must submit to a full cross-examination as to his qualifications as a voter.

***3** ****652** Blount & Blount, C. B. Parkhill, and John Egan, for petitioner.
***7** S. R. Mallory, John S. Beard, C. M. Jones, and John C. Avery, for respondent.
***12** MABRY, C. J.
The return of the sheriff to the writ of habeas corpus shows that on the 17th day of February, 1896, pending the trial of a case in quo warranto proceedings instituted in the name of the attorney general, on the relation of William E. Anderson, against Pat. McHugh,-the issue being whether the said Anderson or McHugh had received the highest number of votes at an election for mayor of the city of Pensacola held in said city on the 4th day of June, ****653** 1895,-the petitioner, Ed. Senior, Jr., was called and sworn as a witness for respondent, McHugh, and, having been advised by the court that he need not testify to any fact tending to convict him of crime, testified, in reply to questions by respondent's counsel, that he voted at said election, in election precinct 13, for Pat. McHugh for mayor, and that his ballot was received by the inspectors. Thereupon, being turned over to the state for cross-examination, the following questions were propounded to said witness, viz.:

'Where were you living at the time you cast your ballot?'

'How long had you been living at that place?'

'At what place were you living at the time of the last city election?'

***13** 'Did you have a certificate of registration?'

'Where were you born?'

'Were you born in the United States?'

'Did you ever take out any naturalization papers?'

'Are you twenty-one years of age?'

'How long have you been living in the state of Florida?'

'How long have you been living in the county of Escambia?'

'How long have you been living in the city of Pensacola?'

'Were you ever registered?'

'Did you take any oath?'

Thereupon he refused to answer any of said questions, upon the ground that the answers would tend to criminate him; and the court deciding that the witness should answer the questions, and ordering him to

make answers thereto, and still persisting in his refusal, he was adjudged to be in contempt of court, and ordered to pay a fine and stand committed, in the custody of the sheriff, until the fine was paid. Upon the refusal of the witness to pay the fine, he was taken into custody by the sheriff, and, still remaining in custody, has sued out a writ of habeas corpus, and asks to be discharged.

A suggestion comes in limine, from counsel opposed to the writ, that the court will not review on habeas corpus an order made by the circuit court adjudging a person guilty of contempt. Reference is made to the decision in Caro v. Maxwell, 20 Fla. 17, holding that a contempt order will not be reviewed on appeal or writ of error, and also to the language used in Ex parte Edwards, 11 Fla. 174,'that in the absence of any statutory limitations or restrictions the power of the several courts over contempt is omnipotent, and its ***14** exercise is not to be inquired into by any other tribunal. This is the great bulwark established by the common law for the protection of courts of justice, and for the maintenance of their dignity, authority, and efficiency, and neither in England nor in the United States has this unrestricted power been seriously questioned.'The first case referred to has no application here, as we have no writ of error or appeal to review an order of a circuit court in a contempt matter. The rule announced in the second case is not now questioned, but its application must be confined to proper limits. As a general rule, habeas corpus does not lie to correct mere irregularities of procedure where there is jurisdiction; and in order to sustain the writ there must be illegality, or want of jurisdiction. Ex parte Pitts, 35 Fla. 149,17 South. 76; Ex parte Prince, 27 Fla. 196,9 South. 659; Ex parte Bowen, 25 Fla. 214,6 South. 65. When a person has been taken into custody under an order of a court exercising proper jurisdiction, a habeas corpus to discharge the person so taken involves a collateral attack on the order under which he is held, and wellestablished rules forbid an investigation into matters of mere irregularity in procedure. But illegality in matter of law, or want of jurisdiction, may be inquired into, and the decision of the lower court as to such matter is not conclusive. The following language taken from People v. Kelly, 24 N. Y. 74,-a contempt proceeding,-is expressive of our view on the subject, viz.: 'But this rule is, of course, subject to the qualification that the conduct charged as constituting the contempt must be such that some degree of delinquency or misbehavior can be predicated of it; for if the act be plainly indifferent or meritorious, or if it be only the assertion of the undoubted right of the party, ***15** it will not become a criminal contempt by being adjudged to be so. The question whether the alleged offender really committed the act charged will be conclusively determined by the order or judgment of the court, and so with equivocal acts, which may be culpable or innocent according to the circumstances; but, where the act is necessarily innocent or justifiable, it would be preposterous to hold it a cause of imprisonment. Hence, if the refusal of Mr. Hackley, the relator, to answer the question propounded to him, was only an assertion of a right secured to every person by the constitution, it was illegal to commit him for a contempt.'It cannot certainly be true that the decision of an inferior court adjudging a matter to be a contempt precludes all investigation as to the legality or proper authority of the court to make such order; and, on the other hand, it must not be forgotten that in such matters, when the court is acting within the sphere of its legitimate powers, the appellate tribunal will not undertake to review the correctness of conclusions as to matters of fact, or questions of mere procedure.In re Dill, 32 Kan. 668, 5 Pac. 39.

In the present case there was a refusal to answer questions propounded in open court during the trial of a cause within the jurisdiction of the circuit court to hear and determine, and the refusal was placed upon the ****654** ground that the answers to the questions would tend to criminate the party to whom the questions were propounded. If, under the circumstances disclosed by the record, the party questioned had a clear constitutional or legal right to insist on his privilege not to answer the questions, on the ground stated, it would be illegal to adjudge him in contempt for refusing to answer; and hence it becomes necessary for us to see if such right of privilege as claimed in the circuit ***16** court did exist, as a matter of law. The ground of the refusal to answer the questions propounded was that the answers thereto would tend to criminate the petitioner, and what we have to say in this opinion will be confined to such ground of privilege.

It is an ancient maxim of the law that no man shall be compelled to criminate himself. The origin and necessity of this maxim, as others of the common law, grew out of conditions found in the early history of English jurisprudence in reference to the administration of criminal law, and which, it must be

admitted, evince many traces of cruelty and barbarity. There was a time when suspected persons were not only deprived of an opportunity to have witnesses produced in their favor, and of the advice and aid of counsel, but were put to torture for the purpose of extorting from them confessions of guilt, or statements which could be used in securing their conviction. Securing the conviction of even suspected persons by such means justly became odious, and we find the humanity of the common law proclaiming that no man shall be compelled to criminate himself,-'Nemo tenetur seipsum prodere.' This principle of the common law was fully recognized in this country when the formation of governments began, and we find it imbedded in the national and all the state constitutions that we have examined. In our constitution it is found in the twelfth section of the bill of rights,-that 'no person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken without just compensation.'The provision that no person shall be compelled, in any criminal case, to be a witness against ***17** himself, should be broadly and liberally construed, to secure the protection designed to be accomplished by it; and, to this end, no technical limitation should be placed upon the terms employed. The terms 'in any criminal case' might, on casual reading, be taken to confine the protection against selfaccusation to investigations in criminal cases, but such is not the true meaning. Our constitutional provision is the same as those found in the constitutions of the United States and of the state of New York, as well as other states; and the cases of Counselman v. Hitchcock, 142 U. S. 547, 12 Sup. Ct. 195, and People v. Forbes, 143 N. Y. 219, 38 N. E. 303, clearly demonstrate that a broad and liberal construction of such provisions should obtain, in furtherance of the right sought to be secured. In the first case cited it is said that the privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard.'The object was to insure that a person should not be compelled, when acting as a witness in an investigation, to give testimony which might tend to show that he himself had committed a crime.'In the New York case, after stating that the matter had frequently been adjudicated both in the federal and state courts, the following language is used, viz.: 'The principle established by these decisions is that no one shall be compelled, in any judicial or other proceeding against himself, or upon the trial of issues between others, to dislcose facts or circumstances that can be used against him as admissions tending to prove his guilt or connection with any criminal offense of which he may then or afterwards be charged, or the sources from which, or the means by which, evidence of its commission,***18** or of his connection with it, may be obtained.'A witness is exempt, by his privilege from answering not only what will criminate him directly, but also what has any tendency to criminate him; the reason being, as stated by Phillips on Evidence (volume 2, p. 929), 'because otherwise question might be put after question, and, though no single question may be asked which directly criminates, yet enough might be got from him by successive questions whereon to found against him a criminal charge.'In showing the extent of the immunity which a witness is entitled to claim, the following language, used by Chief Justice Marshall on the trial of Aaron Burr, has often been quoted, viz.: 'Many links frequently compose that chain of testimony which is necessary to convict an individual of a crime. It appears to the court to be the true sense of the rule that no witness is compelled to furnish any one of them against himself. It is certainly not only a possible, but a probable, case that a witness, by disclosing a single fact, may complete the testimony against himself, and to a very effectual purpose, accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. That fact, of itself, would be unavailing; but all other facts, without it, would be insufficient. While that remains concealed in his own bosom, he is safe; but draw it from thence, and he is exposed to a prosecution. The rule that declares that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description.'Fed. Cas. No. 14,692e.

The authorities agree that the right of privilege against compelling disclosure of incriminatory evidence is personal to the witness, he alone being entitled to invoke its protection, and that it may be ***19** waived by him. Whether ****655** the court or the witness has the right to determine the question of privilege, or to what extent the claim of privilege is left to the determination of the witness, has not been so uniformly stated in the decisions. It has never been recognized that he alone has the right in all cases to decide whether his answer will tend to criminate him. Such a rule would be mischievous, and enable unscrupulous witnesses to defeat the ends of justice in

many cases. The privilege must be claimed in good faith, and not as a shield to defeat justice. It was held in Reg. v. Boyes, 1 Best & S. 311, that, to entitle a witness to the privilege of silence, 'the court must see from the circumstances of the case, and the nature of the evidence which he is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. Moreover, the danger to be apprehended must be real and appreciable, with reference to the ordinary operations of law in the ordinary course of things.'The New York court, in People v. Mather, 4 Wend. 229, stated the right of privilege to be that, when the witness 'claimed to be excused from answering, the court are to determine whether the answer he may give to the question can criminate him directly, or indirectly, by furnishing evidence of his guilt, or by establishing one of many facts which together may constitute a chain of testimony sufficient to warrant his conviction, but which one fact of itself could not produce such result; and, if they think the answer may in any way criminate him, they must allow his privilege, without exacting from him to explain how he would be criminated by the answer which the truth may oblige him to give.'To require the witness to explain how his answer would criminate him would, of course, expose him to the ***20** very danger against which the privilege was designed to protect him. In People v. Forbes, supra, it is said that 'the weight of authority seems to be in favor of the rule that the witness may be compelled to answer when he contumaciously refuses, or when it is perfectly clear and plain that he is mistaken, and that the answer could not injure him, or tend in any degree to subject him to the peril of prosecution. But the courts have recognized the impossibility in most cases of anticipating the effect of the answer. Where it is not so perfectly evident and manifest that the answer called for cannot incriminate, as to preclude all reasonable doubt or fair argument, the privilege must be recognized and protected.'While the witness must judge of the effect of his answer, and should not be required to explain how it will criminate him, yet the court must determine, under all the circumstances of the case, whether such will be its tendency from the question asked; and where, from the nature of the investigation and the character of the testimony sought, it reasonably appears that the answer may criminate, or tend to criminate, the witness has the right to claim his privilege, and is not bound to answer.State v. Duffy, 15 Iowa, 425;Kirschner v. State, 9 Wis. 140;Chamberlain v. Willson, 12 Vt. 491; Ex parte Boscowitz, 84 Ala. 463, 4 South. 279.

As stated above, the witness may waive his privilege, but to what extent he is held to waive it by consenting to answer some questions, or at what stage of an examination he must insist on his privilege in order to avoid a waiver, is a matter in reference to which there is some considerable confusion in the application of the rule to the various cases. Mr. Phillips, in referring to the early decisions in England, says, in ***21** substance, that from the nature of the right a witness, by consenting to answer some questions, ought not to be barred from the right of objecting to others, but that he should not be allowed, by any arbitrary use of his privilege, to make a partial statement of facts to the prejudice of either party. And upon this principle it was ruled in Dixon v. Vale, 1 Car. & P. 278, and East v. Chapman, 2 Car. & P. 570, that, if a witness waive his privilege so far as to answer part of the questions tending to subject him to an indictment, he cannot be exempted from answering the remainder, but must give the whole truth. He further states that a majority of the judges in Reg. v. Garbett, 2 Car. & K. 474, 1 Denison, Crown Cas. 236, thought that it made no difference to the right of the witness to protection, that he answered in part, but that he was entitled to it at whatever stage of the inquiry he chose to claim it, and that they did not consider themselves bound by the cases cited. 2 Phil. Ev. 935. Garbett's Case was decided in 1847, and the question arose in a criminal prosecution against the accused upon the introduction, on the part of the crown, of his testimony on a cross-examination in a civil suit. The accused had gone a long way in his testimony towards opening up the matter in reference to which he was being prosecuted, but he refused to answer some questions pointing directly to his guilt, and frequently put himself in the hands of the court for protection. The testimony was rejected in the criminal case, and several of the most eminent judges dissented. In the later editions of Greenleaf, the ruling in Garbett's Case is adopted. 1 Greenl. Ev. § 451.

The American rule, following to some extent the early English cases, is said to be the other way, and that, if a witness discloses a part of a transaction or ***22** conversation tending to criminate him, he waives his privilege, and must answer freely, and disclose the whole transaction or conversation, unless the partial disclosure is made under an innocent mistake, or does not clearly relate to the transaction as to which he refuses to testify. In Low v. Mitchell, 18 Me. 372, it

was held that, if the witness consents to testify to one matter tending to criminate himself, he must testify in all respects relating to that matter, so far as material to the issue; that if he waives the privilege, he does so fully in relation to that act, but he does not thereby waive his privilege of refusing to reveal other unlawful acts, wholly unconnected with the act of which he has ****656** spoken, even though they may be material to the issue.

It seems to us that it is a just and correct rule that if a witness, with full knowledge of his rights, consents to testify about the very matter that may criminate him, without claiming his privilege, he must submit to a full, legitimate cross-examination in reference thereto. Otherwise a witness would have it in his power to make a partial statement of a matter, to the detriment of one party, without any adequate means of relief. The following authorities bear on the subject: Foster v. Pierce, 11 Cush. 437;Com. v. Price, 10 Gray, 472;Com. v. Pratt, 126 Mass. 462;Com. v. Trider, 143 Mass. 180, 9 N. E. 510;State v. K., 4 N. H. 562;Amherst v. Hollis, 9 N. H. 107;State v. Foster, 23 N. H. 348;Coburn v. Odell, 30 N. H. 540;Chamberlain v. Willson, 12 Vt. 491;Norfolk v. Gaylord, 28 Conn. 309;People v. Freshour, 55 Cal. 375;State v. Nichols, 29 Minn. 357;Foster v. People, 18 Mich. 266;Lombard v. Mayberry,***23** 24 Neb. 674, 40 N. W. 271; 2 Phil. Ev. p. 929 et seq.

In Counselman's Case, supra, he was examined before a grand jury, and, in reply to questions, stated that he was a grain dealer, and had shipments of grain over certain lines of railroad. When interrogated as to rates of freight secured less than the tariff or open rate, and as to rebates, he refused to answer. While freely admitting that he received freights over certain lines, he stated that he did not recollect of shipping over other lines mentioned. It was not insisted on the part of the government that the witness had waived his privilege by answering some questions, and the court makes no reference to this matter in its opinion; but, as the party was discharged, it is evident that the court did not consider he had waived his privilege. The privilege claimed in the case of People v. Forbes, supra, was also in an examination before a grand jury when the conduct of students at Cornell University was being investigated. The witness, who was a student, answered that he had no connection whatever with the transaction being investigated; but, when questioned as to particular facts connected with it, he claimed his privilege, and refused to answer. The court was of the opinion that the witness, by answering the general questions as to his connection with the affair, whether his answers were true or false, did not waive his right to remain silent when it was sought to draw from him some fact or circumstance which, in his judgment, might form another link in the chain of facts, capable of being used, under any circumstances, to his detriment. Under the peculiar surroundings of that investigation, it presented a case, in the judgment of the court, where the witness might claim his privilege as to collateral circumstances ***24** that tended to imperil him. The question presented in Amherst v. Hollis, supra, was whether or not a certain person was a pauper, and therefore a charge upon a town. The witness stated that he was destitute of property during the time for which the charge was made, and, upon further inquiry, admitted that he had considerable money three or four years previously, but that the money had gone to adjust matters which he could not disclose without exposing himself to criminal prosecution. After admitting the rule that a witness should not be compelled to criminate himself, and observing that there were cases in which a witness could not be heard to relate a part of a transaction and refuse to disclose the rest, the court held that the testimony sought to be elicited, although not entirely independent of the facts the witness had testified about, was so far distinct that he was authorized to claim the privilege. The court said that: 'When asked, in the first place, if he was destitute of property, there is no obvious propriety in his alleging that he could not disclose that without subjecting himself to a prosecution. If he had gone on to speak in part of the disposition that had been made of his property, it might have presented a different case.'The cases present illustrations of witnesses testifying in part without being fully advised of their danger and right of privilege, and of the allowance of the privilege by the court after the witness was informed on the subject. The court should inform the witness of his rights, when the circumstances of the case call for it; and there are instances where the privilege has been allowed after the witness had spoken, when it was evident that he had spoken in ignorance of his rights, and in such cases all the testimony, as to which a full ***25** examination could not be allowed, may be stricken out.

There is also, it appears, a distinction between the case of a witness proper and an accomplice, or a party in interest. An accomplice admits his guilt, and seeks to

implicate others, and it is not apparent why he should claim immunity from exposure about the very matter which he is willing to confess. As to distinct, collateral matters, it may be different. When a party in interest volunteers to testify in his own behalf, the rule seems to be not so liberal in his favor as in the case of a disinterested witness who is summoned to testify in controversies between others. Statutes have been passed in several of the states, as was done here at the last session of the legislature, permitting defendants to testify in their own behalf; and under such statutes, when the defendant elects to testify, the question arises as to the extent he must submit to a full cross-examination. Statutes have also been enacted in several states providing that witnesses shall be required to testify in certain cases, and, when they do so, that their statements shall not be used against them in any subsequent prosecution. There is a review of the decisions under such statutes in Counselman's Case. We have no statute on the subject, so far as the present case is concerned. All we know of the proceeding in which the **657 claim of privilege was insisted on in the present case is that petitioner was called and examined as a witness for the respondent in a quo warranto case involving the right to the office of mayor of the city of Pensacola under the recent election held for that purpose on the 4th of June, last. The petitioner, after being fully advised of his rights, testified that he voted for respondent in the quo warranto case, and that his ballot was received by *26 the inspectors. It is not questioned here, and we must assume it to be the fact, that the testimony voluntarily given by the witness was admissible and material in the case. The office of mayor of the city of Pensacola is elective, and the election held in June, 1895, was conducted under the general law governing state elections existing at the last state election. Section 2787, Rev. St., provides that 'whoever casts knowingly an illegal vote at any election in this state held according to law, shall be punished by imprisonment in the state prison not exceeding six months, or by fine not exceeding one hundred dollars.'The provisions of this statute are broad enough to cover illegal voting at municipal elections, and one who knowingly cast an illegal vote at the election in question would be subject to the penalties of the statute. No question is made of this in the present case, nor is it doubted that a voter at said election, when called on to testify as to voting, would be entitled to the privilege of silence, if his testimony would tend to bring upon him the penalties of the statute.State v. Olin, 23 Wis. 309. The petitioner, then, was not compelled to state whether he voted at all at the election in question, if his answers would tend to criminate him; but, after being duly advised by the court, he voluntarily stated that he voted, and for whom he voted. This statement, in the absence of any other showing, tended to establish the fact of a valid vote for the party for whom the ballot was cast; and it also included the principal or essential criminating charge against the voter, if he, as a matter of fact, had knowingly voted when he did not possess the requisite qualifications. Whether or not the vote was legal and entitled to be counted, depended upon prescribed qualifications of the voter; and we are of the *27 opinion that a proper application of the rule demands that the petitioner should answer the questions touching his qualifications as a voter, after he had willingly stated that he had voted at the election. It is a just and reasonable requirement that a witness shall not be allowed, by an arbitrary use of his privilege, to make a partial statement of facts, to the prejudice of either party to the suit. It is stated in State v. Olin, supra, that a person who has voted at an election is always considered as a party, when the result of the election is in controversy; and, from this standpoint, the rule as to subjecting interested parties to a full cross-examination would have more or less effect.

The strongest authority relied on for petitioner is the decision in Counselman's Case, but we think there is a clear distinction between that case and the present one. The matter testified about by Counselman-shipping of grain over railroads-was not criminal, nor did it contain any elements of criminality. The crime consisted in paying a less freight than the tariff or open rate, and, when asked about this matter, he refused to disclose anything about it. He stopped on the border of the criminating matter, and the case presented no ground of waiver of privilege as to such matter. The distinction is sharply drawn in the pauper case from New Hampshire. If petitioner was not a qualified person to vote at the city election, the crime of illegal voting was consummated in the act of casting his ballot, which is the principal criminating act; and, having gone into this matter with full knowledge, he should state the matters tending to develop his qualifications as a voter.

*28 Our conclusion is that the petitioner should be remanded to the custody of the sheriff of Escambia county. Order to be entered accordingly.

Fla. 1896
Ex parte Senior
32 L.R.A. 133, 37 Fla. 1, 19 So. 652

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Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – DOUBLE JEOPARDY – COLLATERAL ESTOPPEL- RES JUDICATA

NOW COMES, Scott Huminski ("Huminski"), and, moves as above, because Huminski multiple prosecutions for the same offense are barred by double jeopardy and collateral estoppel. A criminal contempt prosecution remains in 17-CA-421 that is identical to this prosecution. Multiple prosecutions are barred. See Blockburger v. U.S., 284 U.S. 299 (1932). Stated simply, the "Blockburger" test asks whether each offense contains an element which the other does not. If they do not each contain an element which the other lacks, then the offenses are the "same offense" and Double Jeopardy will apply. See full explanation below by the Florida Supreme Court on double jeopardy (multiple prosecutions) and res judicata in a criminal context.

3 So.3d 1067 (2009)

Eli Enrique VALDES, Petitioner,
v.
STATE of Florida, Respondent.

No. SC07-2256.

Supreme Court of Florida.

January 30, 2009.
Rehearing Denied February 25, 2009.

1068*1068 Carlos J. Martinez, Public Defender, and Maria E. Lauredo, Assistant Public Defender, Eleventh Judicial Circuit, Miami, FL, for Petitioner.

Bill McCollum, Attorney General, Tallahassee, FL, Richard L. Polin, Bureau Chief, Joshua R. Heller, and Jill D. Kramer, Assistant Attorneys General, Miami, FL, for Respondent.

PARIENTE, J.

The issue before us involves double jeopardy — specifically whether dual convictions for discharging a firearm from a vehicle within 1000 feet of a person in violation of section 790.15(2), Florida Statutes (2003), and shooting into an occupied vehicle in violation of section 790.19, Florida Statutes (2003), arising from the same criminal episode, violate double jeopardy. The Third District Court of Appeal in *Valdes v. State*, 970 So.2d 414 (Fla. 3d DCA 2007), concluded that no double jeopardy violation occurred from the dual convictions and certified conflict with *Lopez-Vazquez v. State*, 931 So.2d 231 (Fla. 5th DCA 2006), which reached the opposite conclusion. We have jurisdiction. *See* art. V, § 3(b)(4), Fla. Const.

We reach two related conclusions in this case. First, because we conclude that our prior double jeopardy jurisprudence announcing the "primary evil" standard has proven difficult to apply and has strayed from the plain language of the governing statute, we now adopt the approach set forth in Justice Cantero's special concurrence in *State v. Paul*, 934 So.2d 1167 (Fla.2006). Thus, we hold that section 775.021(4)(b)(2), Florida Statutes (2008), prohibits "separate punishments for crimes arising from the same criminal transaction only when the *statute* itself provides for an offense with multiple degrees." *Paul*, 934 So.2d at 1176 (Cantero, J., specially concurring). Second, by applying this simple test to this case we conclude that dual convictions under 790.15(2) and section 790.19 do not violate the prohibition against double jeopardy. Accordingly, we approve the result in *Valdes* and disapprove *Lopez-Vazquez*.

FACTS

Valdes, who was driving his own vehicle, pulled up next to a vehicle being driven by Rocio Rodriguez, in which her sister, Natalie Gianella, and Rodriguez's minor daughter were passengers. Gianella, Rodriguez, and Valdes knew each other and had previous disputes. Valdes rolled down his window, as did Gianella, and the two began arguing. Valdes pulled out a gun, and Gianella began laughing at him. When the light turned green and the vehicle started to move, Valdes began shooting at the vehicle, firing four or five shots. Gianella was struck in the arm and foot. Valdes was charged with three counts of attempted second-degree murder with a firearm and one count each of discharging a firearm from a vehicle within 1000 feet of a person in violation of section 790.15(2), Florida Statutes (2003), and shooting into an occupied vehicle in violation of section 790.19, Florida Statutes (2003).[1] The jury found Valdes guilty as charged on all 1069*1069 counts and he was sentenced to concurrent thirty-year prison terms on each count.

On appeal to the Third District, Valdes argued in pertinent part that his dual convictions for discharging a firearm from a vehicle within 1000 feet of a person and shooting into an

occupied vehicle violated double jeopardy. In evaluating whether Valdes's convictions fell under the subsection (4)(b)(2) exception to the *Blockburger*[2] test as codified in section 775.021(4), that the offenses are degrees of the same offense, the Third District recognized that "[o]ffenses are considered degree variants of the same core offense where both crimes intend to punish the `same primary evil.'" *Valdes*, 970 So.2d at 419 (citing *Paul*, 934 So.2d at 1175). The court acknowledged the decision of the Fifth District Court of Appeal in *Lopez-Vazquez*, in which the Fifth District concluded that convictions under sections 790.15(2) and 790.19, arising from the same criminal episode, violate double jeopardy. *Valdes*, 970 So.2d at 419.

In the conflict case of *Lopez-Vazquez*, the Fifth District described these facts: "[A]n incident of road rage escalated into extreme acts of violence, culminating in the attempt by Vazquez to take the life of the victim. As Vazquez sat in his vehicle, he fired his weapon into the vehicle occupied by the victim, wounding the victim in the arm." 931 So.2d at 232. The Fifth District concluded that the offenses of discharging a firearm from a vehicle within 1000 feet of a person in violation of section 790.15(2) and shooting into an occupied vehicle in violation of section 790.19 shared the same core offense of battery. *Id.* at 235. The Third District disagreed not only with this conclusion but also with the Fifth District's conclusion that the primary evil punished by the two statutes in question "`is the endangerment of the safety of those who may be struck by the discharge from the firearm,' and that both of these offenses share the same evil." *Valdes*, 970 So.2d at 419 (citation omitted). These diametrically opposed decisions applying the same precedent give rise to the certified conflict in this case.[3]

ANALYSIS

Double Jeopardy Principles

The most familiar concept of the term "double jeopardy" is that the Constitution prohibits subjecting a person to multiple prosecutions, convictions, and punishments for the same criminal offense. The constitutional protection against double jeopardy is found in both article I, section 9, of the Florida Constitution and the Fifth Amendment to the United States Constitution, which contain double jeopardy clauses.[4] Despite this constitutional protection, there is no constitutional prohibition against multiple punishments for different offenses arising out of the same criminal transaction as long as the Legislature intends to authorize separate punishments. *See* *Hayes v. State*, 803 So.2d 695, 699 (Fla.2001) ("As the United States Supreme Court explained in *Brown v. Ohio*, 432 U.S. at 161, 165, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977), where multiple punishments are imposed at a single trial, `the role of the constitutional guarantee against 1070*1070 double jeopardy is limited to assuring that the court does not exceed its legislative authorization by imposing multiple punishments arising from a single criminal act.'"); *Borges v. State*, 415 So.2d 1265, 1267 (Fla.1982) ("The Double Jeopardy Clause `presents no substantive limitation on the legislature's power to prescribe multiple punishments,' but rather, `seeks only to prevent courts either from allowing multiple prosecutions or from imposing multiple punishments for a single, legislatively defined offense.'") (quoting *State v. Hegstrom*, 401 So.2d 1343, 1345 (Fla. 1981)). As we recognized in *Gordon v. State*, 780 So.2d 17 (Fla.2001):

The prevailing standard for determining the constitutionality of multiple convictions for offenses arising from the same criminal transaction is whether the Legislature "intended to authorize separate punishments for the two crimes." *M.P. v. State*, 682 So.2d 79, 81 (Fla.1996); *see State v. Anderson*, 695 So.2d 309, 311 (Fla. 1997) ("Legislative intent is the polestar that guides our analysis in double jeopardy issues...."). Absent a clear statement of legislative intent to authorize separate punishments for two crimes, courts employ the *Blockburger* test, as codified in section 775.021, Florida Statutes (1997), to determine whether separate offenses exist. *See Gaber v. State*, 684 So.2d 189, 192 (Fla.1996) ("[A]bsent an explicit statement of legislative intent to authorize separate punishments for two crimes, application of the *Blockburger* `same-elements' test pursuant to section 775.021(4) ... is the sole method of determining whether multiple punishments are double-jeopardy violations.") (footnote omitted).

Gordon, 780 So.2d at 19-20 (footnote omitted).

In this case there is no clear statement of legislative intent to authorize or to prohibit separate punishments for violations of sections 790.15(2) and 790.19.[5]Both parties and both district courts of appeal agree with this simple conclusion. Because there is no clear legislative intent to be discerned, the next inquiry is whether separate punishments for the two convictions violate the *Blockburger* test, as codified in section 775.021(4). That section provides:

(4)(a) Whoever, in the course of one criminal transaction or episode, commits 1071*1071 an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.
(b) The intent of the Legislature is to convict and sentence for each criminal offense committed in the course of one criminal episode or transaction and not to allow the principle of lenity as set forth in subsection (1) to determine legislative intent. Exceptions to this rule of construction are:
1. Offenses which require identical elements of proof.
2. Offenses which are degrees of the same offense as provided by statute.
3. Offenses which are lesser offenses the statutory elements of which are subsumed by the greater offense.

§ 775.021(4), Fla. Stat. (2003).

It is undisputed that sections 790.15(2) and 790.19 each contain an element that the other does not. Shooting from a vehicle in violation of section 790.15(2) requires proof of two elements: (1) the defendant knowingly and willfully discharged a firearm from a vehicle; and (2) the discharge occurred within 1000 feet of any person. § 790.15(2), Fla. Stat. (2003). In contrast, section 790.19 requires proof of the following three elements: (1) the defendant shot a firearm; (2) he or she did so at, within, or into a vehicle of any kind that was being used or occupied by any person; and (3) he or she did so wantonly or maliciously. § 790.19, Fla. Stat. (2003). Thus, separate convictions for these two offenses are authorized unless the offenses fit within one of the three exceptions in section 775.021(4)(b).

There is likewise no dispute that the first and third exceptions under subsection (4)(b) do not apply to the offenses at issue; the offenses do not require identical elements of proof and the offenses are not lesser offenses the statutory elements of which are subsumed by the greater offense. The focus in this case, as in many other recent cases from this Court, is subsection (4)(b)(2)-whether the offenses "are degrees of the same offense as provided by statute." We now answer that question by first reviewing our case law interpreting subsection (4)(b)(2), and then explaining why we adopt the approach set forth in Justice Cantero's special concurrence in *State v. Paul*, 934 So.2d 1167 (Fla.2006).

This Court's Jurisprudence Interpreting Section 775.021(4)(b)(2)

More than twenty years ago, this Court recognized that there was considerable confusion in the law of this state concerning the proper method of construing criminal statutes in light of the prohibition against double jeopardy. *See Carawan v. State*, 515 So.2d 161, 164-68 (Fla.1987), *superseded by statute,* ch. 88-131, § 7, Laws of Fla. In an attempt to alleviate some of the confusion, we set forth rules of construction to address the issue of whether a single act could be the basis for multiple convictions:

> The first is that "specific, clear and precise statements of legislative intent control" and "courts never resort to rules of construction where the legislative intent is plain and unambiguous." [*Carawan*, 515 So.2d] at 165. The second step, absent a specific statement of legislative intent in the criminal offense statutes themselves, is to apply section 775.021(4),[6] codifying *Blockburger v.* 1072*1072 *United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), to the statutory elements of the criminal offenses. We added judicial gloss by assuming that the legislature "does not intend to punish the same offense under two different statutes," and that the courts should not mechanically apply section 775.021(4) so as to obtain "unreasonable results." *Carawan*,515 So.2d at 167. Subsection 775.021(4) was to be treated as an "aid" in determining legislative intent, not as a specific, clear, and precise statement of such intent. To assist in this analysis, courts are to make a subjective determination of whether the two statutory offenses address the "same evil." *Id.* at 168. The third rule or step is the application of the rule of lenity codified as section 775.021(1), Florida Statutes (1985).[n. 4] We recognized that application of the rule of lenity in subsection (1) might lead to a result contrary to that obtained by applying the statutory elements test of the offenses per subsection (4). We opined that the two rules only come into play when there is no specific statement of legislative intent in the criminal offense statute itself, i.e., when there is doubt about legislative intent. Thus we concluded that, by its terms, the rule of lenity controls and prohibits multiple punishments for the two offenses, even if each contains a unique statutory element and are separate offenses under subsection 775.021(4).
> [N.4] "(1) The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused." § 775.021(1), Fla. Stat. (1985).

State v. Smith, 547 So.2d 613, 615 (Fla. 1989), *superseded by statute,*ch. 88-131, § 7, Laws of Fla. However, during the next legislative session following *Carawan*, the Legislature effectively overruled *Carawan* by amending section 775.021(4) to include a specific statement of legislative intent:

> (4) (a) Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the

sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.
(b) The intent of the Legislature is to convict and sentence for each criminal offense committed in the course of one criminal episode or transaction and not to allow the principle of lenity as set forth in subsection (1) to determine legislative intent. Exceptions to this rule of construction are:
1. Offenses which require identical elements of proof.
2. Offenses which are degrees of the same offense as provided by statute.
3. Offenses which are lesser offenses the statutory elements of which are subsumed by the greater offense.

1073*1073 Ch. 88-131, § 7, Laws of Fla. (additions underlined).

In the years since the statutory amendment, we have endeavored to give meaning to subsection (4)(b)(2), such that criminal defendants, defense attorneys, prosecutors, and lower courts can easily interpret this statutory exception to the *Blockburger* test. In *Sirmons v. State*, 634 So.2d 153 (Fla.1994), this Court considered whether robbery with a weapon and grand theft of an automobile constituted degree variants of the same core offense under subsection (4)(b)(2). This Court determined that Sirmons's dual convictions for these offenses, arising out of a single taking of an automobile at knife point, violated double jeopardy. This Court reasoned that the dual convictions were impermissible under subsection (4)(b)(2) because the offenses were aggravated forms of the same underlying core offense of theft, distinguished only by degree factors. *Id.* at 154. In doing so, this Court relied on earlier decisions in which it found that dual convictions for other crimes that were also aggravated forms of theft violated double jeopardy. *See id.*at 153-54 (citing *State v. Thompson*, 607 So.2d 422 (Fla.1992); *Johnson v. State*,597 So.2d 798 (Fla.1992)).

Three years later, in *State v. Anderson*, 695 So.2d 309 (Fla.1997), this Court held that the prohibition against double jeopardy was violated where the defendant was charged and convicted of both committing perjury in an official proceeding and providing false information in an application for bail, based on a single lie. *Id.* at 310. This Court extended its holding in *Sirmons*, concluding that two offenses can be considered "degree variants" of the same underlying crime, even if they are not denoted in the same statutory chapter. *Anderson*, 695 So.2d at 311.

However, in *Gordon v. State*, 780 So.2d 17 (Fla.2001), this Court narrowed its holding in *Sirmons* when it approved a decision affirming the defendant's convictions for attempted first-degree murder, aggravated battery, and felony causing bodily injury:

Extended to its logical extreme, a broad reading of *Sirmons* and the second statutory exception would render section 775.021 a nullity. Indeed, the plethora of criminal offenses is undoubtedly derived from a limited number of "core" crimes. In no uncertain terms, the Legislature specifically expressed its intent that criminal defendants should be convicted and sentenced for every crime committed during the course of one criminal episode. *See* § 775.021(4)(b). The courts' exceptions for homicides, which are discussed below, and theft, where the nature of the crime is often defined by degree of the violation, are consistent with the limited statutory exception. However, extension of this exception to multiple convictions

for attempted first-degree murder, aggravated battery, and felony causing bodily injury would contravene the plain meaning of section 775.021.

Gordon, 780 So.2d at 23. While emphasizing "the continued viability of the `core offense' construction of the second statutory exception[,]" the Court adopted an approach articulated by Justice Shaw in his dissenting opinion in *Carawan*,whereby courts must discern what "primary evil" a specific offense is intended to punish to determine whether offenses are degree variants of the same offense. *Gordon*, 780 So.2d at 23-24. Justice Shaw noted:

The primary evil of aggravated battery is that it inflicts physical injury on the victim; the primary evil of attempted homicide is that it *may*inflict death, there is no requirement that the state prove any physical injury. The two statutes are not addressed to the same evil. The relationship between aggravated 1074*1074 battery and attempted homicide is different than that between aggravated battery and actual, not attempted, homicide.

Carawan, 515 So.2d at 173 (Shaw, J., dissenting). Applying the "primary evil" test in *Gordon*, this Court found that the separate evils of intending to kill (attempted murder), seriously injuring someone (aggravated battery), and injuring someone during the commission of a felony (felony causing bodily injury), are sufficiently different that they warrant separate punishment. 780 So.2d at 23. Thus, the Court concluded that no double jeopardy violation occurred because the offenses were not degree variants of the same underlying offense. *Id.* at 25.

This Court again applied the "primary evil" test in *State v. Florida*, 894 So.2d 941 (Fla.2005), to dual convictions for aggravated battery on a law enforcement officer and attempted second-degree murder with a firearm.[7] The Court concluded: "The primary evil of aggravated battery is an intentional, nonconsensual touching or striking, whereas the primary evil of attempted second-degree murder is the potential of the defendant's act to cause death. The evil of battery omits lethal potential, and the evil of attempted second-degree murder omits victim contact." *Id.* at 949. Based on the offenses' distinct primary evils, the Court found that the offenses were not degree variants of the same core offense, and thus no double jeopardy violation occurred. *Id.*

This Court most recently applied the second statutory exception in *State v. Paul*,934 So.2d 1167 (Fla.2006). There, the Court considered, inter alia, whether the defendant's dual convictions for lewd and lascivious conduct by rubbing his penis on the victim's stomach and lewd and lascivious conduct by intentionally exposing his penis to the victim, arising out of the same act, resulted in double jeopardy. *Id.*at 1174.[8] Finding that each of the offenses required separate elements that the other did not, the Court proceeded to determine whether any of the statutory exceptions applied. *Id.* at 1174-75. The Court concluded that the first and third exceptions did not apply. *Id.* at 1175. As to the second exception, the Court noted that both offenses stemmed from the same crime of lewd, lascivious, or indecent assault or act upon or in the presence of a child, but found that the crimes were not intended to punish the same evil: "[O]ne forbids lewd or lascivious exhibition; and the other prohibits lewd or lascivious touching." *Id.* Thus, the Court found that the two crimes were not degree variants of the same core offense and subsection (4)(b)(2) did not apply. *Id.*

Justice Cantero wrote a special concurrence in *Paul* in which he expressed his "discomfort" with the Court's continued reliance on the "primary evil" or "same evil" test articulated in *Carawan*, but abrogated by statutory amendment. *Id.* at 1176 (Cantero, J., specially

concurring). Justice Cantero concluded that by looking beyond the statute to determine whether two offenses seek to punish the "same evil," the majority defied legislative intent because the plain language of the statute does not mention the "same evil" test. *Id.* Rather, the statute "simply prohibits separate punishments for crimes that `are degrees of the same offense *as provided by* 1075*1075 *statute.*'" *Id.* (quoting § 775.021(4)(b)(2), Fla. Stat. (1999)). Therefore, Justice Cantero reasoned, "[t]he Legislature intend[ed] to disallow separate punishments for crimes arising from the same criminal transaction only when the *statute* itself provides for an offense with multiple degrees." *Paul*, 934 So.2d at 1176 (Cantero, J., specially concurring).

The dissent in *Paul* asserted that Justice Cantero's approach came closer to the statutory language than the "primary evil" construction of the second exception, 934 So.2d at 1180 (Pariente, J., concurring in part and dissenting in part), but urged a return to the *Sirmons* line of precedent and an interpretation of the second exception "that exempts from the presumption of multiple convictions those statutory offenses that are degree variants of a common core offense." *Id.* at 1182. The dissent concluded that the offenses of lewd or lascivious conduct by exhibition and lewd or lascivious conduct by touching "are separate evils within the meaning of *Florida* and *Gordon,* which found battery and attempted murder to be separate evils, but they derive from the same core offense of lewd or lascivious conduct involving children." *Id.* at 1180.

The Proper Test for Double Jeopardy under Section 775.021(4)(b)(2)

In *Valdes* and *Lopez-Vazquez,* the Third and Fifth Districts applied the "primary evil" test, as set forth in the *Gordon, Florida,* and *Paul* line of cases, to determine whether a defendant's dual convictions under sections 790.15(2) and 790.19, arising out of the same episode, violate double jeopardy. Despite the fact that both the Third District and the Fifth District used the same "primary evil" test, the appellate courts reached different conclusions as to what constituted the "primary evil" of each statute. This occurred in part because the "primary evil" is not specifically found in any one source and the Legislature does not define new criminal offenses by stating the "primary evil" the statute addresses. Not only have the district courts struggled with the application of the "primary evil" test, but over the years this Court has also struggled to craft a consistent interpretation that would provide guidance to trial and district courts.

We conclude that the "primary evil" test defies legislative intent because it strays from the plain meaning of the statute. *See* *Ohio v. Johnson*, 467 U.S. 493, 499, 104 S.Ct. 2536, 81 L.Ed.2d 425 (1984) ("Because the substantive power to prescribe crimes and determine punishments is vested with the legislature, the question under the Double Jeopardy Clause whether punishments are `multiple' is essentially one of legislative intent."); *Anderson*, 695 So.2d at 311 ("Legislative intent is the polestar that guides our analysis in double jeopardy issues...."); *State v. Sousa*, 903 So.2d 923, 928 (Fla.2005) ("The fundamental rule of construction in determining legislative intent is to first give effect to the plain and ordinary meaning of the language used by the Legislature."). By applying the "primary evil" gloss to the second statutory exception, we have added words that were not written by the Legislature in enacting the double jeopardy exceptions of section 775.021(4) and specifically subsection (4)(b)(2). Rather, this exception simply states that there is a prohibition against multiple punishments for offenses which are "degrees of the same

offense." There is no mention of "core offense" and certainly no mention of "primary evil." Further, there is no rule of construction that would compel this Court to require such an analysis based on constitutional considerations. *Compare* Larimore v. State, 2 So.3d 101, 107 (Fla.2008), *as revised on denial of rehearing,*No. SC06-139 (Fla. Jan. 29, 2009) ("Although Larimore has not raised a constitutional challenge to the Act, because the Act can impose on an individual substantial deprivation of liberty-one 1076*1076 that is of indeterminate duration — our construction of the Act must be conducted with due regard to the basic tenets of fairness and due process.'") (quoting State v. Atkinson, 831 So.2d 172, 174 (Fla. 2002)). There is no constitutional prohibition against narrowly interpreting double jeopardy exceptions precisely because there is no constitutional prohibition against multiple punishments for different offenses arising out of the same criminal episode, as long as the Legislature intends such punishments. *See* Hayes, 803 So.2d at 699.

We therefore adopt the approach proposed by Justice Cantero in his special concurrence in *Paul* — an approach we deem to be both easy to apply in practice and deferential to the legislative prerogative inherent in defining crimes and crafting punishments. With these overarching principles in mind, we conclude, as Justice Cantero did in his special concurrence in *Paul,* that the plain meaning of the language of subsection (4)(b)(2), providing an exception for dual convictions for "[o]ffenses which are degrees of the same offense as provided by statute," is that "[t]he Legislature intends to disallow separate punishments for crimes arising from the same criminal transaction only when the *statute* itself provides for an offense with multiple degrees." 934 So.2d at 1176 (Cantero, J., specially concurring). "When necessary, the plain and ordinary meaning of words [in a statute] can be ascertained by reference to a dictionary." Seagrave v. State, 802 So.2d 281, 286 (Fla.2001). The term "degree" has a plain meaning in this context — "a level based on the seriousness of an offense." *Black's Law Dictionary* 456 (8th ed.2004). In providing an exception to *Blockburger* for those offenses that are degrees of each other, subsection (4)(b)(2) does not mention whether two offenses share a "core offense" or whether two offenses share a "primary evil." Instead,

> The statute itself creates an exception for crimes that "are degrees of the same offense *as provided by statute*." § 775.021(4)(b)(2), Fla. Stat. (1999) (emphasis added). By its very language, this exception is intended to apply narrowly. It prohibits separate punishments only when a criminal statute provides for variations in degree of the same offense, so that the defendant would be punished for violating two or more degrees of a single offense. *See* Sirmons v. State, 634 So.2d 153, 156 (Fla.1994) (Grimes, J., dissenting) (highlighting the phrase "as provided by statute" and concluding that the "Court's obligation is to apply the statute as it is written"). One example is the theft statute, which expressly identifies three degrees of grand theft and two degrees of petit theft. *See* § 812.014, Fla. Stat. (2005). Another is the homicide statute, which expressly identifies three degrees of murder, as well as multiple forms of manslaughter. *See id.* §§ 782.04, 782.07. Yet another is arson, which has two degrees. *See id.* § 806.01. It is in such cases, and only such cases, that the exception was intended to apply.

Paul, 934 So.2d at 1177-78 (Cantero, J., specially concurring) (footnote omitted). It is not necessary for the Legislature to use the word "degree" in defining the crime in order for the degree variant exception to apply. There are other statutory designations that can evince a relationship of degree-for example, when a crime may have aggravated forms of the basic offense. *See id.* at 1178 n. 5.

We acknowledge that stare decisis "counsels us to follow our precedents unless there has been `a significant change in circumstances after the adoption of the legal rule, or ... an error in legal analysis.'" *Rotemi Realty, Inc. v. Act Realty Co.*, 911 So.2d 1181, 1188 (Fla.2005) (quoting 1077*1077 *Dorsey v. State*, 868 So.2d 1192, 1199 (Fla.2003)). Nonetheless, the presumption in favor of stare decisis may be overcome upon a consideration of the following factors:

(1) Has the prior decision proved unworkable due to reliance on an impractical legal "fiction"? (2) Can the rule of law announced in the decision be reversed without serious injustice to those who have relied on it and without serious disruption in the stability of the law? And (3) have the factual premises underlying the decision changed so drastically as to leave the decision's central holding utterly without legal justification?

Strand v. Escambia County, 992 So.2d 150, 159 (Fla.2008) (quoting *North Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So.2d 612, 637 (Fla.2003)); *see also State v. Green* 944 So.2d 208, 217 (Fla.2006) ("Fidelity to precedent provides `stability to the law and to the society governed by that law.' However, the doctrine `does not command blind allegiance to precedent.' Stare decisis yields `when an established rule of law has proven unacceptable or unworkable in practice.'") (citations omitted). We conclude that the factors that favor adherence to precedent are not met in this case, and therefore we recede from our precedent in *Gordon, Florida,* and *Paul,* in which we announced and applied the "primary evil" test. The "primary evil" test has proven unworkable, as evidenced by the difficulty experienced by trial courts, district courts, and this Court in attempting to apply the test. Moreover, abandoning the test will not result in a "serious injustice to those who have relied on it" or cause "disruption in the stability of the law." The test was first introduced only eight years ago in *Gordon* and represented yet another approach in a long line of conflicting tests set forth to aid interpretation of the second statutory exception. In fact, our decision to recede from this precedent will bring a stability to the law concerning this exception, and to double jeopardy in general, that has been absent for the last twenty years. Also, it will bring such stability in a manner that most comports with legislative intent and the plain meaning of the second statutory exception.

Accordingly, we conclude that the only offenses that fall under subsection (4)(b)(2), are those that constitute different degrees of the same offense, as explicitly set forth in the relevant statutory sections.[9]

Application of Subsection (4)(b)(2) to the Offenses in this Case

Under the approach we adopt today, dual convictions for the two offenses at issue in this case, discharging a firearm from a vehicle within 1000 feet of a person in violation of section 790.15(2), Florida Statutes, and shooting into an occupied vehicle in violation of section 790.19, Florida Statutes, do not satisfy the second statutory exception because the two offenses are found in separate statutory provisions; neither offense is an aggravated form of the other; and they are clearly not degree variants of the same offense. This is in contrast to sections 790.15(1), 790.15(2), and 790.15(3),[10] which are explicitly degree 1078*1078 variants of the same offense.[11] We thus approve the result reached by the Third District in *Valdes* in concluding that dual convictions for these two offenses do not violate the prohibition against double jeopardy.[12]

CONCLUSION

Based on the foregoing, we approve the result reached by the Third District in *Valdes,* but not the reasoning, and we disapprove both the result and reasoning in *Lopez-Vazquez.*

It is so ordered.

WELLS, CANADY, and POLSTON, JJ., and ANSTEAD, Senior Justice, concur.

QUINCE, C.J., and LEWIS, J., dissent.

[1] Valdes was also charged with possession of a firearm by a convicted felon, but that count was severed from the other offenses.

[2] *Blockburger v. United States,* 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932).

[3] Valdes does not challenge his convictions for attempted second-degree murder in this appeal.

[4] Article 1, section 9, of the Florida Constitution provides in pertinent part: "No person shall ... be twice put in jeopardy for the same offense." Art. I, § 9, Fla. Const. Similarly, the Fifth Amendment to the United States Constitution provides that no person shall be "subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V.

[5] Section 790.15 provides in pertinent part:

790.15 Discharging firearm in public. —

(1) Except as provided in subsection (2) or subsection (3), any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street or whosoever knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. ...

(2) Any occupant of any vehicle who knowingly and willfully discharges any firearm from the vehicle within 1,000 feet of any person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

§ 790.15, Fla. Stat. (2003). Section 790.19 provides in pertinent part:

790.19 Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles. —

[6] At the time, section 775.021(4) provided only:

Whoever, wantonly or maliciously, shoots at, within, or into, or throws any missile or hurls or projects a stone or other hard substance which would produce death or great bodily harm, at, within, or in any public or private building, occupied or unoccupied, or public or private bus or any train, locomotive, railway car, caboose, cable railway car, street railway car, monorail car, or vehicle of any kind which is being used or occupied by any person, ... shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or 775.084.

§ 790.19, Fla. Stat. (2003).

[7] These convictions represented lesser-included offenses of the charged crimes of attempted first-degree murder of a law enforcement officer and attempted first-degree murder. *Id.* at 943.

[8] The defendant was also convicted of lewd or lascivious molestation by touching the same victim's genital area and lewd or lascivious conduct by kissing the victim's neck, arising out of a single act briefly preceding the act in question, but in a different room. *Id.* at 1170.

[9] We note that when we applied the "primary evil" test in *Gordon*, *Florida*, and *Paul*, we found that the second statutory exception was not met and therefore double jeopardy did not apply. The same result in those cases would be reached by an application of the plain language of the "degree" exception.

[10] Section 790.15 provides in its entirety:

(1) Except as provided in subsection (2) or subsection (3), any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street or whosoever knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry.

(2) Any occupant of any vehicle who knowingly and willfully discharges any firearm from the vehicle within 1,000 feet of any person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, who knowingly directs any other person to discharge any firearm from the vehicle commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

[11] Numerous examples of degree variants are found throughout Florida Statutes. Many of these examples would satisfy both the second and third statutory exception to the *Blockburger* test, in that they would constitute "degrees of the same offense as provided by statute" (subsection 4(b)(2)) and "lesser offenses the statutory elements of which are subsumed by the greater offense" (subsection 4(b)(3)). However, note that if a defendant received multiple convictions under sections 790.15(1),790.15(2), and 790.15(3), the offenses would satisfy the second statutory exception, but not the third.

[12] We note that this case involves a circumstance where, because one criminal act gave rise to multiple separate offenses, double jeopardy is not violated. Thus, the circumstance in this case is distinguishable from cases in which double jeopardy is not a concern because multiple convictions occurred based on two distinct criminal acts. *See* *Paul*, 934 So.2d at 1172 n. 3 ("Of course, if two convictions occurred based on two distinct criminal acts, double jeopardy is not a concern.") (citing *Hayes*, 803 So.2d at 700).

848 So.2d 287 (2003)

STATE of Florida, Petitioner,
v.
Antoine L. McBRIDE, Respondent.

No. SC02-627.

Supreme Court of Florida.

May 15, 2003.

288*288 Charles J. Crist, Jr., Attorney General, and Robin A. Compton and Kellie A. Nielan, Assistant Attorneys General, Daytona Beach, for Petitioner.

Beverly A. Pohl and Bruce Rogow of Bruce S. Rogow, P.A., Fort Lauderdale, for Respondent.

CANTERO, J.

We review *McBride v. State*, 810 So.2d 1019, 1023 (Fla. 5th DCA 2002), in which the district court of appeal certified the following question of great public importance:

IS A DEFENDANT ENTITLED TO RELIEF PURSUANT TO A SUCCESSIVE RULE 3.800(a) MOTION TO CORRECT AN ILLEGAL SENTENCE WHEN THE DEFENDANT

RAISED THE IDENTICAL ISSUE IN A PRIOR RULE 3.800(a) MOTION THAT WAS DENIED BY THE TRIAL COURT BUT NEVER APPEALED TO THE DISTRICT COURT OF APPEAL?

We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We answer the question in the negative and quash the decision of the Fifth District Court of Appeal.

I. Facts

Pursuant to a plea agreement, McBride entered a plea of nolo contendere to charges of attempted first-degree murder with a firearm, possession of a firearm by a convicted felon, and robbery with a firearm. *See* *McBride*, 810 So.2d at 1020. The court sentenced him as a habitual felony offender to concurrent thirty-year terms of imprisonment on each of the 289*289 three counts. *Id.* In May 1990, however, when he committed the attempted firstdegree murder, which is a life felony, life felonies were not subject to sentence enhancement under the habitual offender statute. *See* *Lamont v. State*, 610 So.2d 435 (Fla.1992).

In 2000, respondent filed a motion under Florida Rule of Criminal Procedure 3.800(a), asserting that the habitual offender sentence imposed for the attempted first-degree murder was illegal and requesting that he be resentenced. The court denied the motion, and McBride did not appeal. The following year, McBride filed another motion under the same rule asserting the same argument. Noting the successive nature of the claim, the trial court denied the motion, and this time McBride appealed. The Fifth District reversed, holding that the law of the case doctrine did not bar review by an appellate court and that the illegal sentence should be corrected. The appellate court thus reversed and remanded for further proceedings and certified the question quoted above. *McBride*, 810 So.2d at 1023.

II. McBride's Habitual Offender Sentence

This Court previously has held that habitual offender sentences imposed for life felonies when life felonies were not subject to the habitual offender statute are illegal. *See* *Carter v. State*, 786 So.2d 1173, 1180 (Fla.2001); *Lamont v. State*, 610 So.2d 435, 438 (Fla.1992). It is therefore undisputed that McBride's habitual offender sentence for attempted first-degree murder is illegal. Such a sentence ordinarily may be corrected under rule 3.800(a). *See* *Carter*, 786 So.2d at 1180. Because McBride already had filed the identical motion and the court had denied it, however, we must determine whether McBride is procedurally barred from obtaining relief. Our standard of review on such an issue is *de novo*. *See* *West v. State*, 790 So.2d 513, 514 (Fla. 5th DCA 2001); *see also* *State v. Nuckolls*, 677 So.2d 12, 13 (Fla. 5th DCA 1996) (noting that "[t]he issues in this case revolve around the legal sufficiency of the pleadings and therefore we review *de novo* the trial court's ruling").

Florida Rule of Criminal Procedure 3.800(a) provides as follows, in relevant part:

A court may at any time correct an illegal sentence imposed by it, or an incorrect calculation made by it in a sentencing scoresheet, or a sentence that does not grant proper credit for time served when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief ....

As we have previously stated, rule 3.800(a) "is intended to balance the need for finality of convictions and sentences with the goal of ensuring that criminal defendants do not serve sentences imposed contrary to the requirements of law." *Carter*, 786 So.2d at 1176. A sentence is illegal if it imposes "a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances." *Id.* at 1178 (quoting and approving definition in *Blakley v. State*, 746 So.2d 1182, 1186-87 (Fla. 4th DCA 1999)).

III. The Law of the Case Doctrine

The district court correctly held that the law of the case doctrine does not prevent McBride from relitigating the legality of his habitual offender sentence. That doctrine requires that "questions of law *actually decided on appeal* must govern the case in the same court and the trial court, through all subsequent stages of the proceedings." *Florida Dep't of Transp. v. Juliano*, 801 So.2d 101, 105 290*290(Fla.2001) (emphasis added). Law-of-the-case principles do not apply unless the issues are decided *on appeal*. *Id.; see also Kelly v. State*, 739 So.2d 1164, 1164 (Fla. 5th DCA 1999) (holding that "[s]uccessive 3.800(a) motions re-addressing issues previously considered and rejected on the merits and reviewed on appeal are barred by the doctrine of law of the case"). Because McBride did not appeal the previous order denying his rule 3.800 motion, the district court correctly held that the law of the case doctrine does not apply.

IV. Res Judicata and Collateral Estoppel Principles

Our conclusion that the law of the case doctrine does not bar McBride's claim does not, however, end our analysis. The State urges us to apply the common law doctrine of *res judicata*. This Court has explained that doctrine as follows:

> A judgment on the merits rendered in a *former* suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is conclusive not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action.

Juliano, 801 So.2d at 105 (quoting *Kimbrell v. Paige*, 448 So.2d 1009, 1012 (Fla. 1984)). Thus, under *res judicata*, a judgment on the merits bars a subsequent action between the same parties on the same cause of action. *See Denson v. State*, 775 So.2d 288, 290 (Fla.2000) (applying *res judicata* to deny a habeas petition where the defendant had raised the same claim in a 3.800 motion decided against him on the merits and the defendant had exhausted all appropriate appellate review). *Res judicata*, however, prohibits not only relitigation of claims raised but also the litigation of claims *that could have been raised* in the prior action. *Juliano*, 801 So.2d at 105. The doctrine would require a motion to correct an illegal sentence to raise all arguments that the sentence is illegal. Subsequent motions would be barred if they contained arguments that were *or could have been* raised in the prior motion. Rule 3.800, however, allows a court to correct an illegal sentence "at any time." Florida courts have held, and we agree, that the phrase "at any time" allows defendants to file successive motions under rule 3.800. *See Raley v. State*, 675 So.2d 170,

173 (Fla. 5th DCA 1996); *Barnes v. State*, 661 So.2d 71, 71 (Fla. 2d DCA 1995). Thus, rule 3.800 expressly rejects application of *res judicata* principles to such motions.

Again, however, this conclusion does not end the analysis. Although *res judicata*may not apply to motions filed under rule 3.800, the similar, but more narrow, doctrine of collateral estoppel, or issue preclusion, does apply.[1] We have explained that doctrine as follows:

"Collateral estoppel is a judicial doctrine which in general terms prevents identical parties from relitigating the same issues that have already been decided." *Department of Health & Rehabilitative Services v. B.J.M.*, 656 So.2d 906, 910 (Fla.1995). Under Florida law, collateral 291*291 estoppel, or issue preclusion, applies when "the identical issue has been litigated between the same parties or their privies." *Gentile v. Bauder*, 718 So.2d 781, 783 (Fla.1998). In addition, the particular matter must be fully litigated and determined in a contest that results in a final decision of a court of competent jurisdiction. *See* B.J.M., 656 So.2d at 910.

City of Oldsmar v. State, 790 So.2d 1042, 1046 n. 4 (Fla.2001). Although collateral estoppel generally precludes relitigation of an issue in a subsequent but separate cause of action, its intent, which is to prevent parties from rearguing the same issues that have been decided between them, applies in the postconviction context. As explained above, under the principles of *res judicata* a defendant would be prohibited from filing *any* successive 3.800 motion on any issue that was or could have been raised. Collateral estoppel, on the other hand, only precludes a defendant from rearguing in a successive rule 3.800 motion the same issue argued in a prior motion.

This analysis is consistent with the application of rule 3.800 in the district courts of appeal. For example, in *Smith v. State*, 685 So.2d 912, 912 (Fla. 5th DCA 1996),the Fifth District considered "whether the defendant may obtain relief, based on a claim that he was not given proper gain time credit, by a successive rule 3.800 motion." The court concluded that "[w]hile it may be correct that rule 3.800 does not prohibit successive motions, we hold that where, as here, a defendant raises an issue under rule 3.800, the lower court denies relief and the defendant fails to appeal, he may not later raise the same issue in another rule 3.800 motion." *Id. Accord* *Tisdol v. State*, 823 So.2d 300, 301 (Fla. 3d DCA 2002); *see also* *Jenkins v. State*, 749 So.2d 527, 528 (Fla. 1st DCA 1999) (noting that a defendant may not raise the same illegal sentencing issue in successive postconviction motions); *Price v. State*, 692 So.2d 971, 971 (Fla. 2d DCA 1997) (noting that rule 3.800 "contains no proscription against the filing of successive motions" but that "a defendant is not entitled to successive review of a specific issue which has already been decided against him"). In barring the filing of successive *repetitive* 3.800 motions, these courts essentially have applied collateral estoppel principles.

V. Manifest Injustice

Our application of collateral estoppel principles does not end the analysis, either. We must still decide whether a manifest injustice exception exists in the context of collateral estoppel, and if it does, whether manifest injustice would prohibit application of that doctrine.

This Court has long recognized that *res judicata* will not be invoked where it would defeat the ends of justice. *See* *deCancino v. E. Airlines, Inc.*, 283 So.2d 97, 98 (Fla.1973); *Universal Constr. Co. v. City of Fort Lauderdale*, 68 So.2d 366, 369 (Fla.1953).

The law of the case doctrine also contains such an exception. *See* Strazzulla v. Hendrick, 177 So.2d 1, 4 (Fla.1965). We have found no Florida case holding that such an exception applies to collateral estoppel. Federal courts and other state courts, however, have held that the collateral estoppel doctrine does contain such a manifest injustice exception. *See, e.g.*, Comm'r of Internal Revenue v. Sunnen, 333 U.S. 591, 599, 68 S.Ct. 715, 92 L.Ed. 898 (1948); Thompson v. Schweiker, 665 F.2d 936, 940 (9th Cir.1982); Tipler v. E.I. duPont deNemours & Co., 443 F.2d 125, 128 (6th Cir.1971); Dowling v. Finley Assocs., Inc., 248 Conn. 364, 727 A.2d 1245, 1249 n. 5 (1999); Kansas Pub. Employees Ret. Sys. v. Reimer & Koger Assocs., Inc., 262 Kan. 635, 941 P.2d 1321, 1333 (1997); State v. Harrison, 148 Wash.2d 550, 61 292*292 P.3d 1104, 1109 (2003). We agree. We hold that collateral estoppel will not be invoked to bar relief where its application would result in a manifest injustice.

In light of this holding, we must now determine whether the application of collateral estoppel in this case creates a manifest injustice that can be determined from the face of the record. *See* Fla. R.Crim. P. 3.800(a) (stating that the motion must "affirmatively allege[ ] that the court records demonstrate on their face an entitlement to ... relief"). As noted above, McBride was sentenced as a habitual offender to concurrent thirty-year terms of imprisonment on each of three felonies. Only the habitual offender sentence for the life felony of attempted first-degree murder, however, is illegal. In light of the concurrent sentences of the same length McBride is serving as a habitual offender, applying collateral estoppel to his successive motion will not result in a manifest injustice. In fact, as the State notes, resentencing McBride for the life felony could very well result in an increase in his prison term. *See* § 775.082, Fla. Stat. (1989). Therefore, McBride's claim is barred.

Based on the foregoing, the trial court correctly denied McBride's successive rule 3.800 motion, which raised the identical claim raised in his earlier motion, the denial of which he did not appeal. The prior judgment on the merits is thus final with regard to all matters addressed by the trial court in that order. Accordingly, we quash the decision of the Fifth District Court of Appeal, and answer the certified question in the negative.

It is so ordered.

WELLS and QUINCE, JJ., and SHAW, Senior Justice, concur.

PARIENTE, J., concurs in result only with an opinion, in which ANSTEAD, C.J., concurs.

LEWIS, J., concurs in part and dissents in part with an opinion.

PARIENTE, J., concurring in result only.

Although the members of this Court agree that McBride is not entitled to sentence correction via his rule 3.800(a) motion, we diverge in our views of the law dictating this result. The majority rejects the doctrines of law of the case and res judicata, and instead applies collateral estoppel, recognizing a manifest injustice exception. Justice Lewis considers collateral estoppel inapplicable and asserts that res judicata is the proper legal principle, while also embracing a manifest injustice exception.

In my view, the reason for the struggle to make well-established legal principles fit into the rule 3.800(a) framework is because neither doctrine is suited to the unique jurisprudential concerns regarding illegal sentences and the specification in rule 3.800(a) that an illegal

sentence may be challenged at any time. Instead, I conclude that we should quash the Fifth District decision reversing the trial court's denial of the rule 3.800(a) motion because McBride has not received an illegal sentence remediable under the rule.

Moreover, even assuming the doctrine of collateral estoppel bars a successive rule 3.800(a) claim based on the identical claim previously raised, it is essential that we clarify the precise definition of the manifest injustice exception to provide guidance to trial courts and appellate courts. In my view, unless the trial court could have imposed the same sentence or a more severe sentence absent the illegality, correction of an illegal sentence under rule 3.800(a) is necessary to prevent a manifest injustice.

293*293 McBride's sentence is in accord with a plea agreement and is within the statutory maximum for a life felony. In *Maddox v. State*, 760 So.2d 89, 103 (Fla.2000), we reaffirmed our precedent "allowing defendants to agree through a plea bargain to a sentence not specifically authorized by statute or rule as long as the sentence does not exceed the statutory maximum." Cases in which we held that an unauthorized habitual offender sentence for a life felony could be rectified via rule 3.800(a) involved sentences imposed after trial and not as the result of a guilty or no contest plea. *See* *Carter v. State*, 786 So.2d 1173 (Fla.2001), *quashing*704 So.2d 1068, 1069 (Fla. 5th DCA 1997) (defendant "tried and convicted"); *Lamont v. State*, 610 So.2d 435, 436, 439 (Fla.1992) (defendant "found guilty"; discussion of verdict form).

I do not endorse the propositions that either res judicata, which protects the finality of judgments, or collateral estoppel, which precludes relitigation of issues previously resolved, bars the correction of truly illegal sentences under rule 3.800(a). In fact, the very notion of rule 3.800(a) is that it allows the illegality of a sentence to be raised at any time *after* the judgment and sentence are final—even though the challenge to the sentence could have been raised on direct appeal. The fact that a trial court may have in a given case erroneously rejected a postconviction claim of an illegal sentence brought by a defendant (who most likely is unrepresented) should not bar a valid challenge to a truly illegal sentence in a rule 3.800 proceeding. Indeed, past experience shows that even valid challenges to sentences may be rejected and the denial of the motion affirmed per curiam without opinion, especially in areas where the law is in transition. *See, e.g.*, *Dixon v. State*, 730 So.2d 265, 268 n. 4 (Fla.1999) (noting disparate treatment of appeals from summary denials of postconviction motions seeking retroactive application of *Hale v. State*, 630 So.2d 521 (Fla. 1993)).

Application of either res judicata or collateral estoppel to rule 3.800 proceedings can also frustrate pro se litigants whose meritorious claims have been previously derailed on procedural grounds. For example, in *Ford v. State*, 667 So.2d 455 (Fla. 4th DCA 1996), the trial court denied, on res judicata grounds, a successive rule 3.800(a) motion seeking presentence jail credit after the appeal of the denial of the previous motion was dismissed as untimely. To its credit, the State acknowledged on appeal that the second motion was not barred. *Id.* at 455. Pro se defendants who are ignorant of the fact that rule 3.800 does not authorize a motion for rehearing often file for rehearing and then find that their appeals have been dismissed as untimely. *See, e.g.*, *Mincey v. State*, 789 So.2d 492 (Fla. 1st DCA 2001).

While I would never condone the successive filing of nonmeritorious motions, we should not bar reconsideration of a meritorious claim under rule 3.800 that the sentence is illegal. I thus

do not agree with the majority that consideration of a successive motion that a sentence is illegal should turn on the existence of a "manifest injustice" exception. *See* majority op. at 291-92. Rather, in my view the mechanism for correcting illegal sentences provided by rule 3.800(a) should be limited only by the provisos that the error appear on the face of the record and that the sentence itself be illegal as measured by statute, rule, or case law.

As we noted in *Maddox*, "[t]he extraordinary provision made for remedying illegal sentences evidences the utmost importance of correcting such errors, even at the expense of legal principles that might preclude relief from trial court errors of less consequence." 760 So.2d at 101. We recognized 294*294 that "clearly the class of errors that constitute an `illegal' sentence that can be raised for the first time in a postconviction motion decades after a sentence becomes final is a narrower class of errors than those termed `fundamental' errors that can be raised on direct appeal even though unpreserved." *Id.* at 100 n. 8. We observed in *Maddox* that the State recognizes that it "has no interest in any defendant serving a sentence that is longer than the sentence authorized by law." *Id.* at 99. Indeed, the entire justice system certainly has an interest in ensuring that the defendant is not incarcerated longer than is authorized by law, or under illegal terms. The courts have an obligation to correct any such error *whenever* it is brought to their attention.

In accord with the principles espoused in *Maddox*, we held in *Bover v. State*, 797 So.2d 1246 (Fla.2001), that a defendant who pled no contest to fifteen third-degree felonies for a ten-year habitual offender sentence could challenge the sentence via rule 3.800(a) on grounds that his prior offenses did not qualify him for habitualization. Absent qualification as a habitual offender, the maximum sentence Bover could have received for each third-degree felony was five years in prison. We noted that pursuant to the recommended guidelines sentence of life, Bover could have received fifteen consecutive five-year sentences, but we declined to address the effect of the plea agreement on the claim that he lacked the prior felonies necessary for habitualization because neither party raised the issue. *Id.* at 1251 n. 7.

In this case, however, the existence of the plea agreement should not be ignored, because it resulted in three concurrent thirty-year habitual offender sentences, one of which was on the attempted murder count at issue here. Although a habitual offender sentence was not authorized for a life felony, the thirty-year sentence on this count is within the applicable statutory maximum of a "term of years not exceeding 40 years" for a life felony. § 775.082(3)(a), Fla. Stat. (1989). The plea agreement and resulting sentence within the statutory maximum bring this case within the class of cases contemplated by our approval in *Maddox* of agreements to sentences that are not specifically authorized by statute but do not exceed the statutory maximum. *See* 760 So.2d at 103. Therefore, consistent with *Maddox*, I would hold that the imposition of an unauthorized habitual offender sentence can be corrected via rule 3.800(a), except in those situations in which the defendant has agreed through a knowing and voluntary plea to a sentence that does not exceed the maximum penalty authorized for the offense.

Because McBride agreed to his unauthorized sentence as part of a plea and the thirty-year sentence does not exceed the maximum penalty authorized for a life felony under section 775.082(3)(a), he is not entitled to relief via rule 3.800(a). However, because the certified question does not draw a distinction for unauthorized habitual offender sentences imposed pursuant to plea, I do not concur in the majority's answer to the certified question.

ANSTEAD, C.J., concurs.

LEWIS, J., concurring in part and dissenting in part.

I concur in the result only with regard to the issues addressed by the majority today, but I cannot accept the creative reasoning adopted by the Court without authority in its opinion. I must dissent from the majority's unprecedented decision to ignore age-old precedent and rewrite Florida law to apply the doctrine of collateral estoppel to the facts of the present case. In my view, the majority ignores 295*295 extraordinarily well-settled facets of Florida's common law, and simply creates new law, without any deference to, or consideration of, the prior opinions of this Court. Because I can find no existing authority which supports the inordinate and rash action taken today by the Court to totally eliminate the clear legal distinction between collateral estoppel and res judicata, while years of precedent counsel against application of the doctrine of collateral estoppel to the instant case, I dissent.

The doctrines of res judicata and collateral estoppel, and their very separate and distinct nature, are age old. Indeed, each doctrine "was recognized by the Roman law, and later by the English courts, and it is said that [each] pervades, not only our own, but all other, systems of jurisprudence to this day, and has become a rule of universal law." *Cragin v. Ocean & Lake Realty Co.*, 101 Fla. 1324, 133 So. 569, 571 (1931); *see also Coral Realty Co. v. Peacock Holding Co.*, 103 Fla. 916, 138 So. 622, 624 (1931). Central to the law regarding the preclusive effects of prior judgments, and critical in the present action, are the discrete and important differences between the doctrines of res judicata and collateral estoppel.

As long as the doctrines have been part of Florida law, a matter has qualified for the application of res judicata, thereby barring further litigation on a relevant claim, only where there is "a concurrence of identity in the thing sued for, identity of cause of action, identity of persons and parties to the action, and identity of quality in persons for or against whom claim is made." *McGregor v. Provident Trust Co. of Philadelphia*, 119 Fla. 718, 162 So. 323, 328 (1935); *see also Palm AFC Holdings, Inc. v. Palm Beach County*, 807 So.2d 703, 704 (Fla. 4th DCA 2002); *State Dep't of Revenue v. Ferguson*, 673 So.2d 920, 922 (Fla. 2d DCA 1996). I suggest that there is no question that the doctrine of res judicata applies in the present case. Here, McBride's initial and subsequent rule 3.800 motions contained recitations of identical facts, raised identical claims, involved identical parties, and were, in both substance and form, identical actions.

The pertinent, well-recognized difference between the doctrines of res judicata and collateral estoppel is that while res judicata requires identity of the cause of action, *see McGregor,* this Court has always reserved collateral estoppel only for the situation in which a party attempts to rely upon the judgment entered or determination made in a prior and unrelated action. Indeed, the decisions in which this Court has limited application of collateral estoppel to "those cases wherein the parties are the same in the second suit as in the former action but the causes of action are different," *Yovan v. Burdine's*, 81 So.2d 555, 557 (Fla.1955), are myriad. Probably the most succinct and direct expression of this principle is found in this Court's statement in *Universal Construction Co. v. City of Fort Lauderdale*, 68 So.2d 366 (Fla.1953): "Estoppel by judgment is applicable *only* in those cases wherein the parties are the same in the second suit as in the former *but the cause of action is different." Id.* at 369 (emphasis supplied). There are *multiple* Florida decisions which echo this conclusion.[2]

296*296 Because the majority chooses to simply ignore overwhelming authority which precludes the application of collateral estoppel to the facts of the instant case due to the simple, obvious fact that the cause of action before this Court is absolutely identical to that filed originally by McBride in 2000, and refuses to apply the correct doctrine of res judicata, I dissent. I can find absolutely no authority which supports the course of action taken by the majority today, and the majority provides no authority for applying collateral estoppel and obliterating the well-defined legal distinction between this doctrine and res judicata. With this decision the Court rewrites the law of collateral estoppel, applying the doctrine to a subsequent, identical action in contravention of decades of Florida precedent. I refuse to be part of a unilateral and baseless revision of the law which changes the very core of the doctrine of collateral estoppel; therefore, I dissent from that portion of the majority opinion applying collateral estoppel to the present case, and concur only in the result. Collateral estoppel now has the identical components which have historically existed only for application of res judicata.

[1] Both *res judicata* and collateral estoppel apply in criminal and civil contexts. *See, e.g.*, *Thompson v. Crawford*, 479 So.2d 169 (Fla. 3d DCA 1985) (noting that the doctrine of *res judicata* is as applicable to judgments in criminal prosecutions as to civil cases); *Brown v. State*, 397 So.2d 320, 322 (Fla. 2d DCA 1981) (holding that denial of motions to suppress in a bookstore robbery case was proper under a theory of collateral estoppel where the same witness identification was the subject of prior suppression motions denied in a market robbery case).

[2] *See* *Shearn v. Orlando Funeral Home, Inc.*, 88 So.2d 591, 594 (Fla.1956); *Gordon v. Gordon*, 59 So.2d 40, 44 (Fla.1952); *Green v. State Dep't of Health & Rehabilitative Servs.*, 412 So.2d 413, 414 (Fla. 3d DCA 1982) ("Where the causes of action are different, the doctrine of estoppel by judgment comes into play ....") (quoting 32 Fla. Jur.2d, *Judgments and Decrees*, § 116); *Clean Water, Inc. v. State Dep't of Envtl. Reg.*, 402 So.2d 456, 458 (Fla. 1st DCA 1981) ("The doctrine of res judicata bars relitigation of the same cause of action between the same parties and collateral estoppel bars relitigation of the same issues between the same parties in a different cause of action.").

Dated at Bonita Springs, Florida this 1st day of March, 2018.

-/S/- Scott Huminski

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Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 1st day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR COMPETENCY EXAM PER FINDING OF JUDGE KRIER THAT DEFENDANT IS DELUSIONAL

NOW COMES, Scott Huminski ("Huminski"), and, pursuant to the findings of Judge Krier at hearing on 6/29/2017 that defendant is delusional, Huminski moves for a competency exam.

Dated at Bonita Springs, Florida this 1st day of March, 2018.

-/S/- Scott Huminski

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Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
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DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR CHIEF CIRCUIT JUDGE TO REFER THE CONTEMPT CASE TO CHIEF JUDGE OF THE FLORIDA SUPREME COURT FOR ASSIGNMENT RULE 3.840(e)

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. The record does not indicate the reason for the recusal of Judge Krier, it only cites Cannon 3(e), whether the impartiality, bias or prejudice concerning the recusal was the result of "disrespect or criticism" is unknown and is subjective, thus, the Chief Justice of the Supreme Court should have handled any assignment pursuant to Rule 3.840(e). It is not too late for a re-assignment in the Circuit Court to occur, the criminal matter was never disposed of in the Circuit Court and the Circuit Court was never divested of jurisdiction.

Judge Krier became quite irate at hearing when Huminski notified her that the case had been removed to the U.S. Bankruptcy Court and that no motion for remand had been filed under federal abstention doctrines by the State's Attorney. The anger and outright lies uttered by Judge Krier are indicators that she believed

disrespect. Judge Krier stated "Nothing gets removed from my court – EVER" (emphasis in original), indicating she felt some type of disrespect. The court's efiling system under frequently filed documents lists "Removal to U.S. District Court" (bankruptcy court is a unit of the U.S. District Court). A bold lie from the bench such as this suggests, Huminski's mere citing a reality, that the case was removed under Bankruptcy Rule 9027, was considered by Judge Krier as an affront to her authority and certainly criticism. At hearing in Bankruptcy Court, the Judge confirmed the Bankruptcy Court jurisdiction from 6/26/2017 thru early August including, 6/29/2017, the day of the above described hearing. The Circuit Court contempt case must be assigned a judge by the Chief Justice of the Florida Supreme Court.

Dated at Bonita Springs, Florida this 3rd day of March, 2018.

-/S/- Scott Huminski

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Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 3rd day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA APPELLATE DIVISION

SCOTT HUMINSKI,

Appellant,

vs.

Appellate Case No. 18-AP-3
Lower Case No.: 17-MM-815

TOWN OF GILBERT AZ,

Appellee.

_____/

ORDER DIRECTING APPELLANT TO FILE AMENDED NOTICE OF APPEAL AND AMENDED AFFIDAVIT OF INDIGENCY WITHIN TEN (10) DAYS

THIS CAUSE comes before the Court on its own motion. Appellant filed a "Notice of Appeal, Circuit Court 17-CA-421, Criminal Contempt – and Notice of Indigent Criminal Defendant and Motion for Assignment to Lee Public Defender's Office" on February 18, 2018, along with a duplicate copy filed on the same day. Appellant filed an "Amended Notice of Appeal, County Court 17-MM-815 – Refusal to Disqualify and Notice of Indigent Criminal Defendant and Motion for Assignment to Lee Public Defender's Office" on February 19, 2018. On February 26, 2018, Appellant filed a "Notice of Indigency Concerning the Criminal Contempt Set Forth in 17-CA-421 and regarding the very insufficiently plead Criminal Contempt in 17-MM-815," with an incomplete affidavit of indigency attached.

Despite his mention of circuit court civil case number 17-CA-421 in several of these filings, this Court only has jurisdiction to hear appeals from county court. Accordingly, the lower case number in which this appeal originated is case number 17-MM-815. To the extent Appellant is attempting to appeal an order entered in case number 17-CA-421, his notice of appeal has been forwarded to the Second District Court of Appeal by the Clerk.

As for Appellant's appeal regarding county case number 17-MM-815, no final judgment or order was attached to the amended notice of appeal as required by Fla. R. App. P. 9.040. A

copy of the specific order of the lower court being appealed must be attached to the notice of appeal. The notice of appeal also does not contain a Certificate of Service clearly indicating that it was served on Appellee.

Regarding the affidavit of indigency filed on February 26, 2018, it was not completed by the Clerk because it was attached to another pleading. Appellant is directed to file an affidavit of indigency separately, without attaching any other documents or pleadings to it.

Therefore, it is

ORDERED AND ADJUDGED that, **within ten (10) days** from the date this order is rendered, Appellant shall file an amended notice of appeal, attaching a copy of the specific final order to which his appeal is directed and including a Certificate of Service verifying that he served all Appellees with the amended notice of appeal. Defendant may also file a new affidavit of indigency, separately and without attaching it to any other pleadings or documents.

The briefing schedule shall thereafter proceed in accordance with Fla. R. App. P. 9.210, and all briefs must comply with the requirements set forth in Rule 9.210. Failure to comply may result in sanctions pursuant to Fla. R. App. P. 9.410, including an order to show cause as to why the appeal should not be dismissed.

DONE AND ORDERED in Chambers in Fort Myers, Lee County on this 2ND day of March, 2018.

Joseph C. Fuller, Jr.
Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the forgoing filed in the above styled case has been e-mailed/mailed to:

- **Court Administration (XXIV)**
- **Scott Huminski**
- **Town of Gilbert AZ**

Dated:

MAR 05 2018

LINDA DOGGETT, CLERK OF COURT

By: _____
Deputy Clerk

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE ASSIGNMENT ORDER TO COUNTY COURT, in the alternative, MOTION FOR LEAVE TO CHALLENGE THE ASSIGNMENT AND OTHER ISSUES IN THE FLORIDA SUPREME COURT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because the assignment order was issued after the first hearing in the County Court and a County Court administrative judge can not assign Judges to cases in Circuit Court or cause the dismissal of a Circuit Court case. Fl 38.22 mandates that contempt actions be heard in the Court where the contempt occurred. The Court's reliance upon the procedure of an "administrative transfer" to dismiss the Circuit Court prosecution and initiate it in County Court does not exist. Huminski is prejudiced because the record of the case before and after the alleged contempt exists in the Circuit Court. The County Court record is devoid of critical portions of the record such as the order(s) Huminski allegedly violated, this prejudices Huminski's ability to defend himself and certainly prejudices any appeal or writ filed in the future.

Criminal contempt is creature of common law, neither a statutory felony nor misdemeanor, it should be heard in the Court where it allegedly occurred. FL 38.22. See attached opinion U.S. v. Cohn (11d Cir. 2009)("We conclude that criminal contempt is a sui generis offense and that it is neither a felony nor a misdemeanor.") In South Dade Farms v. Peters, 88 So.2d 891 (1956), the Florida Supreme Court approvingly cites Oswald, Contempt of Court: "It should always be borne in mind in considering and dealing with contempt of Court that it is an offense purely sui generis ... ". The desire to force contempts to the County Courts by misclassifying them as misdemeanors is erroneous. The Florida Supreme Court has exclusive jurisdiction to review judicial assignments. See Attached section 293 as to the exclusive jurisdiction of the Florida Supreme Court.

The attached Fl. Practice 5.1 reveals no provision for transfer of a case from Circuit to County Courts, only judicial assignments are anticipated and allowed. The effective dismissal of a case out of Circuit Court and re-initiation of that case in County Court is not within the authority, power or jurisdiction of the chief Circuit Judge or any administrative judge. This scenario is not merely a judicial assignment, it involves the manipulation of cases between courts that is not allowed or anticipated by any Rule, Statute or authority.

The record does not indicate the reason for the recusal of Judge Krier it only cites Cannon 3(e), whether the impartiality, bias or prejudice concerning the recusal was the result of "disrespect or criticism" is unknown and can be subjective, thus, the Chief Justice of the Supreme Court should have handled any assignment

pursuant to Rule 3.840(e). See attached. Up to and including the recusal of Judge Krier (the original recusal order was lost, a copy of a copy was filed) filed on 9/22/2017 and back-dated to 8/14/2017 the case was captioned by Judge Krier in the Circuit Court and signed in Judge Krier's capacity as a Circuit Court Judge. See attached recusal order.

The unlawful "administrative transfer" from Circuit Court to County Court created a new criminal case absent a legitimate charging document. In this instance a show cause order. On 6/30/2017 court staff printed out a copy of an unserved show cause order of Judge Krier dated 6/5/2017, hand modified it with a new County Court docket number and then filed that document as a legitimate County Court show cause order. The same court staff forgot to file the 117 pages of attachments to the show cause order. This conduct flirts with forgery and obstruction of justice. Court orders can not recklessly be copied and filed in other cases and held out to be valid. A somewhat valid show cause order only exists in the Circuit Court, on 6/5/2017 when the 6/5 show cause order was authored case 17-mm-815 did not exist. A cascade of dubious conduct accompanies so-called "administrative transfers".

As previously noted in a previous motion the initiation of a second prosecution while the first case has not been disposed of violated the multiple prosecution prohibition of Double Jeopardy. Failure to follow administrative procedure leads to flaws and as this case reveals, infirmities of a constitutional magnitude.

Dated at Bonita Springs, Florida this 5th day of March, 2018.

-/S/- Scott Huminski

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Bonita Springs, FL 34134
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S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 5th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

EXHIBIT "A"

Florida Jurisprudence, Second Edition
Database updated February 2005

Courts and Judges

Carmela Pellegrino, J.D. and Kerry Hogan Lassus, J.D. of the National Legal Research Group, Inc.

Part Two. Judges
XV. Assignment and Substitution [§ § 291-299]
A. Assignment, in General [§ § 291-294]

Topic Summary; Correlation Table; References

§ 293. Review of judicial assignments

West's Key Number Digest

West's Key Number Digest, Courts 70

The Supreme Court has exclusive jurisdiction to review judicial assignments. [FN13] Thus, the district court of appeal lacks authority to review an administrative order assigning a county court judge to circuit court duty. [FN14]

Practice Guide:

A litigant who is affected by a judicial assignment made by a chief judge of a judicial circuit must challenge the assignment in the trial court and then seek review in the Supreme Court by way of petition for prohibition or petition for relief under the "all writs" power.[FN15]

CUMULATIVE SUPPLEMENT

Cases:

Because of the vital role temporary judicial assignments play in the administration of the state court system, the Supreme Court must have exclusive jurisdiction to review such assignments under its constitutional authority to oversee the administrative supervision of all courts. Fla. Const. Art. 5, § 2(a); Fla. R. Jud. Admin. 2.050(b)(4). Physicians Healthcare Plans, Inc. v. Pfeifler, 846 So. 2d 1129 (Fla. 2003).

The Supreme Court has exclusive jurisdiction to review judicial assignments. Fla. Const. Art. 5, § 2(a, b). Physicians Healthcare Plans, Inc. v. Pfeifler, 846 So. 2d 1129 (Fla. 2003).

District Court of Appeal lacked jurisdiction to consider defendant's argument that county court judge did not have jurisdiction to preside over his felony trial and violation of probation hearing; Supreme Court had exclusive jurisdiction to review temporary judicial assignments. Thweatt v. State, 861 So. 2d 1284 (Fla. Dist. Ct. App. 5th Dist. 2004).

[END OF SUPPLEMENT]

[FN13] Wild v. Dozier, 672 So. 2d 16, 21 Fla. L. Weekly S57 (Fla. 1996), reh'g denied, (Apr. 11, 1996); Rivkind v. Patterson, 671 So. 2d 788 (Fla. 1996); Holsman v. Cohen, 667 So. 2d 769, 21 Fla. L. Weekly S61 (Fla. 1996).

[FN14] Wild v. Dozier, 672 So. 2d 16, 21 Fla. L. Weekly S57 (Fla. 1996), reh'g denied, (Apr. 11, 1996); J.G. v. Holtzendorf, 669 So. 2d 1043, 21 Fla. L. Weekly S122 (Fla. 1996).

[FN15] Wild v. Dozier, 672 So. 2d 16, 21 Fla. L. Weekly S57 (Fla. 1996), reh'g denied, (Apr. 11, 1996).

FLJUR COURTS § 293
END OF DOCUMENT

EXHIBIT "B"

West's Florida Practice Series TM
Civil Practice
Philip J. Padovano FNa

Part I. Civil Procedure
Chapter 5. Judges

§ 5.1 Assignment

Judicial assignments are made in the discretion of the chief judge under local administrative procedures within the judicial circuit. A trial judge may be assigned to preside in a particular case for a variety of reasons but most often trial judges are assigned to handle an entire class of cases as part of a regular policy of judicial rotation. While most cases are handled according to the assignments made by the chief judge, the absence of a proper assignment order does not affect the jurisdiction of the court.

Rule 2.050(b)(4) of the Rules of Judicial Administration provides that the "[t]he chief judge shall assign judges to the courts and divisions, and shall determine the length of each assignment." This rule gives the chief judge authority to assign a judge the responsibility of handling an individual case. However, judges are most often assigned to a caseload consisting of a defined class of cases and the individual cases are selected at random. The authority vested in the chief judge by rule 2.050(b)(4) applies to the assignment of county judges as well as circuit judges. If there are two or more county judges in one county within the judicial circuit, the chief judge has authority to determine the nature and length of the assignment for each county judge.

An assignment order by the chief judge is not a jurisdictional prerequisite to the handling of a case that is otherwise within the subject matter jurisdiction of the court. FN1 All circuit judges are authorized to assert the jurisdiction of the circuit court within their respective judicial circuits and all county judges are authorized to assert the jurisdiction of the county court within their respective counties. The fact that a judge has handled a case not assigned by the chief judge does not affect the jurisdiction of the court as long as that judge is a member of the court. Jurisdiction of the court and the assignment of judges are separate matters.

Rule 2.050(b)(4) provides that the "[t]he chief judge may assign any judge to temporary service for which the judge is qualified in any court in the same circuit." This rule authorizes the chief judge to assign a qualified county judge to temporary service as a circuit judge and vice

versa. The supreme court has defined the phrase "temporary service" to mean that a county judge should not be assigned for more than sixty days to handle circuit court matters exclusively, or for more than six months to handle specific circuit court cases in addition to the regular county court duties. FN2

Although a cross-jurisdictional assignment should not ordinarily last for more than six months, the workload in a particular judicial circuit may justify successive assignment orders. In *Wild v. Dozier*, the supreme court held that the chief judge has authority to assign a county judge to circuit court duties by successive temporary assignment orders provided the overall workload does not amount to a *de facto* permanent assignment. FN3 Whether successive judicial assignments remain "temporary" as required by rule 2.050(b)(4) is not merely a function of the duration of the combined assignments. As the court explained in *Wild v. Dozier*, there are many other relevant factors:

The successive nature of the assignment, the type of case covered by the assignment, and the practical effect of the assignment on circuit court jurisdiction over a particular type of case also must be considered. For example, *Crusoe* [*v. Rowls*, 472 So.2d 1163 (Fla.1985)] illustrates that successive assignments totalling more than two years may be considered temporary if the class of circuit court case covered by the assignment is limited and the practical effect of the assignment is to aid and assist circuit judges rather than to usurp circuit court jurisdiction over a particular type of case. 472 So.2d at 1165. Similarly, *Payret* [*v. Adams*, 500 So.2d 136 (Fla.1986)] demonstrates that successive and repetitive assignments that, when considered individually, may be facially valid will not be considered temporary where their practical effect is to create a de facto permanent circuit judge by administrative order.

The power vested in the chief judge to assign trial court judges to particular duties is delegated under the rules by the chief justice of the Florida Supreme Court. In the applicable constitutional framework, the supreme court has exclusive jurisdiction to review judicial assignments. FN4 A party who is aggrieved by the assignment of a judge must first raise the issue in the circuit court. Thereafter, the proper method of review is to file a petition directly in the supreme court. The district courts of appeal lack jurisdiction to review judicial assignments.

FNa Judge, First District Court Of Appeal, State Of Florida.

FN1 **Jurisdiction.** An assignment order is not a jurisdictional prerequisite. That is so because jurisdiction is the power of the court and not the power of a particular judge. See Pantoja v. Reliable Trucking, Inc., 585 So.2d 955 (Fla. 4th DCA 1991). A procedural error in an assignment order does not affect the jurisdiction of the court. See Long Term Management, Inc. v. University Nursing Care Ctr., Inc., 704 So.2d 669 (Fla. 1st DCA 1997).

FN2 **Temporary Duty.** The chief judge may assign a qualified county judge to temporary duty on the circuit court. If the assignment consists entirely of circuit court work it should not exceed sixty days and if it consists of some circuit court work in addition to the judge's regular county court duties, it should not exceed six months. See Payret v. Adams, 500 So.2d 136 (Fla.1986); Crusoe v. Rowls, 472 So.2d 1163 (Fla.1985).

FN3 **Successive Assignments.** Temporary assignments can be made successively provided they do not amount to a de facto permanent assignment. See Wild v. Dozier, 672 So.2d 16 (Fla.1996), holding limited by 1-888-Traffic Schools v. Chief Judge, Fourth Judicial Circuit, 734 So.2d 413 (Fla.1999); Rivkind v. Patterson, 672 So.2d 819 (Fla.1996).

FN4 **Review.** The supreme court has exclusive jurisdiction to review judicial assignments. See Physicians Healthcare Plans, Inc. V. Raymond Pfeifler, 846 So.2d 1129 (Fla.2003); Wild v. Dozier, 672 So.2d 16 (Fla.1996), holding limited by 1-888-Traffic Schools v. Chief Judge, Fourth Judicial Circuit, 734 So.2d 413 (Fla.1999); Rivkind v. Patterson, 672 So.2d 819 (Fla.1996); Griffin v. Kia Motors Corp., 843 So.2d 336 (Fla. 1st DCA 2003) (declining to resolve a dispute over the assignment of a judge, on the ground that judicial assignment is within the exclusive jurisdiction of the supreme court).

(2004)

5 FLPRAC § 5.1
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EXHIBIT "C"

C
West's Florida Statutes Annotated Currentness
Florida Rules of Criminal Procedure (Refs & Annos)

XVI. Criminal Contempt

➞Rule 3.840. Indirect Criminal Contempt

A criminal contempt, except as provided in rule 3.830 concerning direct contempts, shall be prosecuted in the following manner:

(a) Order to Show Cause. The judge, on the judge's own motion or on affidavit of any person having knowledge of the facts, may issue and sign an order directed to the defendant, stating the essential facts constituting the criminal contempt charged and requiring the defendant to appear before the court to show cause why the defendant should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for preparation of the defense after service of the order on the defendant.

(b) Motions; Answer. The defendant, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer the order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the judge. A defendant's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

(c) Order of Arrest; Bail. The judge may issue an order of arrest of the defendant if the judge has reason to believe the defendant will not appear in response to the order to show cause. The defendant shall be admitted to bail in the manner provided by law in criminal cases.

(d) Arraignment; Hearing. The defendant may be arraigned at the time of the hearing, or prior thereto at the defendant's request. A hearing to determine the guilt or innocence of the defendant shall follow a plea of not guilty. The judge may conduct a hearing without assistance of counsel or may be assisted by the prosecuting attorney or by an attorney appointed for that purpose. The defendant is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and testify in his or her own defense. All issues of law and fact shall be heard and determined by the judge.

(e) Disqualification of Judge. If the contempt charged involves disrespect to or criticism of a judge, the judge shall disqualify himself or herself from presiding at the hearing. Another judge shall be designated by the chief justice of the supreme court.

(f) Verdict; Judgment. At the conclusion of the hearing the judge shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the defendant has been found and adjudicated guilty.

(g) Sentence; Indirect Contempt. Prior to the pronouncement of sentence, the judge shall inform the defendant of the accusation and judgment against the defendant and inquire as to whether the defendant has any cause to show why sentence should not be pronounced. The defendant shall be afforded the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the defendant.

CREDIT(S)

Amended Sept. 24, 1992, effective Jan. 1, 1993 (606 So.2d 227).

COMMITTEE NOTES

1968 Adoption.

(a)(1) Order to Show Cause. The courts have used various and, at times, misleading terminology with reference to this phase of the procedure, viz. "citation," "rule nisi," "rule," "rule to show cause," "information," "indicted," and "order to show cause." Although all apparently have been used with the same connotation the terminology chosen probably is more readily understandable than the others. This term is used in Federal Rule

of Criminal Procedure 42(b) dealing with indirect criminal contempts.

In proceedings for indirect contempt, due process of law requires that the accused be given notice of the charge and a reasonable opportunity to meet it by way of defense or explanation. State ex rel. Giblin v. Sullivan, 157 Fla. 496, 26 So.2d 509 (1946); State ex rel. Geary v. Kelly, 137 So.2d 262, 263 (Fla. 3d DCA 1962).

The petition (affidavit is used here) must be filed by someone having actual knowledge of the facts and must be under oath. Phillips v. State, 147 So.2d 163 (Fla. 3d DCA 1962); see also Croft v. Culbreath, 150 Fla. 60, 6 So.2d 638 (1942); Ex parte Biggers, 85 Fla. 322, 95 So. 763 (1923).

(2) Motions; Answer. The appellate courts of Florida, while apparently refraining from making motions and answers indispensable parts of the procedure, seem to regard them with favor in appropriate situations. Regarding motions to quash and motion for bill of particulars, see Geary v. State, 139 So.2d 891 (Fla. 3d DCA 1962); regarding the answer, see State ex. rel. Huie v. Lewis, 80 So.2d 685 (Fla.1955).

Elsewhere in these rules is a recommended proposal that a motion to dismiss replace the present motion to quash; hence, the motion to dismiss is recommended here.

The proposal contains no requirement that the motions or answer be under oath. Until section 38.22, Florida Statutes, was amended in 1945 there prevailed in Florida the common law rule that denial under oath is conclusive and requires discharge of the defendant in indirect contempt cases; the discharge was considered as justified because the defendant could be convicted of perjury if the defendant had sworn falsely in the answer or in a motion denying the charge. The amendment of section 38.22, Florida Statutes, however, has been construed to no longer justify the discharge of the defendant merely because the defendant denies the charge under oath. See Ex parte Earman, 85 Fla. 297, 95 So. 755 (1923), re the common law; see Dodd v. State, 110 So.2d 22 (Fla. 3d DCA 1959) re the construction of section 38.22, Florida Statutes, as amended. There appears, therefore, no necessity of requiring that a pleading directed to the order to show cause be under oath, except as a matter of policy of holding potential perjury prosecutions over the heads of defendants. It is recommended, therefore, that no oath be required at this stage of the proceeding.

Due process of law in the prosecution for indirect contempt requires that the defendant have the right to assistance by counsel. Baumgartner v. Joughin, 105 Fla. 335, 141 So. 185 (1932), adhered to, 107 Fla. 858, 143 So. 436 (1932).

(3) Order of Arrest; Bail. Arrest and bail, although apparently used only rarely, were permissible at common law and, accordingly, are unobjectionable under present Florida law. At times each should serve a useful purpose in contempt proceedings and should be included in the rule. As to the common law, see Ex parte Biggers, supra.

(4) Arraignment; Hearing. Provision is made for a prehearing arraignment in case the defendant wishes to plead guilty to the charge prior to the date set for the hearing. The defendant has a constitutional right to a hearing under the due process clauses of the state and federal constitutions. State ex rel. Pipia v. Buchanan, 168

So.2d 783 (Fla. 3d DCA 1964). This right includes the right to assistance of counsel and the right to call witnesses. Baumgartner v. Joughin, supra. The defendant cannot be compelled to testify against himself. Demetree v. State ex rel. Marsh, 89 So.2d 498 (Fla.1956).

Section 38.22, Florida Statutes, as amended in 1945, provides that all issues of law or fact shall be heard and determined by the judge. Apparently under this statute the defendant is not only precluded from considering a jury trial as a right but also the judge has no discretion to allow the defendant a jury trial. See State ex rel. Huie v. Lewis, supra, and Dodd v. State, supra, in which the court seems to assume this, such assumption seemingly being warranted by the terminology of the statute.

There is no reason to believe that the statute is unconstitutional as being in violation of section 11 of the Declaration of Rights of the Florida Constitution which provides, in part, that the accused in all criminal prosecutions shall have the right to a public trial by an impartial jury. Criminal contempt is not a crime; consequently, no criminal prosecution is involved. Neering v. State, 155 So.2d 874 (Fla.1963); State ex rel. Saunders v. Boyer, 166 So.2d 694 (Fla. 2d DCA 1964); Ballengee v. State, 144 So.2d 68 (Fla. 2d DCA 1962).

Section 3 of the Declaration of Rights, providing that the right of trial by jury shall be secured to all and remain inviolate forever, also apparently is not violated. This provision has been construed many times as guaranteeing a jury trial in proceedings at common law, as practiced at the time of the adoption of the constitution (see, e.g., Hawkins v. Rellim Inv. Co., 92 Fla. 784, 110 So. 350 (1926)), i.e., it is applicable only to cases in which the right existed before the adoption of the constitution (see, e.g., State ex rel. Sellers v. Parker, 87 Fla. 181, 100 So. 260 (1924)). Section 3 was never intended to extend the right of a trial by jury beyond this point. Boyd v. Dade County, 123 So.2d 323 (Fla.1960).

There is some authority that trial by jury in indirect criminal contempt existed in the early common law, but this practice was eliminated by the Star Chamber with the result that for centuries the common law courts have punished indirect contempts without a jury trial. See 36 Mississippi Law Journal 106. The practice in Florida to date apparently has been consistent with this position. No case has been found in this state in which a person was tried by a jury for criminal contempt. See Justice Terrell's comment adverse to such jury trials in State ex rel. Huie v. Lewis, supra.

The United States Supreme Court has assumed the same position with reference to the dictates of the common law. Quoting from Eilenbecker v. District Court, 134 U.S. 31, 36, 10 S.Ct. 424, 33 L.Ed. 801 (1890), the Court stated, "If it has ever been understood that proceedings according to the common law for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it." United States v. Barnett, 376 U.S. 681, 696, 84 S.Ct. 984, 12 L.Ed.2d 23 (1964). In answer to the contention that contempt proceedings without a jury were limited to trivial offenses, the Court stated, "[W]e find no basis for a determination that, at the time the Constitution was adopted, contempt was generally regarded as not extending to cases of serious misconduct." 376 U.S. at 701. There is little doubt, therefore, that a defendant in a criminal contempt case in Florida has no constitutional right to a trial by jury.

Proponents for such trials seemingly must depend on authorization by the legislature or Supreme Court of Florida to attain their objective. By enacting section 38.22, Florida Statutes, which impliedly prohibits trial by jury the legislature exhibited a legislative intent to remain consistent with the common law rule. A possible alternative is for the Supreme Court of Florida to promulgate a rule providing for such trials and assume the position that under its constitutional right to govern practice and procedure in the courts of Florida such rule would supersede section 38.22, Florida Statutes. It is believed that the supreme court has such authority. Accordingly, alternate proposals are offered for the court's consideration; the first provides for a jury trial unless waived by the defendant and the alternate is consistent with present practice.

(5) Disqualification of Judge. Provision for the disqualification of the judge is made in federal rule 42(b). The proposal is patterned after this rule.

Favorable comments concerning disqualification of judges in appropriate cases may be found in opinions of the

Supreme Court of Florida. See Pennekamp v. State, 156 Fla. 227, 22 So.2d 875 (1945), and concurring opinion in State ex rel. Huie v. Lewis, supra.

(6) Verdict; Judgment. "Judgment" is deemed preferable to the term "order," since the proper procedure involves an adjudication of guilty. The use of "judgment" is consistent with present Florida practice. E.g., Dinnen v. State, 168 So.2d 703 (Fla. 2d DCA 1964); State ex rel. Byrd v. Anderson, 168 So.2d 554 (Fla. 1st DCA 1964).

The recital in the judgment of facts constituting the contempt serves to preserve for postconviction purposes a composite record of the offense by the person best qualified to make such recital: the judge. See Ryals v. United States, 69 F.2d 946 (5th Cir.1934), in which such procedure is referred to as "good practice."

(7) Sentence; Indirect Contempt. The substance of this subdivision is found in present sections 921.05(2), 921.07 and 921.13, Florida Statutes. While these sections are concerned with sentences in criminal cases, the First District Court of Appeal in 1964 held that unless a defendant convicted of criminal contempt is paid the same deference the defendant is not being accorded due process of law as provided in section 12 of the Declaration of Rights of the Florida Constitution and the Fourteenth Amendment of the Constitution of the United States. Neering v. State, 164 So.2d 29 (Fla. 1st DCA 1964).

Statement concerning the effect the adoption of this proposed rule will have on contempt statutes:

This rule is not concerned with the source of the power of courts to punish for contempt. It is concerned with desirable procedure to be employed in the implementation of such power. Consequently, its adoption will in no way affect the Florida statutes purporting to be legislative grants of authority to the courts to punish for contempt, viz., sections 38.22 (dealing with "all" courts), 932.03 (dealing with courts having original jurisdiction in criminal cases), and 39.13 (dealing with juvenile courts). This is true regardless of whether the source of power is considered to lie exclusively with the courts as an inherent power or is subject, at least in part, to legislative grant.

The adoption of the rule also will leave unaffected the numerous Florida statutes concerned with various situations considered by the legislature to be punishable as contempt (e.g., section 38.23, Florida Statutes), since these statutes deal with substantive rather than procedural law.

Section 38.22, Florida Statutes, as discussed in the preceding notes, is concerned with procedure in that it requires the court to hear and determine all questions of law or fact. Insofar, therefore, as criminal contempts are concerned the adoption of the alternate proposal providing for a jury trial will mean that the rule supersedes this aspect of the statute and the statute should be amended accordingly.

1972 Amendment. Same as prior rule.

HISTORICAL NOTE

Derivation:

1972 Revision (272 So.2d 65).

Prior Provisions:

1971 R.Cr.P. 3.840.
1968 Amendment (211 So.2d 203).
1968 Amendment (207 So.2d 430).
1967 R.Cr.P. 1.840.

CROSS REFERENCES

Disqualification of judge, see Judicial Administration Rule 2.160.
Punishment of contempts, see F.S.A. § 38.22.
Related court rule provision, see Traffic Court Rule 6.090.

LAW REVIEW AND JOURNAL COMMENTARIES

Contempt for nonsupport in Florida. Ruth Fleet Thurman, 9 Stetson L.Rev. 333 (1980).

Contempt of court in Florida. 9 Miami L.Q. 281 (1955).

Criminal contempt procedures in Florida. 18 U.Fla.L.Rev. 78 (1965).

Florida Rules of Criminal Procedure; amendments. 23 U.Miami L.Rev. 816 (Summer 1969).

Nonsupport contempt hearing. 12 Fla.St.U.L.Rev. 117 (1984).

Rules of Criminal Procedure: Pretrial Discovery. Albert J. Datz, 42 Fla.B.J. 285, 288 (May 1968).

Use of contempt of court to enforce Florida divorce decrees. 6 Nova L.J. 313 (1982).

When the lawyer's tone or manner can send him to jail. J. James McGuirk, 52 Fla.B.J. 747 (1978).

LIBRARY REFERENCES

Contempt  3, 53 to 63.
Westlaw Topic No. 93.
C.J.S. Contempt §§ 2 to 3, 11, 74 to 101.

RESEARCH REFERENCES

ALR Library

32 ALR 5th 31, Right to Appointment of Counsel in Contempt Proceedings.

52 ALR 3rd 1002, Right to Counsel in Contempt Proceedings.

33 ALR 3rd 448, Appealability of Contempt Adjudication or Conviction.

41 ALR 2nd 1263, Necessity of Affidavit or Sworn Statement as Foundation for Constructive Contempt.

EXHIBIT "D"

586 F.3d 844 (2009)

UNITED STATES of America, Plaintiff-Appellee,

v.

Lee A. COHN, Defendant-Appellant.

No. 07-13479.
United States Court of Appeals, Eleventh Circuit.

September 30, 2009.

J. David Bogenschutz, Bogenschutz & Dutko, P.A., Marc Fagelson, Ft. Lauderdale, FL, for Cohn.

Anne R. Schultz, Asst. U.S. Atty., Maria Kostantina Medetis, Miami, FL, Phillip D'Rosa, Ft. Lauderdale, FL, for U.S.

Before TJOFLAT and BLACK, Circuit Judges, and EVANS,[*] District Judge.

*845 PER CURIAM:

The principal question this appeal presents is whether criminal contempt, 18 U.S.C. § 401, should be classified as a felony or a misdemeanor. We conclude that criminal contempt is a **sui generis** offense and that it is neither a felony nor a misdemeanor.

I.

A.

On January 7 and 12, 2005, Lee A. Cohn, a member of the Florida bar, entered his appearance as retained counsel on behalf of Kenneth Lance Malbry, who had been indicted by a Southern District of Florida grand jury for possession of crack cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). Cohn represented Malbry through the final disposition of the case on August 5, 2005. On that date, the district court accepted Malbry's plea of guilty to the charge, which had been tendered at a change-of-plea hearing on April 18, and sentenced Malbry to 188 months' imprisonment and a four-year term of supervised release.

On January 24, 2006, the U.S. Attorney informed the district court that Cohn had been disbarred by the Florida Supreme Court on January 9, 2006, and that he had been declared "ineligible to practice law in Florida" on April 6,

2005 — nearly two weeks before Malbry tendered his plea of guilty. On March 29, 2006, Malbry, represented by a court-appointed attorney, moved the district court pursuant to 28 U.S.C. § 2255 to vacate his conviction and sentence on the ground that Cohn's inability to practice law had deprived him of the effective assistance of counsel at his change-of-plea hearing and sentencing. The court granted the motion on May 25, 2006.

B.

On August 31, 2006, the district court entered an order pursuant to Rule 42(a) of the Federal Rules of Criminal Procedure[1] requiring Cohn to show cause why he should not be held in criminal contempt, under 18 U.S.C. § 401,[2] for representing Malbry and appearing before the district court "after having been deemed not eligible to practice law in Florida by The Florida Bar." The order stated that such conduct constituted a clear violation of the Special Rules Governing the Admission and Practice of Attorneys for the Southern District of Florida.

Pursuant to the district court's order, the U.S. Attorney appeared to prosecute the contempt. At a hearing held on November 9, 2006, Cohn announced that he intended to plead guilty to the criminal contempt charge, and the district court instructed the prosecutor and defense counsel to submit memoranda addressing the question of which of the Sentencing Guidelines was "most analogous" to the § 401 offense. After the parties complied, the district court scheduled a plea and sentencing hearing for January 29, 2007. When the hearing convened, the court informed the parties of its determination that Cohn's offense was

> *846 a crime of criminal contempt pursuant to 18, U.S.C., Section 401(1), that is a Class A felony and, therefore, the statutory penalty would be life in prisonment, a maximum term of life in prisonment, probation would not be authorized, the maximum fine would be $250,000, supervised release would not be greater than five years, and there would be a mandatory special assessment of $100.[3]

Because the court's position was unanticipated, the court continued the hearing.

On April 23, 2007, the district court accepted Cohn's conditional plea to criminal contempt.[4] At a second sentencing hearing on July 9, 2007, the court, adhering to its January 29 announcement that criminal contempt constitutes a Class A felony, sentenced Cohn to forty-five days' imprisonment to be followed by a five-year term of supervised release, and a special assessment of $100.[5] This appeal followed.

II.

Cohn asks that we vacate his sentence and remand the case to the district court for resentencing on the ground that the court erred in treating criminal contempt as a Class A felony.[6] We review issues of statutory interpretation **de novo. United** *847 **States v. Maturin**, 499_F.3d_1243, 1245 (11th Cir.2007).

III.

The parties agree that 18 U.S.C. § 401 covers Cohn's criminal contempt. It provides:

> A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
> (2) Misbehavior of any of its officers in their official transactions;
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Section 401 does not specify maximum or minimum penalties for its violation, nor does it assign a felony or misdemeanor designation or grade. Whether criminal contempt appropriately falls within either the felony or misdemeanor classification is a question of first impression in this circuit.[7]

Title 18 U.S.C. § 3559, which classifies offenses according to letter grades, states that "[a]n offense that is not specifically *848 classified by a letter grade in the section defining it, is classified ... [according to] the maximum term of imprisonment authorized." The district court reasoned that because a maximum penalty is not specified in § 401, a violation of the statute is punishable by life imprisonment. Pursuant to § 3559, crimes punishable by life imprisonment are classified as Class A felonies.[8] Class A felons cannot be sentenced to probation.

We disagree with the district court's conclusion that § 401 falls within the ambit of § 3559's classification scheme. Section 401 covers a broad range of conduct, as acknowledged by the Supreme Court. **See, e.g., Frank v. United States**, 395_U.S._147,149,89_S._Ct._1503,1505,23_L._Ed._2d_162 (1969) ("[A] person may be found in contempt of court for a great many different types of offenses. ... Congress, perhaps in recognition of the scope of criminal contempt, has authorized courts to impose penalties but has not placed any specific limits on their discretion."); **Green v. United States**, 356_U.S._165,188,78_S._Ct._632,645,2_L._Ed._2d_672 (1958) ("Congress has not seen fit to impose limitations on the sentencing power for contempts."), **overruled in part on other grounds by Bloom v. Illinois**, 391_U.S._194,88_S._Ct._1477,20_L._Ed._2d_522 (1968). Likewise, a broad array of penalties exists for § 401 violations. No single sentencing guideline applies to § 401. Courts, in sentencing contemners, are directed to the "Other Offenses" section of the Guidelines rather than a single guideline "[b]ecause misconduct constituting contempt varies significantly and the nature of the contemptuous conduct, the circumstances under which the contempt was committed, the effect the misconduct had on the administration of justice, and the need to vindicate the authority of the court are highly context-dependent." U.S.S.G. § 2J1.1, comment. (n.1).[2] Uniform classification of criminal contempt would be inconsistent with the breadth of § 401 and appropriate sentences for its violation. On the other hand, it would be an impracticable, painstaking task individually to classify each instance of criminal contempt. Accordingly, we hold that criminal contempt is best categorized as a **sui generis** offense, rather than a felony or misdemeanor.

*849 This reading of § 401 is supported by the Supreme Court's consistent categorization of criminal contempt as a **sui generis** offense. **See Cheff v. Schnackenberg**, 384_U.S._373,380,86_S._Ct._1523,1526,16_L._Ed._2d_629 (1966) (referring to criminal contempt as "an offense **sui generis**"); **see also United States v. Holmes**, 822 F.2d_481,493 (5th Cir.1987) ("[T]he Supreme Court has never characterized contempt as either a felony or a misdemeanor, but rather has described it as 'an offense **sui generis**.'"). This reading also appropriately reflects the differences between criminal contempt and the traditional crimes classified pursuant to § 3359. Criminal contempt need not be charged by indictment. **See** Fed.R.Crim.P. 7(a)(1); Fed.R.Crim.P. 42(a). The district courts have authority to appoint private attorneys to initiate and prosecute a criminal contempt case. **Young v. United States ex rel. Vuitton et Fils S.A.**, 481_U.S._787,799-801,107_S._Ct._2124,2133-34,95_L._Ed._2d_740 (1987); Fed.R.Crim.P. 42(a)(2).
Considering the scope of § 401 and the wide range of sentences that may be imposed for its violation, Supreme Court jurisprudence, and the differences between criminal contempt and other crimes, we hold that criminal contempt is an offense **sui generis** that cannot be classified pursuant to § 3559. The district court accordingly erred in classifying criminal contempt as a Class A felony.

IV.

For the foregoing reasons, the sentence the district court imposed is vacated and the case is remanded for resentencing.

VACATED AND REMANDED.

NOTES

[*] Honorable Orinda D. Evans, United States District Judge for the Northern District of Georgia, sitting by designation.

[1] Fed.R.Crim.P. 42 states, in pertinent part:

(a) Disposition After Notice. Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.

(1) Notice. The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must:

. . . .

(C) state the essential facts constituting the charged criminal contempt.

[2] The text of § 401 is set out in part III, *infra*.

[3] As we point out *infra*, 18 U.S.C. § 401 does not classify criminal contempt by letter grade. According to 18 U.S.C. § 3559(a)(1), governing sentencing classification of offenses, if an offense "is not specifically classified by a letter grade in the section defining it," the offense is classified as a Class A felony "if the maximum term of imprisonment authorized is ... life imprisonment."

[4] Fed.R.Crim.P. 11(a)(2) states, in pertinent part: "With the consent of the court and the government, a defendant may enter a conditional plea of guilty ... reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion." The conditional plea enabled Cohn to challenge on appeal the district court's determination that criminal contempt is a Class A felony.

[5] The district court accepted the Sentencing Guidelines determination articulated in the presentence report ("the PSI") prepared by the court's probation office. The PSI designated U.S.S.G. § 2J1.2(b)(2) as the guideline most analogous to the criminal contempt Cohn had committed. Section 2J1.2 provides for a base offense level of 14. The PSI increased the base offense level by three levels for "substantial interference with the administration of justice," but reduced it by three levels for acceptance of responsibility, for a total offense level of 14. Based on a total offense level of 14 and a criminal history category of I, the sentence range called for imprisonment of 15 to 21 months. Given a maximum term of imprisonment of 21 months, the PSI stated that Cohn's criminal contempt constituted a Class E felony. (18 U.S.C. § 3559(a)(5) provides that a crime for which the maximum penalty of imprisonment is less than five years but more than one year is a Class E felony.) The court, however, considered the crime a Class A felony. Addressing the questions of restitution and fine, the court found that Cohn, who had already made restitution, was unable to pay a fine, but directed him to participate in a substance abuse and mental health program.

[6] As an alternative ground for vacating his sentence, Cohn also argues that the district court erred in determining that U.S.S.G. § 2J1.2, "Obstruction of Justice," is the guideline most analogous to the offense of criminal contempt. Section 2J1.1, "Contempt," is the guideline applicable to 18 U.S.C. § 401. It instructs the sentencing court to apply U.S.S.G. § 2X5.1, "Other Offenses," because "misconduct constituting contempt varies significantly." U.S.S.G. § 2J1.1, comment. (n.1). Section 2X5.1 provides that if an offense is "a felony for which no guideline expressly has been promulgated, apply the most analogous offense guideline." The district court determined that Cohn's criminal contempt is a Class A felony and that the most analogous offense is obstruction of justice. Because we reverse the district court's determination that Cohn's contempt was a felony, § 2X5.1 does not apply, and we need not reach the question of whether obstruction of justice was the crime most analogous to Cohn's contempt.

[7] The Ninth Circuit is the only court of appeals to have ruled on this precise issue in a reported decision. In **United States v. Carpenter**, the contemner refused to testify in response to a grand jury subpoena. 91_F.3d_1282, 1282 (9th Cir. 1996) (per curiam). The government argued that Carpenter's criminal contempt constituted a Class A felony based on the reasons articulated by the district court in this case. **Id.** at 1284. The district court accepted the argument and treated the contempt as a Class A felony. The Ninth Circuit reversed, holding that the only similarity criminal contempt bore to other Class A felonies was that § 401 did not specify a maximum term of imprisonment. Although a maximum penalty is not specified "for Class A felonies because Congress views all such felonies as extraordinarily serious crimes," the court observed that criminal contempts, "in contrast, include a broad range of conduct, from trivial to severe." **Id.** The Ninth Circuit elected to classify criminal contempt in accordance with the maximum sentence a court could impose for the most analogous offense. **Id.** at 1285. The district court had found that obstruction of justice, with a sentence range under the Guidelines of 6–12 months, was the most analogous offense to Carpenter's contempt. **Id.** Accordingly, the Ninth Circuit classified Carpenter's criminal contempt as a Class A misdemeanor. **Id.** We decline to adopt this method of classification. The method does not address how to classify criminal contempt if a sufficiently analogous guideline is absent. More importantly, maximum penalties are established by statute, not the Sentencing Guidelines. It is far from clear whether a district court, in classifying a criminal contempt, should use the maximum penalty called for by the base offense level or the total offense level, including all possible enhancements.
Judge Barkett, in a special concurrence, has addressed the issue of classifying criminal contempt. **See United States v. Love**, 449_F.3d_1154, 1157-59 (11th Cir.2006) (per curiam) (Barkett, J., specially concurring). In that case, the defendant was convicted of violating 18 U.S.C. § 401(3) and sentenced to 45 days' imprisonment and five years' supervised release by the same district court who sentenced Cohn. The court classified contempt as a Class A felony. On appeal, this court did not address the merits of the district court's classification decision because it found

that the defendant had "induced or invited the ruling." **Id.** at 1157. Judge Barkett opined "that criminal contempt, as an offense **sui generis**, cannot be branded a Class A felony in every instance." **Id.** at 1157-58. Otherwise, "patently absurd" and likely unconstitutional results, including harsh or disparate punishments, would result. **Id.** at 1158. Judge Barkett emphasized that criminal contempts are not universally "extraordinarily serious" but rather "include a broad range of conduct, from trivial to severe." **Id.** at 1158 (quoting **Carpenter**, 91 F.3d at 1284). Judge Barkett asserted that the **Carpenter** approach would appropriately address these concerns; nonetheless, we do not adopt the **Carpenter** approach for the reasons above.

[8] In its entirety, subsection (a) of 18 U.S.C. § 3559 states:

(a) Classification.—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—

(1) life imprisonment, or if the maximum penalty is death, as a Class A felony;

(2) twenty-five years or more, as a Class B felony;

(3) less than twenty-five years but ten or more years, as a Class C felony;

(4) less than ten years but five or more years, as a Class D felony;

(5) less than five years but more than one year, as a Class E felony;

(6) one year or less but more than six months, as a Class A misdemeanor;

(7) six months or less but more than thirty days, as a Class B misdemeanor;

(8) thirty days or less but more than five days, as a Class C misdemeanor; or

(9) five days or less, or if no imprisonment is authorized, as an infraction.

[9] Forcing a district court to pigeonhole a criminal contempt into a felony or misdemeanor category would impinge on its ability to impose appropriate sentences. Pursuant to § 3559, different classifications prescribe various periods of imprisonment and supervised release and fines. Due to the variety of conduct which may be punished as criminal contempt, it is important that the district courts have flexibility in sentencing. For example, a court may be inclined to impose a short period of imprisonment but a lengthy term of supervised release or a steep fine. Section 3559's classification system would not permit this flexibility.

EXHIBIT "E"

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

vs.

SCOTT HUMINSKI

Defendant

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

COPY

KS/MT

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA CASE NO. 17-MM-000815; 18-000003AP (JRA)

vs.

SCOTT ALAN HUMINSKI

_____/

CERTIFICATION OF CONFLICT

COMES NOW, Kathleen A. Smith, Public Defender, and pursuant to Valle v. State, 763 So.2d 1175 (Fla. 4th DCA 2000) and certifies to this Honorable Court the following:

The Public Defender has been appointed to represent the Defendant, Scott Alan Huminski.

After a careful investigation and weighing of the facts of this case, the Public Defender has conclusively determined that the interests of Scott Alan Huminski are so adverse and hostile to those of another client and/or an attorney within the Office of the Public Defender that a conflict of interest exists.

As a result of this conflict of interest, the Public Defender cannot adequately or ethically continue to represent the Defendant.

WHEREFORE, the Public Defender certifies to this Honorable Court that the Office of the Public Defender can no longer represent the Defendant due to this conflict of interest and requests that a Regional Counsel be appointed pursuant to section 27.5303, Florida Statutes (1995) and Babb v. Edwards, 412 So.2d 859 (Fla. 1982).

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; this 5th day of March, 2018.

KATHLEEN A. SMITH
Public Defender
2000 Main Street
Fort Myers, FL 33902-1980
(239) 533-2911

By: _____ for
Of Counsel - Kevin John Sarlo
Florida Bar No. 0126369

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER STRIKING SUCCESSIVE MOTIONS

THIS CAUSE comes before the Court on Defendant's "Motion To Dismiss – No Jurisdiction," "Motion To Dismiss Criminal Contempt," "Motion To Dismiss – At Best This is A Civil Contempt Case," "Motion To Dismiss – Denial Of Compulsory Process 6th Amendment And Bill Of Particulars," "Memorandum Concerning Violations Of Huminksi's Sixth Amendment Rights," and "Motion To Stay Pending Disposition In Russel v. Waterman Broadcasting," filed February 27, 2018. The Court has previously ruled on the issues raised in these motions, and the motions are successive. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 5 day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 5 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER STRIKING MOTION FOR STATE DISCLOSURE

THIS CAUSE comes before the Court on Defendant's "Motion For State's Disclosure Of Medical Witnesses Concerning Huminski's Competence To Act As His Own Attorney With His Disabilities," filed February 27, 2018. The State is not required to present witnesses on that issue, and must only list witnesses that it intends to call at trial. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 5 day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 5 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER STRIKING APPOINTMENT OF PUBLIC DEFENDER

THIS CAUSE comes before the Court on Defendant's affidavit of indigency filed March 1, 2018, which contains a determination by the Clerk that Defendant is indigent, and appoints the Public Defender. The Court denied Defendant appointment of counsel by order filed January 18, 2018. The Clerk has no authority to override a ruling by the Court. Further, the Public Defender certified conflict in this case, and could not be appointed. Accordingly, it is

ORDERED AND ADJUDGED that the appointment of the Public Defender in the "application for criminal indigent status" filed March 1, 2018 is STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 5 day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; Office of the Public Defender, P.O. Box 1980, Ft. Myers, FL 33902-1980; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 5 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER ON "NOTICES" OF ORDERS ENTERED AFTER APPEAL

THIS CAUSE comes before the Court on Defendant's "Notice Of Orders Entered After Notice Of Appeal Are Void Ab Initio" filed February 23, 2018, "Notice Of Per Se Criminal Contempt" and "Notice Of Per Se Criminal Contempt 2" filed February 23, 2018. Defendant is mistaken. Fla. R. App. P. 9.130(f) provides that the trial court does not automatically lose jurisdiction during an interlocutory appeal, and may proceed even to trial.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's notices are DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 5 day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; ; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 5 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – 38.22 IMPROPER VENUE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above.

38.22 Power to punish contempts.—Every court may punish contempts against it whether such contempts be direct, indirect, or constructive, and in any such proceeding the court shall proceed to hear and determine all questions of law and fact.

History.—s. 1, Nov. 23, 1828; RS 975; GS 1345; RGS 2534; CGL 4161; s. 1, ch. 23004, 1945; s. 4, ch. 73-334.

In above"contempts against it" and "the court shall..." refer to the same court Circuit or County court against which the contempt occurred. This statute does not authorize any other court than the one which the contempt offended to hear and determine the cause.

The plain language states a county court cannot hear and determine a case for contempt expressed against the circuit court. No contempt has been alleged against the County Court. See 38.22

The nature of the potential punishment involved does not divest a Circuit Court, a District Court of Appeal or the Florida Supreme Court of the power to hear contempts. An indirect criminal contempt against the Florida Supreme Court does not get moved or transferred to a county court. This governmental position is absurd and prohibited under 38.22.

Dated at Bonita Springs, Florida this 2nd day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 2nd day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – Gideon v. Wainwright

NOW COMES, Scott Huminski ("Huminski"), and, moves as above per Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). In Gideon, the Supreme Court

found the Sixth Amendment guarantee of counsel to be a fundamental right made obligatory upon the states via the Fourteenth Amendment. Id. at 342-45, 83 S.Ct. 792.

Accordingly the court determined that an indigent criminal defendant has a right to appointed counsel in all state court felony proceedings and reversed a conviction obtained in violation of that right. Id. This right was further extended in Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), where the Supreme Court

held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." Id. at 37, 92 S.Ct. 2006.

Dated at Bonita Springs, Florida this 2nd day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 2nd day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 **State of Florida vs Huminski, Scott A**

_____ Previously FTA for assigned Judge _____
_____ Felony Reduction _____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	03/06/2018	BH

Attorney: AT Huminski, Scott A

APPEARANCE
_____ Failed to Appear
X Present w/o Attorney
_____ Present w/ Attorney
_____ Present by Attorney
_____ Present w/ Interpreter
_____ Interpreter Services Requested
Language _____
_____ Victim/Other _____

PLEA
_____ Guilty
_____ Not Guilty
_____ Nolo Contender
_____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
_____ Withheld by Judge
_____ Adjudicated Guilty
_____ Withheld by Clerk
_____

VERDICT
_____ Guilty by Judge
_____ Not Guilty by Judge
_____ Guilty by Jury
_____ Not Guilty by Jury
_____ Mistrial
_____

DISPOSITION
_____ Acquitted
_____ Nolle Pros
_____ No Information
_____ Dismissed
_____ Adm.Dismissed
_____ Merge & Dismiss

SENTENCE

SH

_____ Probation Reporting _____ DD/MM/YY
_____ Consecutive/Concurrent with _____
_____ One Time Cost $_____ Waive COS $_____
_____ Report to Probation Today or Upon Release Within _____
_____ Probation may terminate early when conditions are met
_____ May Transfer Probation to _____
_____ May Report to Probation and/or Instruct by Mail
_____ Ignition Interlock Device _____ DD/MM/YY
_____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
_____ Statutory Exception to Vehicle Impound
_____ Does Not Own Vehicle _____ Shared Vehicle
_____ Other _____
_____ Random _____ Alcohol _____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
_____ No Possession or Consumption of Alcohol or Illicit Substances
_____ DUI School - Follow recommendations/Phase _____ I _____ II
_____ School to Determine which Phase
_____ Sign up w/in _____ days
_____ Traffic School 4 Hr / 8Hr / 12 Hr
_____ Attend and Complete Lee Memorial High Risk Driver's Course or _____ Victim Impact Panel
_____ Psychiatric Evaluation _____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
_____ Sign up for Batterer's Intervention Program w/in 30 Days
_____ Attend & Complete _____ Anti-Theft _____ Mile Post Program
_____ Attend & Complete Program _____
_____ DNA Testing Collected _____ in Court _____ at LCJ
_____ Other Testing _____ HIV _____ STD _____
_____ Defendant Advised of Habitual and/or Felony Status

_____ Jail Time _____ DD/MM/YY
_____ Consecutive/Concurrent with _____
_____ Weekend Time Fri 6pm to Sun 6pm
_____ Beginning _____
_____ Day Work Program* _____ Days
___ Minimum ___ day(s) a week ___ consecutive weeks
_____ Credit Time Served _____ DD/MM/YY
_____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
_____ Defendant Remanded _____ Sentence Suspended
_____ DL Suspended/Revoked _____ DD/MM/YY
_____ Spec. Conditions - Drive for Work/Business purposes
_____ Show Valid Driver's License within _____
_____ Produced Valid Driver's License in Court
_____ Community Service _____ Hours and/or Pay $_____
_____ Must complete _____ hours of community service before buyout
_____ Show Proof of Com. Service to Clerk w/in _____
_____ Stay Away from arrest location _____
_____ No Contact with victim _____
_____ State Orally Amends Charge in Open Court
_____ Formal Filing of Information is Waived
_____ Information Filed in Open Court
_____ Successfully Completed Pretrial Diversion Program
_____ Judicial Warning
_____ Defendant Accepted DV Diversion
_____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to 3.16.18 MANDATORY COURT APPEARANCE

For _____ AR _____ DS _____ TR _____ DA _____ DD _____ DT _____ RH

Time 8:45 AM PM Court Room 2A

_____ Speedy Trial Waived _____ Speedy Trial Tolled

JRA _____ HAS _____ MEG _____ ZMG _____ DSG _____ JMG _____ TPP _____ ABH _____

_____ Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** _____

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO FORBID FINAL JUDGMENT WHILE INTERLOCTORY APPEAL IS PENDING

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because Florida Rule of Appellate Procedure 9.130(f) prohibits a lower tribunal from entering an order disposing of a case during the pendency of an interlocutory appeal. Final judgments and subsequent orders entered during the pendency of an interlocutory appeal are entered without jurisdiction and are "a nullity." Connor Realty, Inc. v. Ocean Terrace N. Condo. Ass'n, 572 So. 2d 4, 4 (Fla. 4th DCA 1990); see also McKenna v. Camino Real Vill. Ass'n, 8 So. 3d 1172, 1175 (Fla. 4th DCA 2009).

Dated at Bonita Springs, Florida this 6th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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Bonita Springs, FL 34134

(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 6th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISMISS – 5th Amendment Right to Remain Silent – Faretta inquiry

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because Huminski asserts his 5th Amendment right to remain silent. Since the Court stripped defendant

of counsel counsel without a Feretta inquiry, the trial will be patently unconstitutional. FARETTA v. CALIFORNIA, 422 U.S. 806 (1975). See Florida Bar Journal, October 1997 Volume LXXI, No. 9 below.

Dated at Bonita Springs, Florida this 6th day of March, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

Self-Representation and Ineffective Assistance of Counsel: How Trial Judges Can Find Their Way Thro

by Angela D. McCravy

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Requests for self-representation and claims of ineffective assistance of court-appointed counsel present a real quagmire to the trial judges who must deal with them. Such difficulties are understandable, since the case law in these areas is voluminous, complex, and at times downright inconsistent. Judge Chris Altenbernd of the Second District Court of Appeal attempted to assist trial judges by giving them a skeleton procedural outline to follow in his concurring opinion in *Jones v. State*, 658 So. 2d 122 (Fla. 2d DCA 1995). However, the issue became even more confusing when the same court receded from portions of that procedural guide less than a year later in *Bowen v. State*, 677 So. 2d 863 (Fla. 2d DCA 1996). This article is intended to sort out some of the confusion and assist trial judges who are increasingly confronted with these issues by criminal defendants.

When Defendants Complain About Court-Appointed Counsel

The trial judge must first conduct a *Nelson*[1] inquiry to determine whether trial counsel has in fact been ineffective. As part of this hearing, the judge should inquire of both the defendant and the court-appointed counsel about the circumstances surrounding the complaint. Only after inquiring of both the defendant and counsel can the judge determine whether the omission or act occurred, and whether it constitutes a "specific, serious deficiency measurably below that of professionally competent counsel."[2]

There is no easy formula for determining whether an attorney's particular act or omission constitutes ineffective assistance. In general, Florida courts have made this determination on a case-by-case basis. But one of the most prevalent claims made by defendants about their court-appointed attorney is that the attorney has not made sufficient visits to the jail to discuss the case. If this is the extent of the defendant's complaints and he or she raises no instance of incompetency or inadequacy in the handling of the defense, the trial judge is not required even to conduct a *Nelson* inquiry.[3]

Sometimes a defendant will voice complaints about his or her attorney that, at the root, are nothing more than a reflection of personality differences between the defendant and attorney. In such a situation, the judge should remember that an accused is not entitled

to the appointment of counsel of his or her choice,[4] and that the Sixth Amendment does not guarantee a meaningful relationship between the accused and counsel.[5] The judge's inquiry should focus on the adversarial process, not on the harmoniousness of the attorney-client relationship.[6]

After the *Nelson* inquiry, if the judge determines that the court-appointed counsel has in fact been ineffective, the judge should make a finding to that effect on the record and appoint a substitute attorney. The new attorney should be allowed adequate time to prepare for trial.

Alternatively, if the judge determines that the attorney has not been ineffective, that finding should also clearly be made on the record. The judge should then advise the defendant that if he or she discharges the original counsel, the state may not be required to appoint another one. If the defendant continues to demand dismissal of the court-appointed counsel, then it is presumed that the defendant is exercising the right to self-representation.[7] The trial judge may then discharge the attorney and require the defendant to proceed without representation. But the judge must first conduct a *Faretta*[8] inquiry to determine if the defendant's waiver is knowing and intelligent. The proper procedure for conducting a *Faretta* hearing is discussed below.

The best course for a judge to follow is to advise a defendant about the right to self-representation anytime the defendant complains about the court-appointed counsel.[9] But the requirement to give a defendant this advice does not mandate reversal every time a court fails to do so upon learning that a defendant has expressed dissatisfaction with counsel, "a daily occurrence in many trial courts."[10]

When Defendants Request Self-Representation

Initially, trial judges should be aware that the right of self-representation may be lost if it is not timely asserted. *See, e.g.*, *Horton v. Dugger*, 895 F.2d 714 (11th Cir. 1990) (upholding denial of self-representation request made after jury was empaneled but before trial began). However, at least one Florida court has held otherwise. *See Smith v. State*, 677 So. 2d 370 (Fla. 2d DCA 1996) (conviction reversed where trial court advised defendant he had "no choice" but to proceed with court-appointed attorney or return to his cell while the trial continued without him, when he sought to discharge his court-appointed attorney after the state rested its case but before the defense case-in-chief). Because of the conflicting law in this area, it is probably best for a trial judge to err on the side of caution and conduct a *Nelson* and/or *Faretta* inquiry anytime complaints about counsel or requests for self-representation are made, regardless of what point they occur during trial.

A trial judge is only required to conduct a *Faretta* inquiry when there is an unequivocal request for self-representation.[11] The purpose of a *Faretta* hearing is to determine whether a defendant is knowingly and intelligently waiving the right to counsel. These are the factors a trial judge should consider in determining whether a defendant's waiver of counsel is knowing and intelligent:[12]

•What is the defendant's age, education, and background?
• What is the defendant's mental condition?
•Does the defendant understand the dangers and disadvantages of self-representation, including:
a) the nature and complexity of the case?
b) the seriousness of the charge?
c) the potential sentence?
d) the possibility of sentence enhancement, such as habitual offender, use of a firearm, or use of a mask?
•What is the defendant's experience in the criminal justice system?
•Does the defendant understand the requirement to abide by the rules of courtroom procedure?
•Was the defendant represented by counsel before trial?
•Is the waiver the result of coercion or mistreatment?

There are no particular words required to establish that the defendant is making an informed decision. The issue depends on the facts and circumstances of each case.[13] The ultimate test is not the trial court's express advice, but rather the defendant's understanding.[14]

The most prevalent mistake made by trial judges during a *Faretta* hearing is inquiring into the defendant's legal skills and ability to actually conduct his or her defense. A defendant's technical legal knowledge is irrelevant to determining whether his or her waiver is knowing and intelligent.[15] Additionally, the Second District Court of Appeal has held that once a trial judge determines that a defendant's waiver is knowing and intelligent, the judge may not proceed to inquire into whether there are other "unusual circumstances" which would deny a fair trial to a defendant who represents himself or herself. *Bowen v. State*, 677 So. 2d 863 (Fla. 2d DCA 1996), *aff'd*, 22 Fla. L. Weekly S208 (April 24, 1997). The import of the *Bowen*decision appears to be that Florida's pre-*Faretta* "unusual circumstances" test for self-representation established in *Cappetta v. State*, 204 So. 2d 913 (Fla. 4th DCA 1967), and approved by the Florida Supreme Court at 216 So. 2d 749 (Fla. 1968), was overruled by *Faretta*.[16]

On the other hand, the Fourth District has suggested that trial judges should inquire about the fairness of a trial without counsel when conducting a *Faretta* hearing, because the inquiry serves the purpose of making the defendant "aware of the disadvantages under which he is placing himself by waiving counsel."[17] The Fourth District also continues to hold that a trial judge may properly deny self-representation based on "unusual circumstances" such as the state of the defendant's health, as long as the "unusual circumstance" is something other than lack of legal knowledge.[18]

In his concurring opinion of the Florida Supreme Court's review of the *Bowen* decision, Justice Wells noted that Florida Rule of Criminal Procedure 3.111(d)(3) may not follow the mandates of *Faretta* and *Nelson* with sufficient clarity. The rule provides that "[n]o waiver shall be accepted if it appears that the defendant is unable to make an intelligent

and understanding choice because of a mental condition, age, education, experience, the nature or complexity of the case, or other factors." To clarify the rule and harmonize it with the Supreme Court's interpretations of *Faretta* and *Nelson*, Justice Wells has suggested that the Criminal Procedure Rules Committee of The Florida Bar review the rule. He has also suggested that the Florida Conference of Circuit Court Judges develop a colloquy for trial judges to use when questioning defendants who wish to waive the assistance of counsel.

If the trial judge concludes after a *Faretta* inquiry that the defendant's waiver is knowing and intelligent, then the defendant must be permitted to represent himself or herself at trial. The trial judge should renew the offer of assistance of counsel at each subsequent stage of the proceedings.[19] If the judge determines that the defendant's waiver is not knowing and intelligent, the judge should explain on the record the factors leading to the decision and then proceed to trial with the defendant represented by appointed counsel.

Occasionally a trial judge will be confronted with a defendant whose behavior and complaints regarding court-appointed counsel are completely unfounded and disruptive to courtroom procedure. In such a situation, the judge is not compelled to allow the defendant to delay and continually frustrate the trial. The judge may presume that the defendant's actions constitute a request to proceed pro se.[20] The best course would be to confirm the waiver of counsel by conducting a *Faretta* inquiry. But the failure to do so does not automatically require reversal. *See Waterhouse v. State*, 596 So. 2d 1008 (Fla. 1992), *cert. denied*, 506 U.S. 957 (1992) (conviction affirmed despite lack of *Faretta* hearing. "Waterhouse's manipulation of the proceedings and his attempts to delay show an obvious understanding of the proceedings against him. Under these facts, we find the requirements of *Faretta* were met.")

Hybrid Representation

Often a defendant seeking self-representation will request that standby counsel be appointed to assist the defendant in conducting the defense. The appointment of standby counsel under *Faretta* is constitutionally permissible, but not constitutionally required. Standby counsel may be denied when the defendant refuses to cooperate with the trial court or with court-appointed counsel in their efforts to provide legal assistance.[21] But a judge should use caution in denying standby counsel, because a defendant may waive the right to self-representation if the defendant later abandons his or her initial request to proceed pro se. *Brown v. Wainwright*, 665 F.2d 607, 611 (5th Cir. 1982) (en banc). The trial judge is not required to allow a nonlawyer to assist a pro se defendant in lieu of a licensed attorney. *See Bauer v. State*, 610 So. 2d 1326 (Fla. 2d DCA 1992).

Even if standby counsel is appointed, the defendant must be permitted to control the organization and content of his or her defense, make motions, argue points of law, participate in voir dire, question witnesses, and address the court and the jury at appropriate points. The defendant has the entire responsibility for his or her own defense.[22]

Sometimes a defendant will resist the appointment of standby counsel even though the trial judge believes an attorney's assistance might at some point become necessary. A trial judge can appoint standby counsel over the defendant's objection to relieve the judge of the need to explain and enforce basic rules of courtroom procedure or to assist the defendant in overcoming routine obstacles to reach his or her goal. However, the judge must not permit standby counsel's participation over the defendant's objection to substantially interfere with any significant tactical decisions, or to control the questioning of witnesses, or to speak on any matter of importance. Outside the presence of the jury, the defendant must be freely permitted to address the court on his or her own behalf. On disagreements between the counsel and the defendant, the trial judge must resolve the disagreement in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel.[23]

Occasionally a defendant will insist on acting as co-counsel with a court-appointed attorney. But *Faretta* does not require a trial judge to permit this type of "hybrid" representation. A defendant does not have the right to partially represent himself or herself and at the same time be partially represented by counsel. Neither does a defendant have a constitutional right to choreograph the attorney's appearance.[24]

Conclusion

It is understandable that trial judges might be inclined to resist allowing a defendant to represent himself or herself at trial. To allow such pro se representation requires an exorbitant amount of patience and vigilance on the part of the judge as well as the prosecutor. It can also generate tremendous anxiety in victims of violent crimes at the prospect of being subjected to questioning by their attackers. Even so, the Sixth Amendment has guaranteed that a defendant who makes a knowing and intelligent waiver of counsel has the right to represent himself or herself. This is true even though it "seems to cut against the grain of [the United States Supreme Court]'s decisions holding that the Constitution requires that no accused can be convicted and imprisoned unless he has been accorded the right to assistance of counsel."[25]

Under certain circumstances, the trial court may properly deny self-representation or the appointment of different counsel. But the key to having those decisions upheld is in conducting a thorough inquiry into the effectiveness of court-appointed counsel and the nature of the defendant's waiver. q

[1] *Nelson v. State,* 274 So. 2d 256 (Fla. 4th D.C.A. 1973).
[2] *Phillips v. State,* 608 So. 2d 778 (Fla. 1992), *cert. denied*, 509 U.S. 908.
[3] *Kenney v. State*, 611 So. 2d 575 (Fla. 1st D.C.A. 1992); *Augsberger v. State*, 655 So. 2d 1202 (Fla. 2d D.C.A. 1995).
[4] *Wheat v. United States,* 486 U.S. 153 (1988).
[5] *Morris v. Slappy*, 461 U.S. 1 (1983).
[6] *United States v. Cronic,* 466 U.S. 648 (1984).
[7] *Hardwick v. State*, 521 So. 2d 1071 (Fla. 1988), *cert. denied*, 488 U.S. 871 (1988).
[8] *Faretta v. California*, 422 U.S. 806 (1975).
[9] *Capehart v. State*, 583 So. 2d 1009 (Fla. 1991), *cert. denied*, 502 U.S. 1065 (1992).
[10] *Causey v. State*, 623 So. 2d 617 (Fla. 4th D.C.A. 1993), *rev. denied,* 634 So. 2d 623 (Fla.

1994); *State v. Craft*, 685 So. 2d 1292 (Fla. 1996).
[11] *Augsberger v. State*, 655 So. 2d 1202 (Fla. 2d D.C.A. 1992); *see also Weems v. State,* 645 So. 2d 1098 (Fla. 4th D.C.A. 1994), *rev. denied,* 654 So. 2d 920 (Fla. 1995).
[12] *Faretta v. California,* 422 U.S. 806 (1975); *see also Fitzpatrick v. Wainwright,* 800 F.2d 1057 (11th Cir. 1986).
[13] *Fitzpatrick v. Wainwright,* 800 F. 2d 1057 (11th Cir. 1986); *Payne v. State*, 642 So. 2d 111 (Fla. 1st D.C.A. 1994).
[14] *Fitzpatrick v. Wainwright*, 800 F. 2d 1057 (11th Cir. 1986).
[15] *Faretta v. California*, 422 U.S. 806 (1975).
[16] The *Cappetta* test includes "whether the accused, by reason of age, mental derangement, lack of knowledge, or education, or inexperience in criminal procedures would be deprived of a fair trial if allowed to conduct his own defense, or in any case, where the complexity of the crime was such that in the interest of justice legal representation was necessary." *Cappetta,* 204 So. 2d at 918.
[17] *Morris v. State,* 667 So. 2d 982 (Fla. 4th D.C.A. 1996), *appeal dism.*, 673 So. 2d 29 (Fla. 1996).
[18] *Id.*
[19] Fla. R. Crim. P. 3.111(d)(5).
[20] *State v. Young,* 626 So. 2d 655 (Fla. 1993).
[21] *Jones v. State,* 449 So. 2d 253 (Fla. 1984), *cert. denied,* 469 U.S. 893 (1984).
[22] *McKaskle v. Wiggins,* 465 U.S. 168 (1984); *Behr v. Bell,* 665 So. 2d 1055 (Fla. 1996).
[23] *McKaskle v. Wiggins*, 465 U.S. 168 (1984).
[24] *Id.*; *Sheppard v. State*, 391 So. 2d 346 (Fla. 5th D.C.A. 1980).
[25] *Faretta,* 422 U.S. at 832

.Angela D. McCravy *is an assistant attorney general in the Second District. Ms. McCravy is a former special agent with the Drug Enforcement Administration. She received her B.S. from Georgia State University in 1983 and her J.D. from Stetson University College of Law in 1993.*

This column is submitted on behalf of the Criminal Law Section, Claire K. Luten, chair, and Randy E. Merrill, editor.

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Notice of Appeal (supplemental)

NOW COMES, Scott Huminski ("Huminski"), and, and notices of appeal of the verbal order of 3/6/2018 setting trial for 3/16/2018 because Huminski had been stripped of assigned counsel by the Court and Huminski asserted his right to remain silent at hearing on 3/6/2018 and he affirms his right to remain silent here.

Huminski can not remain silent as is his right under the 5th Amendment and act as his own attorney at trial. These acts are mutually exclusive and defy logic. Huminski had always objected to the stripping of his counsel and the court below never conducted a Faretta v. California inquiry as to self-representation.

Dated at Bonita Springs, Florida this 6th day of March, 2018.

-/S/- Scott Huminski

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(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Notice of Assertion of Right to remain silent at trial
And FAILURE of court to hold Nelson or Faretta inquiry

NOW COMES, Scott Huminski ("Huminski"), and, and notices as above. The Court failed to hold Nelson or Faretta inquiries and failed to put the required information on the record. These errors have caused Huminski to face trial without counsel while he maintains his right to silence. The Court can not coerce a defendant to speak at trial when he wishes to assert his 5th Amendment right to silence at trial.

Dated at Bonita Springs, Florida this 7th day of March, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA APPELLATE DIVISION

SCOTT HUMINSKI,

Appellant,

vs.

Appellate Case No. 18-AP-3
Lower Case No.: 17-MM-815

TOWN OF GILBERT AZ,

Appellee.

_____/

ORDER DISMISSING PUBLIC DEFENDER'S EMERGENCY MOTION TO STRIKE APPLICATION AND/OR MOTION TO WITHDRAW AS MOOT

THIS CAUSE comes before the Court on the Public Defender's "Certification of Conflict," filed on March 5, 2018 and "Emergency Motion to Strike Application and/or Motion to Withdraw," filed on March 7, 2018. Having reviewed the pleadings and the record, the Court finds the following:

1. Appellant filed a "Notice of Appeal, Circuit Court 17-CA-421, Criminal Contempt – and Notice of Indigent Criminal Defendant and Motion for Assignment to Lee Public Defender's Office" on February 18, 2018, and an "Amended Notice of Appeal, County Court 17-MM-815 – Refusal to Disqualify and Notice of Indigent Criminal Defendant and Motion for Assignment to Lee Public Defender's Office" on February 19, 2018. On February 26, 2018, Appellant filed a "Notice of Indigency Concerning the Criminal Contempt Set Forth in 17-CA-421 and regarding the very insufficiently plead Criminal Contempt in 17-MM-815."

2. On March 5, 2018, this Court rendered an order directing Appellant to file an amended notice of appeal within ten days, attaching a copy of the non-final interlocutory order being appealed and including a sufficient certificate of service that indicates that it was properly served on Appellee. The Court warned Appellant that failure to comply with the order directing him to file an amended notice of appeal could result in sanctions, including the dismissal of his

non-final appeal. The Court also noted in its order that Appellant had attempted to file an affidavit of indigency for the purpose of obtaining appellate counsel for the non-final appeal, but the affidavit was not completed by the Clerk.

3. On March 5, 2018, the Public Defender filed a "Certification of Conflict" indicating that it had been appointed by the Clerk to represent Defendant in this non-final appeal. On March 7, 2018, the Public Defender filed an "Emergency Motion to Strike Application and/or Motion to Withdraw."

4. However, based on Appellant's affidavit of indigency filed March 1, 2018 and the Clerk's finding of indigency and appointment of the Public Defender, the lower tribunal already addressed this matter by order entered March 5, 2018 and has already stricken the Clerk's appointment of the Public Defender, thus relieving the Public Defender of any obligation to represent Appellant in the present non-final appeal.

Accordingly,

ORDERED AND ADJUDGED that that the "Certification of Conflict" and emergency motion to strike are DISMISSED as moot. To the extent that Appellant is separately seeking appointment of counsel for the purpose of the county-to-circuit non-final appeal, this matter is under consideration. The Appellate Banc is aware of the fact that both the Public Defender and Regional Counsel have conflicted off of the underlying case. For clarification purposes, the Public Defender is not currently appointed to represent Appellant for purposes of appeal and has no current obligation as it relates to this non-final appeal.

DONE AND ORDERED in Chambers in Fort Myers, Lee County on this 8TH day of March, 2018.

Joseph C. Fuller, Jr.
Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the forgoing filed in the above styled case has been e-mailed/mailed to:

- **Court Administration (XXIV)**
- **Scott Huminski**
- **Town of Gilbert AZ**
- **Office of the Public Defender**

Dated: 3/8/18

LINDA DOGGETT, CLERK OF COURT

By: _____
Deputy Clerk

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Objection no compulsory process of witnesses or confrontation of accusers

NOW COMES, Scott Huminski ("Huminski"), and, and objects as above. The Court has denied Huminski compulsory process of witnesses and accusors. Compulsory process in Lee County is accomplished via the Public Defender or Conflict Counsel. Compulsory process (process at State's expense) is otherwise accomplished by a motion to the Court requesting an order. The Court has denied Huminski compulsory process motion and mentioned that he did not follow the procedure. There is no procedure established other than to request and order from the Court at the State's expense for non-represented indigents. This case is unique as there is no public defender or conflict counsel available to provide Huminski with compulsory process.

In the alternative, Huminski again requests an order for compulsory process of all witnesses he listed in his motion to depositions.

Dated at Bonita Springs, Florida this 7th day of March, 2018.

-/S/- Scott Huminski

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCTET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Notice of Appeal (consolidated) to the Florida Supreme Court – Judicial Appointment/Rule-Making Exclusive Jurisdiction Appeal
Notice of Indigency in the court below and request for appointment of counsel on appeal
And Motion to Stay Criminal Trial and collateral appeals and MOTION TO HOLD APPEAL IN ABEYANCE WHILE HUMINSKI'S ADDRESS IS UNKNOWN

NOW COMES, Scott Huminski ("Huminski"), and notices of interlocutory appeal or for writs of certiorari/prohibition/"all writs" concerning of the act of re-assignment/transfer of criminal contempt to County Court from Circuit Court and the lack of a Florida Rule of Procedure / administrative rule allowing such a transfer. No order exists concerning this act that appears to be a flaw in operation of the 20th Circuit automatically moving all *sui generis* contempt cases to the misdemeanor court when a re-assignment issues in a contempt case. This is a rule-making/judicial assignment appeal that went far beyond assignment because along with assignment, the case was administratively moved from Circuit to County

Court as part of the assignment function far exceeding the power of the chief circuit judge and even the assignment powers of the Chief Justice of the Florida Supreme Court, in the alternative, guidance from the Supreme Court's rule-making jurisdiction is required to address transfers from Circuit to County Courts, because it is currently the *wild west*. This unlawful assignment procedure also effectuates an administrative virtual dismissal of a Circuit Court matter not documented in any order and not anticipated by any Court Rule , thus, this appeal is centered partially on an administrative procedure that is not the product of any Court Rule, contrarily, the transfer is the product of a Circuit custom in want of a Rule. This matter is brought as a consolidated appeal as the material herein impact and arose from both the Circuit and County Courts.

JURISDICTION – EXCLUSIVELY FLORIDA SUPREME COURT

Exclusive jurisdiction of the Florida Supreme Court of judicial assignments and rule-making, See attached Motion to Vacate, Exhibit "A", Westlaw 5 Fla. Practice § 5.1. See also In re Clarification of Florida Rules of Practice and Procedure, 281 So.2d 204 (Fla. 1973) (Florida Supreme Court has exclusive jurisdiction over rule-making). Clearly, transfer from Circuit Court to County Court is a procedure in need of a Rule under the exclusive jurisdiction of this Court. Transfer of a case from Circuit to County is a judicial re-assignment subject to the exclusive jurisdiction of this Court.

Attached hereto are minutes issued in the County Court mentioning a "transfer" to criminal (i.e. County Court), an administrative act that happened, but, is not allowed and does not automatically accompany a judicial re-assignment under any Florida Rule, Law, Statute or Authority although it is a custom of the 20th Circuit. This situation requires the exclusive rule-making authority of the Supreme Court and rule-making clarification. *Id.*

Attached hereto is the order of assignment issued in the County Court, assigning the criminal contempt to itself after a hearing in the case without mention of the "transfer" from Circuit Court to County Court. The record is devoid of any administrative order transferring the case from Circuit to County or visa versa. This case is ripe for review of the non-order transferring a case from Circuit to County – no time limit applies as no order was issued.

The attached Motion to Vacate, Exhibit "E" is a true and correct copy of Judge Krier's recusal from the criminal contempt matter captioned in the Circuit Court and signed in her capacity as a Circuit Court judge filed on 8/14/2017 contradicting the alleged transfer to County Court on 6/30/2017. This re-assignment/transfer process even confuses the presiding judges. On 8/14/2017, the exact same contempt actions existed in Circuit and County courts in violation of the multiple prosecution prohibition of Double Jeopardy as a result of this unlawful assignment/transfer procedure, rule clarification is necessary.

Below are true and correct docket entries appointing the Public Defender to Huminski in early March in 17-MM-815 and appeal 18-AP-0003. Huminski should

be appointed an attorney in this appeal as he was appointed counsel in the case below and moves for appointment.

17-MM-815:

02/27/2018	Application for Indigency - Existing CaseUnable to Process Application is Incomplete Comments: Unable to Process Application is Incomplete	1
03/01/2018	Application for Indigency - Existing CasePD Appointed Comments: PD Appointed	

18-AP-0003:

02/27/2018	Application for Indigency - Existing CaseUnable to Process Application is Incomplete Comments: Unable to Process Application is Incomplete	1
03/01/2018	Application for Indigency - Existing CasePD Appointed Comments: PD Appointed	1

Attached hereto is Huminski's recent petition of indigency that resulted in appointment of a public defender after re-entry by pre-trial services on 3/1/2018 which he asserts in this Court.

Attached hereto is an "order on arraignment" dated 7/10/2017 captioned in the Circuit Court – Civil Division and signed in Judge Krier's capacity as a Circuit Court judge when the criminal contempt was purportedly transferred to County Court on 6/30/2017 without a court order by an unknown mechanism. Even Circuit Court judges are intensely confused concerning this procedure adopted by the 20th Circuit. A Rule is required to avoid this confusion and promote the orderly administration of justice. The Florida Supreme Court must set forth procedures

concerning transfer from Circuit to County Courts or forbid it, because the current situation is chaotic, illegal and procedures need to be drafted and adopted. The same confusion exists in the recusal order of the Circuit Court attached to the attached Motion to Vacate again captioned in the Circuit Court – civil division and signed in Judge Krier's Circuit capacity. Litigants are just as confused and prejudiced by this dangerously casual transfer procedure.

Huminski notifies that his criminal trial concerning the material herein is on 3/16/2018 and he is asserting his right to remain silent and has been stripped of counsel despite his indigency. There will be no 4th Amendment right to counsel and the judge has ruled no compulsory process of witnesses or confrontation of accusers. Thus, Huminski's address after the trial without counsel is likely to be in a Florida jail or prison and Huminski requests that this matter be held in abeyance during Huminski's imprisonment or that an attorney be appointed to him during incarceration to handle this appeal. Huminski at 58 has never been convicted or jailed for anything and doesn't know what his address will be or what mechanisms are allowed in prison to participate in this appeal.

This appeal is ripe as the order of assignment does not mention a transfer from Circuit to County and is proper under the Court's rule-making jurisdiction because transfer should have been documented by order and not be considered an automatic function of the 20th Circuit..

All relief requested herein is directed to the Florida Supreme Court or any other appellate court that may hear these issues.

WHEREFORE, an immediate stay should issue in the criminal trial court and collateral appeals. The County Case should be vacated as Void Ab Initio because of the procedural/administrative irregularities that rise to a Constitutional magnitude and the Court should consider crafting a rule regarding transfers between Circuit and County Courts to avoid this situation in the future. Appellant suggest such inter-Circuit transfers are illegal as they prohibit final disposition in one of the Courts.Finality is an essential element of the adversarial process.

Dated at Bonita Springs, Florida this 12th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system to all parties on this 12th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE ASSIGNMENT ORDER TO COUNTY COURT, in the alternative, MOTION FOR LEAVE TO CHALLENGE THE ASSIGNMENT AND OTHER ISSUES IN THE FLORIDA SUPREME COURT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because the assignment order was issued after the first hearing in the County Court and a County Court administrative judge can not assign Judges to cases in Circuit Court or cause the dismissal of a Circuit Court case. Fl 38.22 mandates that contempt actions be heard in the Court where the contempt occurred. The Court's reliance upon the procedure of an "administrative transfer" to dismiss the Circuit Court prosecution and initiate it in County Court does not exist. Huminski is prejudiced because the record of the case before and after the alleged contempt exists in the Circuit Court. The County Court record is devoid of critical portions of the record such as the order(s) Huminski allegedly violated, this prejudices Huminski's ability to defend himself and certainly prejudices any appeal or writ filed in the future.

Criminal contempt is creature of common law, neither a statutory felony nor misdemeanor, it should be heard in the Court where it allegedly occurred. FL 38.22. See attached opinion U.S. v. Cohn (11d Cir. 2009)("We conclude that criminal contempt is a sui generis offense and that it is neither a felony nor a misdemeanor.") In South Dade Farms v. Peters, 88 So.2d 891 (1956), the Florida Supreme Court approvingly cites Oswald, Contempt of Court: "It should always be borne in mind in considering and dealing with contempt of Court that it is an offense purely sui generis ... ". The desire to force contempts to the County Courts by misclassifying them as misdemeanors is erroneous. The Florida Supreme Court has exclusive jurisdiction to review judicial assignments. See Attached section 293 as to the exclusive jurisdiction of the Florida Supreme Court.

The attached Fl. Practice 5.1 reveals no provision for transfer of a case from Circuit to County Courts, only judicial assignments are anticipated and allowed. The effective dismissal of a case out of Circuit Court and re-initiation of that case in County Court is not within the authority, power or jurisdiction of the chief Circuit Judge or any administrative judge. This scenario is not merely a judicial assignment, it involves the manipulation of cases between courts that is not allowed or anticipated by any Rule, Statute or authority.

The record does not indicate the reason for the recusal of Judge Krier it only cites Cannon 3(e), whether the impartiality, bias or prejudice concerning the recusal was the result of "disrespect or criticism" is unknown and can be subjective, thus, the Chief Justice of the Supreme Court should have handled any assignment

pursuant to Rule 3.840(e). See attached. Up to and including the recusal of Judge Krier (the original recusal order was lost, a copy of a copy was filed) filed on 9/22/2017 and back-dated to 8/14/2017 the case was captioned by Judge Krier in the Circuit Court and signed in Judge Krier's capacity as a Circuit Court Judge. See attached recusal order.

The unlawful "administrative transfer" from Circuit Court to County Court created a new criminal case absent a legitimate charging document. In this instance a show cause order. On 6/30/2017 court staff printed out a copy of an unserved show cause order of Judge Krier dated 6/5/2017, hand modified it with a new County Court docket number and then filed that document as a legitimate County Court show cause order. The same court staff forgot to file the 117 pages of attachments to the show cause order. This conduct flirts with forgery and obstruction of justice. Court orders can not recklessly be copied and filed in other cases and held out to be valid. A somewhat valid show cause order only exists in the Circuit Court, on 6/5/2017 when the 6/5 show cause order was authored case 17-mm-815 did not exist. A cascade of dubious conduct accompanies so-called "administrative transfers".

As previously noted in a previous motion the initiation of a second prosecution while the first case has not been disposed of violated the multiple prosecution prohibition of Double Jeopardy. Failure to follow administrative procedure leads to flaws and as this case reveals, infirmities of a constitutional magnitude.

Dated at Bonita Springs, Florida this 5th day of March, 2018.

-/S/- Scott Huminski

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Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 5th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

EXHIBIT "A"

Florida Jurisprudence, Second Edition
Database updated February 2005

Courts and Judges
Carmela Pellegrino, J.D. and Kerry Hogan Lassus, J.D. of the National Legal Research Group, Inc.
Part Two. Judges
XV. Assignment and Substitution [§ § 291-299]
A. Assignment, in General [§ § 291-294]

Topic Summary; Correlation Table; References

§ 293. Review of judicial assignments

West's Key Number Digest

West's Key Number Digest, Courts 70

The Supreme Court has exclusive jurisdiction to review judicial assignments. [FN13] Thus, the district court of appeal lacks authority to review an administrative order assigning a county court judge to circuit court duty. [FN14]

Practice Guide:

A litigant who is affected by a judicial assignment made by a chief judge of a judicial circuit must challenge the assignment in the trial court and then seek review in the Supreme Court by way of petition for prohibition or petition for relief under the "all writs" power.[FN15]

CUMULATIVE SUPPLEMENT

Cases:

Because of the vital role temporary judicial assignments play in the administration of the state court system, the Supreme Court must have exclusive jurisdiction to review such assignments under its constitutional authority to oversee the administrative supervision of all courts. Fla. Const. Art. 5, § 2(a); Fla. R. Jud. Admin. 2.050(b)(4). Physicians Healthcare Plans, Inc. v. Pfeifler, 846 So. 2d 1129 (Fla. 2003).

The Supreme Court has exclusive jurisdiction to review judicial assignments. Fla. Const. Art. 5, § 2(a, b). Physicians Healthcare Plans, Inc. v. Pfeifler, 846 So. 2d 1129 (Fla. 2003).

District Court of Appeal lacked jurisdiction to consider defendant's argument that county court judge did not have jurisdiction to preside over his felony trial and violation of probation hearing; Supreme Court had exclusive jurisdiction to review temporary judicial assignments. Thweatt v. State, 861 So. 2d 1284 (Fla. Dist. Ct. App. 5th Dist. 2004).

[END OF SUPPLEMENT]

[FN13] Wild v. Dozier, 672 So. 2d 16, 21 Fla. L. Weekly S57 (Fla. 1996), reh'g denied, (Apr. 11, 1996); Rivkind v. Patterson, 671 So. 2d 788 (Fla. 1996); Holsman v. Cohen, 667 So. 2d 769, 21 Fla. L. Weekly S61 (Fla. 1996).

[FN14] Wild v. Dozier, 672 So. 2d 16, 21 Fla. L. Weekly S57 (Fla. 1996), reh'g denied, (Apr. 11, 1996); J.G. v. Holtzendorf, 669 So. 2d 1043, 21 Fla. L. Weekly S122 (Fla. 1996).

[FN15] Wild v. Dozier, 672 So. 2d 16, 21 Fla. L. Weekly S57 (Fla. 1996), reh'g denied, (Apr. 11, 1996).

FLJUR COURTS § 293
END OF DOCUMENT

EXHIBIT "B"

West's Florida Practice Series TM
Civil Practice
Philip J. Padovano FNa

Part I. Civil Procedure
Chapter 5. Judges

§ 5.1 Assignment

Judicial assignments are made in the discretion of the chief judge under local administrative procedures within the judicial circuit. A trial judge may be assigned to preside in a particular case for a variety of reasons but most often trial judges are assigned to handle an entire class of cases as part of a regular policy of judicial rotation. While most cases are handled according to the assignments made by the chief judge, the absence of a proper assignment order does not affect the jurisdiction of the court.

Rule 2.050(b)(4) of the Rules of Judicial Administration provides that the "[t]he chief judge shall assign judges to the courts and divisions, and shall determine the length of each assignment." This rule gives the chief judge authority to assign a judge the responsibility of handling an individual case. However, judges are most often assigned to a caseload consisting of a defined class of cases and the individual cases are selected at random. The authority vested in the chief judge by rule 2.050(b)(4) applies to the assignment of county judges as well as circuit judges. If there are two or more county judges in one county within the judicial circuit, the chief judge has authority to determine the nature and length of the assignment for each county judge.

An assignment order by the chief judge is not a jurisdictional prerequisite to the handling of a case that is otherwise within the subject matter jurisdiction of the court. FN1 All circuit judges are authorized to assert the jurisdiction of the circuit court within their respective judicial circuits and all county judges are authorized to assert the jurisdiction of the county court within their respective counties. The fact that a judge has handled a case not assigned by the chief judge does not affect the jurisdiction of the court as long as that judge is a member of the court. Jurisdiction of the court and the assignment of judges are separate matters.

Rule 2.050(b)(4) provides that the "[t]he chief judge may assign any judge to temporary service for which the judge is qualified in any court in the same circuit." This rule authorizes the chief judge to assign a qualified county judge to temporary service as a circuit judge and vice

versa. The supreme court has defined the phrase "temporary service" to mean that a county judge should not be assigned for more than sixty days to handle circuit court matters exclusively, or for more than six months to handle specific circuit court cases in addition to the regular county court duties. FN2

Although a cross-jurisdictional assignment should not ordinarily last for more than six months, the workload in a particular judicial circuit may justify successive assignment orders. In *Wild v. Dozier*, the supreme court held that the chief judge has authority to assign a county judge to circuit court duties by successive temporary assignment orders provided the overall workload does not amount to a *de facto* permanent assignment. FN3 Whether successive judicial assignments remain "temporary" as required by rule 2.050(b)(4) is not merely a function of the duration of the combined assignments. As the court explained in *Wild v. Dozier*, there are many other relevant factors:

The successive nature of the assignment, the type of case covered by the assignment, and the practical effect of the assignment on circuit court jurisdiction over a particular type of case also must be considered. For example, *Crusoe* [*v. Rowls*, 472 So.2d 1163 (Fla.1985)] illustrates that successive assignments totalling more than two years may be considered temporary if the class of circuit court case covered by the assignment is limited and the practical effect of the assignment is to aid and assist circuit judges rather than to usurp circuit court jurisdiction over a particular type of case. 472 So.2d at 1165. Similarly, *Payret* [*v. Adams*, 500 So.2d 136 (Fla.1986)] demonstrates that successive and repetitive assignments that, when considered individually, may be facially valid will not be considered temporary where their practical effect is to create a de facto permanent circuit judge by administrative order.

The power vested in the chief judge to assign trial court judges to particular duties is delegated under the rules by the chief justice of the Florida Supreme Court. In the applicable constitutional framework, the supreme court has exclusive jurisdiction to review judicial assignments. FN4 A party who is aggrieved by the assignment of a judge must first raise the issue in the circuit court. Thereafter, the proper method of review is to file a petition directly in the supreme court. The district courts of appeal lack jurisdiction to review judicial assignments.

FNa Judge, First District Court Of Appeal, State Of Florida.

FN1 **Jurisdiction.** An assignment order is not a jurisdictional prerequisite. That is so because jurisdiction is the power of the court and not the power of a particular judge. See Pantoja v. Reliable Trucking, Inc., 585 So.2d 955 (Fla. 4th DCA 1991). A procedural error in an assignment order does not affect the jurisdiction of the court. See Long Term Management, Inc. v. University Nursing Care Ctr., Inc., 704 So.2d 669 (Fla. 1st DCA 1997).

FN2 **Temporary Duty.** The chief judge may assign a qualified county judge to temporary duty on the circuit court. If the assignment consists entirely of circuit court work it should not exceed sixty days and if it consists of some circuit court work in addition to the judge's regular county court duties, it should not exceed six months. See Payret v. Adams, 500 So.2d 136 (Fla.1986); Crusoe v. Rowls, 472 So.2d 1163 (Fla.1985).

FN3 **Successive Assignments.** Temporary assignments can be made successively provided they do not amount to a de facto permanent assignment. See Wild v. Dozier, 672 So.2d 16 (Fla.1996), holding limited by 1-888-Traffic Schools v. Chief Judge, Fourth Judicial Circuit, 734 So.2d 413 (Fla.1999); Rivkind v. Patterson, 672 So.2d 819 (Fla.1996).

FN4 **Review.** The supreme court has exclusive jurisdiction to review judicial assignments. See Physicians Healthcare Plans, Inc. V. Raymond Pfeifler, 846 So.2d 1129 (Fla.2003); Wild v. Dozier, 672 So.2d 16 (Fla.1996), holding limited by 1-888-Traffic Schools v. Chief Judge, Fourth Judicial Circuit, 734 So.2d 413 (Fla.1999); Rivkind v. Patterson, 672 So.2d 819 (Fla.1996); Griffin v. Kia Motors Corp., 843 So.2d 336 (Fla. 1st DCA 2003) (declining to resolve a dispute over the assignment of a judge, on the ground that judicial assignment is within the exclusive jurisdiction of the supreme court).

(2004)

5 FLPRAC § 5.1
END OF DOCUMENT

EXHIBIT "C"

C
West's Florida Statutes Annotated Currentness
Florida Rules of Criminal Procedure (Refs & Annos)

XVI. Criminal Contempt

➞Rule 3.840. Indirect Criminal Contempt

A criminal contempt, except as provided in rule 3.830 concerning direct contempts, shall be prosecuted in the following manner:

(a) Order to Show Cause. The judge, on the judge's own motion or on affidavit of any person having knowledge of the facts, may issue and sign an order directed to the defendant, stating the essential facts constituting the criminal contempt charged and requiring the defendant to appear before the court to show cause why the defendant should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for preparation of the defense after service of the order on the defendant.

(b) Motions; Answer. The defendant, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer the order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the judge. A defendant's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

(c) Order of Arrest; Bail. The judge may issue an order of arrest of the defendant if the judge has reason to believe the defendant will not appear in response to the order to show cause. The defendant shall be admitted to bail in the manner provided by law in criminal cases.

(d) Arraignment; Hearing. The defendant may be arraigned at the time of the hearing, or prior thereto at the defendant's request. A hearing to determine the guilt or innocence of the defendant shall follow a plea of not guilty. The judge may conduct a hearing without assistance of counsel or may be assisted by the prosecuting attorney or by an attorney appointed for that purpose. The defendant is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and testify in his or her own defense. All issues of law and fact shall be heard and determined by the judge.

(e) Disqualification of Judge. If the contempt charged involves disrespect to or criticism of a judge, the judge shall disqualify himself or herself from presiding at the hearing. Another judge shall be designated by the chief justice of the supreme court.

(f) Verdict; Judgment. At the conclusion of the hearing the judge shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the defendant has been found and adjudicated guilty.

(g) Sentence; Indirect Contempt. Prior to the pronouncement of sentence, the judge shall inform the defendant of the accusation and judgment against the defendant and inquire as to whether the defendant has any cause to show why sentence should not be pronounced. The defendant shall be afforded the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the defendant.

CREDIT(S)

Amended Sept. 24, 1992, effective Jan. 1, 1993 (606 So.2d 227).

COMMITTEE NOTES

1968 Adoption.

(a)(1) Order to Show Cause. The courts have used various and, at times, misleading terminology with reference to this phase of the procedure, viz. "citation," "rule nisi," "rule," "rule to show cause," "information," "indicted," and "order to show cause." Although all apparently have been used with the same connotation the terminology chosen probably is more readily understandable than the others. This term is used in Federal Rule

of Criminal Procedure 42(b) dealing with indirect criminal contempts.

In proceedings for indirect contempt, due process of law requires that the accused be given notice of the charge and a reasonable opportunity to meet it by way of defense or explanation. State ex rel. Giblin v. Sullivan, 157 Fla. 496, 26 So.2d 509 (1946); State ex rel. Geary v. Kelly, 137 So.2d 262, 263 (Fla. 3d DCA 1962).

The petition (affidavit is used here) must be filed by someone having actual knowledge of the facts and must be under oath. Phillips v. State, 147 So.2d 163 (Fla. 3d DCA 1962); see also Croft v. Culbreath, 150 Fla. 60, 6 So.2d 638 (1942); Ex parte Biggers, 85 Fla. 322, 95 So. 763 (1923).

(2) Motions; Answer. The appellate courts of Florida, while apparently refraining from making motions and answers indispensable parts of the procedure, seem to regard them with favor in appropriate situations. Regarding motions to quash and motion for bill of particulars, see Geary v. State, 139 So.2d 891 (Fla. 3d DCA 1962); regarding the answer, see State ex. rel. Huie v. Lewis, 80 So.2d 685 (Fla.1955).

Elsewhere in these rules is a recommended proposal that a motion to dismiss replace the present motion to quash; hence, the motion to dismiss is recommended here.

The proposal contains no requirement that the motions or answer be under oath. Until section 38.22, Florida Statutes, was amended in 1945 there prevailed in Florida the common law rule that denial under oath is conclusive and requires discharge of the defendant in indirect contempt cases; the discharge was considered as justified because the defendant could be convicted of perjury if the defendant had sworn falsely in the answer or in a motion denying the charge. The amendment of section 38.22, Florida Statutes, however, has been construed to no longer justify the discharge of the defendant merely because the defendant denies the charge under oath. See Ex parte Earman, 85 Fla. 297, 95 So. 755 (1923), re the common law; see Dodd v. State, 110 So.2d 22 (Fla. 3d DCA 1959) re the construction of section 38.22, Florida Statutes, as amended. There appears, therefore, no necessity of requiring that a pleading directed to the order to show cause be under oath, except as a matter of policy of holding potential perjury prosecutions over the heads of defendants. It is recommended, therefore, that no oath be required at this stage of the proceeding.

Due process of law in the prosecution for indirect contempt requires that the defendant have the right to assistance by counsel. Baumgartner v. Joughin, 105 Fla. 335, 141 So. 185 (1932), adhered to, 107 Fla. 858, 143 So. 436 (1932).

(3) Order of Arrest; Bail. Arrest and bail, although apparently used only rarely, were permissible at common law and, accordingly, are unobjectionable under present Florida law. At times each should serve a useful purpose in contempt proceedings and should be included in the rule. As to the common law, see Ex parte Biggers, supra.

(4) Arraignment; Hearing. Provision is made for a prehearing arraignment in case the defendant wishes to plead guilty to the charge prior to the date set for the hearing. The defendant has a constitutional right to a hearing under the due process clauses of the state and federal constitutions. State ex rel. Pipia v. Buchanan, 168

So.2d 783 (Fla. 3d DCA 1964). This right includes the right to assistance of counsel and the right to call witnesses. Baumgartner v. Joughin, supra. The defendant cannot be compelled to testify against himself. Demetree v. State ex rel. Marsh, 89 So.2d 498 (Fla.1956).

Section 38.22, Florida Statutes, as amended in 1945, provides that all issues of law or fact shall be heard and determined by the judge. Apparently under this statute the defendant is not only precluded from considering a jury trial as a right but also the judge has no discretion to allow the defendant a jury trial. See State ex rel. Huie v. Lewis, supra, and Dodd v. State, supra, in which the court seems to assume this, such assumption seemingly being warranted by the terminology of the statute.

There is no reason to believe that the statute is unconstitutional as being in violation of section 11 of the Declaration of Rights of the Florida Constitution which provides, in part, that the accused in all criminal prosecutions shall have the right to a public trial by an impartial jury. Criminal contempt is not a crime; consequently, no criminal prosecution is involved. Neering v. State, 155 So.2d 874 (Fla.1963); State ex rel. Saunders v. Boyer, 166 So.2d 694 (Fla. 2d DCA 1964); Ballengee v. State, 144 So.2d 68 (Fla. 2d DCA 1962).

Section 3 of the Declaration of Rights, providing that the right of trial by jury shall be secured to all and remain inviolate forever, also apparently is not violated. This provision has been construed many times as guaranteeing a jury trial in proceedings at common law, as practiced at the time of the adoption of the constitution (see, e.g., Hawkins v. Rellim Inv. Co., 92 Fla. 784, 110 So. 350 (1926)), i.e., it is applicable only to cases in which the right existed before the adoption of the constitution (see, e.g., State ex rel. Sellers v. Parker, 87 Fla. 181, 100 So. 260 (1924)). Section 3 was never intended to extend the right of a trial by jury beyond this point. Boyd v. Dade County, 123 So.2d 323 (Fla.1960).

There is some authority that trial by jury in indirect criminal contempt existed in the early common law, but this practice was eliminated by the Star Chamber with the result that for centuries the common law courts have punished indirect contempts without a jury trial. See 36 Mississippi Law Journal 106. The practice in Florida to date apparently has been consistent with this position. No case has been found in this state in which a person was tried by a jury for criminal contempt. See Justice Terrell's comment adverse to such jury trials in State ex rel. Huie v. Lewis, supra.

The United States Supreme Court has assumed the same position with reference to the dictates of the common law. Quoting from Eilenbecker v. District Court, 134 U.S. 31, 36, 10 S.Ct. 424, 33 L.Ed. 801 (1890), the Court stated, "If it has ever been understood that proceedings according to the common law for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it." United States v. Barnett, 376 U.S. 681, 696, 84 S.Ct. 984, 12 L.Ed.2d 23 (1964). In answer to the contention that contempt proceedings without a jury were limited to trivial offenses, the Court stated, "[W]e find no basis for a determination that, at the time the Constitution was adopted, contempt was generally regarded as not extending to cases of serious misconduct." 376 U.S. at 701. There is little doubt, therefore, that a defendant in a criminal contempt case in Florida has no constitutional right to a trial by jury.

Proponents for such trials seemingly must depend on authorization by the legislature or Supreme Court of Florida to attain their objective. By enacting section 38.22, Florida Statutes, which impliedly prohibits trial by jury the legislature exhibited a legislative intent to remain consistent with the common law rule. A possible alternative is for the Supreme Court of Florida to promulgate a rule providing for such trials and assume the position that under its constitutional right to govern practice and procedure in the courts of Florida such rule would supersede section 38.22, Florida Statutes. It is believed that the supreme court has such authority. Accordingly, alternate proposals are offered for the court's consideration; the first provides for a jury trial unless waived by the defendant and the alternate is consistent with present practice.

(5) Disqualification of Judge. Provision for the disqualification of the judge is made in federal rule 42(b). The proposal is patterned after this rule.

Favorable comments concerning disqualification of judges in appropriate cases may be found in opinions of the

Supreme Court of Florida. See Pennekamp v. State, 156 Fla. 227, 22 So.2d 875 (1945), and concurring opinion in State ex rel. Huie v. Lewis, supra.

(6) Verdict; Judgment. "Judgment" is deemed preferable to the term "order," since the proper procedure involves an adjudication of guilty. The use of "judgment" is consistent with present Florida practice. E.g., Dinnen v. State, 168 So.2d 703 (Fla. 2d DCA 1964); State ex rel. Byrd v. Anderson, 168 So.2d 554 (Fla. 1st DCA 1964).

The recital in the judgment of facts constituting the contempt serves to preserve for postconviction purposes a composite record of the offense by the person best qualified to make such recital: the judge. See Ryals v. United States, 69 F.2d 946 (5th Cir.1934), in which such procedure is referred to as "good practice."

(7) Sentence; Indirect Contempt. The substance of this subdivision is found in present sections 921.05(2), 921.07 and 921.13, Florida Statutes. While these sections are concerned with sentences in criminal cases, the First District Court of Appeal in 1964 held that unless a defendant convicted of criminal contempt is paid the same deference the defendant is not being accorded due process of law as provided in section 12 of the Declaration of Rights of the Florida Constitution and the Fourteenth Amendment of the Constitution of the United States. Neering v. State, 164 So.2d 29 (Fla. 1st DCA 1964).

Statement concerning the effect the adoption of this proposed rule will have on contempt statutes:

This rule is not concerned with the source of the power of courts to punish for contempt. It is concerned with desirable procedure to be employed in the implementation of such power. Consequently, its adoption will in no way affect the Florida statutes purporting to be legislative grants of authority to the courts to punish for contempt, viz., sections 38.22 (dealing with "all" courts), 932.03 (dealing with courts having original jurisdiction in criminal cases), and 39.13 (dealing with juvenile courts). This is true regardless of whether the source of power is considered to lie exclusively with the courts as an inherent power or is subject, at least in part, to legislative grant.

The adoption of the rule also will leave unaffected the numerous Florida statutes concerned with various situations considered by the legislature to be punishable as contempt (e.g., section 38.23, Florida Statutes), since these statutes deal with substantive rather than procedural law.

Section 38.22, Florida Statutes, as discussed in the preceding notes, is concerned with procedure in that it requires the court to hear and determine all questions of law or fact. Insofar, therefore, as criminal contempts are concerned the adoption of the alternate proposal providing for a jury trial will mean that the rule supersedes this aspect of the statute and the statute should be amended accordingly.

1972 Amendment. Same as prior rule.

HISTORICAL NOTE

Derivation:

1972 Revision (272 So.2d 65).

Prior Provisions:

1971 R.Cr.P. 3.840.
1968 Amendment (211 So.2d 203).
1968 Amendment (207 So.2d 430).
1967 R.Cr.P. 1.840.

CROSS REFERENCES

Disqualification of judge, see Judicial Administration Rule 2.160.
Punishment of contempts, see F.S.A. § 38.22.
Related court rule provision, see Traffic Court Rule 6.090.

LAW REVIEW AND JOURNAL COMMENTARIES

Contempt for nonsupport in Florida. Ruth Fleet Thurman, 9 Stetson L.Rev. 333 (1980).

Contempt of court in Florida. 9 Miami L.Q. 281 (1955).

Criminal contempt procedures in Florida. 18 U.Fla.L.Rev. 78 (1965).

Florida Rules of Criminal Procedure; amendments. 23 U.Miami L.Rev. 816 (Summer 1969).

Nonsupport contempt hearing. 12 Fla.St.U.L.Rev. 117 (1984).

Rules of Criminal Procedure: Pretrial Discovery. Albert J. Datz, 42 Fla.B.J. 285, 288 (May 1968).

Use of contempt of court to enforce Florida divorce decrees. 6 Nova L.J. 313 (1982).

When the lawyer's tone or manner can send him to jail. J. James McGuirk, 52 Fla.B.J. 747 (1978).

LIBRARY REFERENCES

Contempt  3, 53 to 63.
Westlaw Topic No. 93.
C.J.S. Contempt §§ 2 to 3, 11, 74 to 101.

RESEARCH REFERENCES

ALR Library

32 ALR 5th 31, Right to Appointment of Counsel in Contempt Proceedings.

52 ALR 3rd 1002, Right to Counsel in Contempt Proceedings.

33 ALR 3rd 448, Appealability of Contempt Adjudication or Conviction.

41 ALR 2nd 1263, Necessity of Affidavit or Sworn Statement as Foundation for Constructive Contempt.

EXHIBIT "D"

586 F.3d 844 (2009)

UNITED STATES of America, Plaintiff-Appellee,

v.

Lee A. COHN, Defendant-Appellant.

No. 07-13479.
United States Court of Appeals, Eleventh Circuit.

September 30, 2009.

J. David Bogenschutz, Bogenschutz & Dutko, P.A., Marc Fagelson, Ft. Lauderdale, FL, for Cohn.

Anne R. Schultz, Asst. U.S. Atty., Maria Kostantina Medetis, Miami, FL, Phillip D'Rosa, Ft. Lauderdale, FL, for U.S.

Before TJOFLAT and BLACK, Circuit Judges, and EVANS,[*] District Judge.

*845 PER CURIAM:

The principal question this appeal presents is whether criminal contempt, 18 U.S.C. § 401, should be classified as a felony or a misdemeanor. We conclude that criminal contempt is a **sui generis** offense and that it is neither a felony nor a misdemeanor.

I.

A.

On January 7 and 12, 2005, Lee A. Cohn, a member of the Florida bar, entered his appearance as retained counsel on behalf of Kenneth Lance Malbry, who had been indicted by a Southern District of Florida grand jury for possession of crack cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). Cohn represented Malbry through the final disposition of the case on August 5, 2005. On that date, the district court accepted Malbry's plea of guilty to the charge, which had been tendered at a change-of-plea hearing on April 18, and sentenced Malbry to 188 months' imprisonment and a four-year term of supervised release.

On January 24, 2006, the U.S. Attorney informed the district court that Cohn had been disbarred by the Florida Supreme Court on January 9, 2006, and that he had been declared "ineligible to practice law in Florida" on April 6,

2005 — nearly two weeks before Malbry tendered his plea of guilty. On March 29, 2006, Malbry, represented by a court-appointed attorney, moved the district court pursuant to 28 U.S.C. § 2255 to vacate his conviction and sentence on the ground that Cohn's inability to practice law had deprived him of the effective assistance of counsel at his change-of-plea hearing and sentencing. The court granted the motion on May 25, 2006.

B.

On August 31, 2006, the district court entered an order pursuant to Rule 42(a) of the Federal Rules of Criminal Procedure[1] requiring Cohn to show cause why he should not be held in criminal contempt, under 18 U.S.C. § 401,[2] for representing Malbry and appearing before the district court "after having been deemed not eligible to practice law in Florida by The Florida Bar." The order stated that such conduct constituted a clear violation of the Special Rules Governing the Admission and Practice of Attorneys for the Southern District of Florida.

Pursuant to the district court's order, the U.S. Attorney appeared to prosecute the contempt. At a hearing held on November 9, 2006, Cohn announced that he intended to plead guilty to the criminal contempt charge, and the district court instructed the prosecutor and defense counsel to submit memoranda addressing the question of which of the Sentencing Guidelines was "most analogous" to the § 401 offense. After the parties complied, the district court scheduled a plea and sentencing hearing for January 29, 2007. When the hearing convened, the court informed the parties of its determination that Cohn's offense was

> *846 a crime of criminal contempt pursuant to 18, U.S.C., Section 401(1), that is a Class A felony and, therefore, the statutory penalty would be life in prisonment, a maximum term of life in prisonment, probation would not be authorized, the maximum fine would be $250,000, supervised release would not be greater than five years, and there would be a mandatory special assessment of $100.[3]

Because the court's position was unanticipated, the court continued the hearing.

On April 23, 2007, the district court accepted Cohn's conditional plea to criminal contempt.[4] At a second sentencing hearing on July 9, 2007, the court, adhering to its January 29 announcement that criminal contempt constitutes a Class A felony, sentenced Cohn to forty-five days' imprisonment to be followed by a five-year term of supervised release, and a special assessment of $100.[5] This appeal followed.

II.

Cohn asks that we vacate his sentence and remand the case to the district court for resentencing on the ground that the court erred in treating criminal contempt as a Class A felony.[6] We review issues of statutory interpretation **de novo. United** *847 **States v. Maturin**, 499_F.3d_1243, 1245 (11th Cir.2007).

III.

The parties agree that 18 U.S.C. § 401 covers Cohn's criminal contempt. It provides:

> A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
> (2) Misbehavior of any of its officers in their official transactions;
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Section 401 does not specify maximum or minimum penalties for its violation, nor does it assign a felony or misdemeanor designation or grade. Whether criminal contempt appropriately falls within either the felony or misdemeanor classification is a question of first impression in this circuit.[7]

Title 18 U.S.C. § 3559, which classifies offenses according to letter grades, states that "[a]n offense that is not specifically *848 classified by a letter grade in the section defining it, is classified ... [according to] the maximum term of imprisonment authorized." The district court reasoned that because a maximum penalty is not specified in § 401, a violation of the statute is punishable by life imprisonment. Pursuant to § 3559, crimes punishable by life imprisonment are classified as Class A felonies.[8] Class A felons cannot be sentenced to probation.

We disagree with the district court's conclusion that § 401 falls within the ambit of § 3559's classification scheme. Section 401 covers a broad range of conduct, as acknowledged by the Supreme Court. **See, e.g., Frank v. United States**, 395_U.S._147,149,89_S._Ct._1503,1505,23_L._Ed._2d_162 (1969) ("[A] person may be found in contempt of court for a great many different types of offenses. ... Congress, perhaps in recognition of the scope of criminal contempt, has authorized courts to impose penalties but has not placed any specific limits on their discretion."); **Green v. United States**, 356_U.S._165,188,78_S._Ct._632,645,2_L._Ed._2d_672 (1958) ("Congress has not seen fit to impose limitations on the sentencing power for contempts."), **overruled in part on other grounds by Bloom v. Illinois**, 391_U.S._194,88_S._Ct._1477,20_L._Ed._2d_522 (1968). Likewise, a broad array of penalties exists for § 401 violations. No single sentencing guideline applies to § 401. Courts, in sentencing contemners, are directed to the "Other Offenses" section of the Guidelines rather than a single guideline "[b]ecause misconduct constituting contempt varies significantly and the nature of the contemptuous conduct, the circumstances under which the contempt was committed, the effect the misconduct had on the administration of justice, and the need to vindicate the authority of the court are highly context-dependent." U.S.S.G. § 2J1.1, comment. (n.1).[2] Uniform classification of criminal contempt would be inconsistent with the breadth of § 401 and appropriate sentences for its violation. On the other hand, it would be an impracticable, painstaking task individually to classify each instance of criminal contempt. Accordingly, we hold that criminal contempt is best categorized as a **sui generis** offense, rather than a felony or misdemeanor.

*849 This reading of § 401 is supported by the Supreme Court's consistent categorization of criminal contempt as a **sui generis** offense. **See Cheff v. Schnackenberg**, 384_U.S._373,380,86_S._Ct._1523,1526,16_L._Ed._2d_629 (1966) (referring to criminal contempt as "an offense **sui generis**"); **see also United States v. Holmes**, 822 F.2d_481,493 (5th Cir.1987) ("[T]he Supreme Court has never characterized contempt as either a felony or a misdemeanor, but rather has described it as 'an offense **sui generis**.'"). This reading also appropriately reflects the differences between criminal contempt and the traditional crimes classified pursuant to § 3359. Criminal contempt need not be charged by indictment. **See** Fed.R.Crim.P. 7(a)(1); Fed.R.Crim.P. 42(a). The district courts have authority to appoint private attorneys to initiate and prosecute a criminal contempt case. **Young v. United States ex rel. Vuitton et Fils S.A.**, 481_U.S._787,799-801,107_S._Ct._2124,2133-34,95_L._Ed._2d_740 (1987); Fed.R.Crim.P. 42(a)(2).
Considering the scope of § 401 and the wide range of sentences that may be imposed for its violation, Supreme Court jurisprudence, and the differences between criminal contempt and other crimes, we hold that criminal contempt is an offense **sui generis** that cannot be classified pursuant to § 3559. The district court accordingly erred in classifying criminal contempt as a Class A felony.

IV.

For the foregoing reasons, the sentence the district court imposed is vacated and the case is remanded for resentencing.

VACATED AND REMANDED.

NOTES

[*] Honorable Orinda D. Evans, United States District Judge for the Northern District of Georgia, sitting by designation.

[1] Fed.R.Crim.P. 42 states, in pertinent part:

(a) Disposition After Notice. Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.

(1) Notice. The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must:

. . . .

(C) state the essential facts constituting the charged criminal contempt.

[2] The text of § 401 is set out in part III, *infra*.

[3] As we point out *infra*, 18 U.S.C. § 401 does not classify criminal contempt by letter grade. According to 18 U.S.C. § 3559(a)(1), governing sentencing classification of offenses, if an offense "is not specifically classified by a letter grade in the section defining it," the offense is classified as a Class A felony "if the maximum term of imprisonment authorized is ... life imprisonment."

[4] Fed.R.Crim.P. 11(a)(2) states, in pertinent part: "With the consent of the court and the government, a defendant may enter a conditional plea of guilty ... reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion." The conditional plea enabled Cohn to challenge on appeal the district court's determination that criminal contempt is a Class A felony.

[5] The district court accepted the Sentencing Guidelines determination articulated in the presentence report ("the PSI") prepared by the court's probation office. The PSI designated U.S.S.G. § 2J1.2(b)(2) as the guideline most analogous to the criminal contempt Cohn had committed. Section 2J1.2 provides for a base offense level of 14. The PSI increased the base offense level by three levels for "substantial interference with the administration of justice," but reduced it by three levels for acceptance of responsibility, for a total offense level of 14. Based on a total offense level of 14 and a criminal history category of I, the sentence range called for imprisonment of 15 to 21 months. Given a maximum term of imprisonment of 21 months, the PSI stated that Cohn's criminal contempt constituted a Class E felony. (18 U.S.C. § 3559(a)(5) provides that a crime for which the maximum penalty of imprisonment is less than five years but more than one year is a Class E felony.) The court, however, considered the crime a Class A felony. Addressing the questions of restitution and fine, the court found that Cohn, who had already made restitution, was unable to pay a fine, but directed him to participate in a substance abuse and mental health program.

[6] As an alternative ground for vacating his sentence, Cohn also argues that the district court erred in determining that U.S.S.G. § 2J1.2, "Obstruction of Justice," is the guideline most analogous to the offense of criminal contempt. Section 2J1.1, "Contempt," is the guideline applicable to 18 U.S.C. § 401. It instructs the sentencing court to apply U.S.S.G. § 2X5.1, "Other Offenses," because "misconduct constituting contempt varies significantly." U.S.S.G. § 2J1.1, comment. (n.1). Section 2X5.1 provides that if an offense is "a felony for which no guideline expressly has been promulgated, apply the most analogous offense guideline." The district court determined that Cohn's criminal contempt is a Class A felony and that the most analogous offense is obstruction of justice. Because we reverse the district court's determination that Cohn's contempt was a felony, § 2X5.1 does not apply, and we need not reach the question of whether obstruction of justice was the crime most analogous to Cohn's contempt.

[7] The Ninth Circuit is the only court of appeals to have ruled on this precise issue in a reported decision. In **United States v. Carpenter**, the contemner refused to testify in response to a grand jury subpoena. 91_F.3d_1282, 1282 (9th Cir. 1996) (per curiam). The government argued that Carpenter's criminal contempt constituted a Class A felony based on the reasons articulated by the district court in this case. **Id.** at 1284. The district court accepted the argument and treated the contempt as a Class A felony. The Ninth Circuit reversed, holding that the only similarity criminal contempt bore to other Class A felonies was that § 401 did not specify a maximum term of imprisonment. Although a maximum penalty is not specified "for Class A felonies because Congress views all such felonies as extraordinarily serious crimes," the court observed that criminal contempts, "in contrast, include a broad range of conduct, from trivial to severe." **Id.** The Ninth Circuit elected to classify criminal contempt in accordance with the maximum sentence a court could impose for the most analogous offense. **Id.** at 1285. The district court had found that obstruction of justice, with a sentence range under the Guidelines of 6–12 months, was the most analogous offense to Carpenter's contempt. **Id.** Accordingly, the Ninth Circuit classified Carpenter's criminal contempt as a Class A misdemeanor. **Id.** We decline to adopt this method of classification. The method does not address how to classify criminal contempt if a sufficiently analogous guideline is absent. More importantly, maximum penalties are established by statute, not the Sentencing Guidelines. It is far from clear whether a district court, in classifying a criminal contempt, should use the maximum penalty called for by the base offense level or the total offense level, including all possible enhancements.
Judge Barkett, in a special concurrence, has addressed the issue of classifying criminal contempt. **See United States v. Love**, 449_F.3d_1154, 1157-59 (11th Cir.2006) (per curiam) (Barkett, J., specially concurring). In that case, the defendant was convicted of violating 18 U.S.C. § 401(3) and sentenced to 45 days' imprisonment and five years' supervised release by the same district court who sentenced Cohn. The court classified contempt as a Class A felony. On appeal, this court did not address the merits of the district court's classification decision because it found

that the defendant had "induced or invited the ruling." **Id.** at 1157. Judge Barkett opined "that criminal contempt, as an offense **sui generis**, cannot be branded a Class A felony in every instance." **Id.** at 1157-58. Otherwise, "patently absurd" and likely unconstitutional results, including harsh or disparate punishments, would result. **Id.** at 1158. Judge Barkett emphasized that criminal contempts are not universally "extraordinarily serious" but rather "include a broad range of conduct, from trivial to severe." **Id.** at 1158 (quoting **Carpenter**, 91 F.3d at 1284). Judge Barkett asserted that the **Carpenter** approach would appropriately address these concerns; nonetheless, we do not adopt the **Carpenter** approach for the reasons above.

[8] In its entirety, subsection (a) of 18 U.S.C. § 3559 states:

(a) Classification.—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—

(1) life imprisonment, or if the maximum penalty is death, as a Class A felony;

(2) twenty-five years or more, as a Class B felony;

(3) less than twenty-five years but ten or more years, as a Class C felony;

(4) less than ten years but five or more years, as a Class D felony;

(5) less than five years but more than one year, as a Class E felony;

(6) one year or less but more than six months, as a Class A misdemeanor;

(7) six months or less but more than thirty days, as a Class B misdemeanor;

(8) thirty days or less but more than five days, as a Class C misdemeanor; or

(9) five days or less, or if no imprisonment is authorized, as an infraction.

[9] Forcing a district court to pigeonhole a criminal contempt into a felony or misdemeanor category would impinge on its ability to impose appropriate sentences. Pursuant to § 3559, different classifications prescribe various periods of imprisonment and supervised release and fines. Due to the variety of conduct which may be punished as criminal contempt, it is important that the district courts have flexibility in sentencing. For example, a court may be inclined to impose a short period of imprisonment but a lengthy term of supervised release or a steep fine. Section 3559's classification system would not permit this flexibility.

EXHIBIT "E"

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

vs.

SCOTT HUMINSKI

Defendant

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

COPY

17mm815

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CIVIL ACTION**

Huminski, Scott
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421
Date: **June 29, 2017**
Judge: **Elizabeth V Krier**
Deputy Clerk: **Brenda Horton**
Court Reporter:

MINUTES

Attorney for Plaintiff: **Kevin Sarlo** ☑ Present ☐ Not Present
Attorney for Defendant: **Anthony Kunasck** ☑ Present ☐ Not Present

Hearing Information:

SHOW CAUSE / ARRAIGNMENT PROCEEDING:

-Plea of Not Guilty Entered
-CMC scheduled on 8/15/17 at 1:00 for 10 minutes
-CMC is set to review how the State is proceeding with the case and at that Point we can schedule future hearings. Also to be discussed transfer case From civil to criminal
-Pretrial release without bond / Conditions: Mr. Huminski is to check in with Pretrial officer every 2 weeks, along with the condition to not violate anymore Orders. Only Mr. Huminski's PD or licensed attorney may contact the courts. He must not contact the courts or Sheriff's Department by email

☐ Motion _____ ☐ Granted ☐ Denied ☐ Reserved

Notes:
-Scott Huminski-present
-Copies of orders on file given to Mr. Huminski, Mr. Sarlo, and Mr. Kunasck In court

*Sworn

☐ For additional details refer to Court Reporter transcript ☐ Hearing Cancelled

☐ Waived the 15 day exception rule ☑ Order signed in open court

Order to be prepared by:

☐ Magistrate ☐ Plaintiff's Attorney ☐ Defendant's Attorney

☐ Exhibits Received

*Sworn

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL DIVISION

STATE OF FLORIDA,

vs.

Case No.: 17-MM-815

SCOTT A. HUMINSKI,

Defendant.
_____/

ORDER OF REASSIGNMENT

THIS CAUSE came before the Court on August 15, 2017, it is hereby

ORDERED AND ADJUDGED that the above case shall be reassigned to the Honorable James R. Adams. You are to appear before Judge Adams on September 1, 2017 at 8:30 a.m. in Courtroom 1-A for docket sounding.

DONE AND ORDERED in Lee County, Florida this 15th day of August 2017.

JAMES R. ADAMS
Administrative County Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via e-service to the following on this 15th day of August 2017:

Office of the State Attorney, 20th Judicial Circuit
Pro Se Defendant, S_Huminski@live.com

Judicial Assistant

IN THE CIRCUIT/COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA vs.
Scott Humiski
Defendant/Minor Child

For Both Contempt Cases

CASE NO. 17-CA-421
17-MM-815
Both Criminal Contempt

APPLICATION FOR CRIMINAL INDIGENT STATUS

X I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER OR

___ I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENCE STATUS FOR COSTS

Notice to Applicant: The provision of a public defender/court appointed lawyer and costs/due process services are not free. A judgment and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for whom you are making this application. There is a $50.00 fee for each application filed. If the application fee is not paid to the Clerk of the Court within 7 days, it will be added to any costs that may be assessed against you at the conclusion of this case. If you are a parent/guardian making this affidavit on behalf of a minor or tax-dependent adult, the information contained in this application must include your income and assets.

1. **I have** 0 **dependents.** *(Do not include children not living at home and do not include a working spouse or yourself.)*

2. **I have a take home income of $** 0 paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly ( ) yearly
*(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, **minus** deductions required by law and other court ordered support payments)*

3. **I have other income** paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly (X) yearly: *(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No.")*

Social Security benefits	Yes $ 1481	No	Veterans' benefit	Yes $	No
Unemployment compensation	Yes $	No	Child support or other regular support from family members/spouse	Yes $	No
Union funds	Yes $	No	Rental income	Yes $	No
Workers compensation	Yes $	No	Dividends or interest	Yes $	No
Retirement/pensions	Yes $	No	Other kinds of income not on the list	Yes $	No
Trusts or gifts	Yes $	No			

4. **I have other assets:** *(Circle "yes" and fill in the value of the property, otherwise circle "No")*

Cash	Yes $ 200	No	Savings	Yes $	No
Bank account(s)	Yes $ 160	No	Stocks/bonds	Yes $	No
Certificates of deposit or money market accounts	Yes $	No	*Equity in homestead real estate	Yes $	No
*Equity in motor vehicles	Yes $ 1200	No	*Equity in non-homestead real estate	Yes $	No
*Equity in boats/other tangible property	Yes $ 50	No			

*include expectancy of an interest in such property

5. **I have a total amount of liabilities and debts in the amount of $** 49500

6. **I receive:** *(Circle "Yes" or "No.")*
Temporary Assistance for Needy Families-Cash Assistance ...Yes No
Poverty- related veterans' benefits.....Yes No
Supplemental Security Income (SSI).....Yes No

7. **I have been released on bail in the amount of $** 0 **Cash** ____ **Surety** ____ **Posted by**: Self ____ Family ____ Other ____

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 27.52, F.S., commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. **I attest that the information I have provided on this Application is true and accurate.**

2/21/18
Signed on

12-1-59
Date of Birth

4327
Last four digits of Driver's License or ID Number

Signature of applicant for indigent status
Print full legal name: Scott A Humiski
Address: 2444 Kinkaid
City, State, Zip: Cape Coral
Phone number: 239 300 6156
E-mail Address: S-Humiski@live.com

CLERK DETERMINATION

_____ Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent

_____ The Public Defender is hereby appointed to the case listed above until relieved by the Court.

Dated this ___day of_____, 20__

LINDA DOGGETT
Clerk of the Circuit Court, by Deputy Clerk

This form was completed with the assistance of:

Clerk/Deputy Clerk/Other authorized person

APPLICANTS FOUND NOT INDIGENT MAY SEEK REVIEW BY ASKING FOR A HEARING TIME. Sign here if you want the judge to review the clerk's decision of not indigent.

Florida Supreme Court Form 3.984, Updated 11/23/15

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

Vs. CASE NO: 17-MM-815

SCOTT HUMINSKI

_____/

ORDER ON ARRAIGNMENT

THIS CAUSE having come before this Court on 6/29/17 for Arraignment on the Order to Show Cause issued on 6/5/17 and SCOTT HUMINSKI having been served with the Order and having appeared before the Court and the Court having appointed the Public Defender's Office to represent SCOTT HUMINSKI, and being advised of the premises, it is ORDERED and ADJUDGED as follows:

1. SCOTT HUMINSKI was advised of his rights.

2. The Public Defender's Office was appointed to represent SCOTT HUMINSKI.

3. SCOTT HUMINSKI entered a plea of not guilty.

4. The Court ordered pre-trial release for SCOTT HUMINSKI with the conditions set forth below. **Failure to comply with the conditions may result in this pre-trial release being revoked.**

   A. SCOTT HUMINSKI shall check in with the pre-trial release program and thereafter check in with a pre-trial officer every two (2) weeks.;

   B. SCOTT HUMINSKI shall comply with all previously entered orders of the Court in Case number 17-CA-421 including:
      (1) SCOTT HUMINSKI shall not contact the Lee County Sherriff's Office except through their legal counsel, unless said contact is initiated by the Sherriff's office, such as if SCOTT HUMINSKI is arrested or stopped for a traffic violation.

      (2) SCOTT HUMINSKI shall not file anything in the Court file in Case No. 17-CA-421 unless such filing occurs by an attorney licensed in the State of Florida.

(3) SCOTT HUMINSKI shall not contact the Court's office except through an attorney licensed in the State of Florida.

5. This Case is scheduled for case management on 8/15/17 at 1PM. At the time of Case Management, the State shall inform the Court and Defendant whether they will be requesting a sentence less than 60 days that would entitle SCOTT HUMINSKI to a non-jury trial or a greater sentence that would require a jury trial. At the time of case management, the Court will set a trial date.

DONE and ORDERED this 7 day of July, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
SAO
PD
Pre-trial release program, Scott Peckham

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

CORRECTED CERTIFICATE OF SERVICE RE: NOTICE OF APPEAL

NOW COMES, Scott Huminski ("Huminski"), and, and notices as above to correct filing and service dates of the Notice of Appeal filed today.

Dated at Bonita Springs, Florida this 8th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and the Notice of Appeal filed today and any attachment(s) was served via the court's efiling system to all parties of record on this 8th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA APPELLATE DIVISION

SCOTT HUMINSKI,

Appellant,

vs.

Case No. 18-AP-3
Lower Case No. 17-MM-815

TOWN OF GILBERT AZ

Appellee.

_______________________________/

ORDER DECLARING DEFENDANT INDIGENT AND APPOINTING PRIVATE REGISTRY ATTORNEY FOR APPEAL

THIS CAUSE comes before the Court on the Appellant's request for counsel, contained within his pro se "Amended Notice of Appeal, County Court 17-MM-815 – Refusal to Disqualify and Notice of Indigent Criminal Defendant and Motion for Assignment to Lee Public Defender's Office," filed on February 28, 2018, and application for indigent status, filed on March 1, 2018. In his motion requesting appointed counsel, Appellant requests appointment of the Public Defender for the purpose of representing him on his appeal of the lower court's non-final order. However, the lower case includes certifications of conflict of interest from both the Office of the Public Defender and the Office of Criminal Conflict and Civil Regional Counsel. In the interest of expediency, the Court finds that the Public Defender and Regional Counsel have a conflict representing Appellant in this non-final appeal.

Therefore, upon review of the motion, the application and the case file, the Court finds that Defendant was previously declared indigent, that Defendant was previously appointed the Office of Public Defender prior to the certification of conflict, that the Public Defender and Regional Counsel have a conflict of interest, and that the following private attorney from the registry is appointed to represent Defendant on this non-final misdemeanor appeal: Michael J.P. Baker, Bar Number: 3451; mailing address: MICHAEL J. P. BAKER LAW OFFICE, P. A., 1136

NE Pine Island Rd Ste 37, Cape Coral, FL 33909-2186; telephone number: 239-313-7350; e-mail address: BakerAssociatesLaw@aol.com.

Thus, it is hereby

ORDERED AND ADJUDGED that Defendant's motion is GRANTED. The attorney Michael J.P. Baker is appointed to represent Defendant on this non-final appeal. Furthermore, the Court finds that Defendant is entitled to the waiver of filing fees in the pursuit of his non-final appeal and is declared indigent for the purposes of appeal.

DONE AND ORDERED in Chambers at Ft. Myers, Lee County, Florida this 8th day of March, 2018.

Joseph C. Fuller, Jr.
Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the forgoing filed in the above styled case has been e-mailed/mailed to:

- **Court Administration (XXIV)**
- **Scott Huminski**
- **Town of Gilbert AZ**
- **Michael J.P. Baker, Esq.**

Dated: 3/9/18

LINDA DOGGETT, CLERK OF COURT

By: _____
Deputy Clerk

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Motion to Dismiss – BAIT & SWITCH 4th Amendment

NOW COMES, Scott Huminski ("Huminski"), and, and moves as above because counsel asked Huminski if he wanted to pursue a plea deal. With knowledge that Huminski had counsel for a trial, Huminski decided to go to trial. Now Huminski was stripped of counsel that impacted his decision to go to trial. BAIT and SWITCH of a 4th Amendment right is corrupt and unconstitutional.

Dated at Bonita Springs, Florida this 9th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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Copies of this document and any attachment(s) was served via the court's efiling system on all parties of record this 9th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Motion for Sentencing to allow Huminski's Neurosurgery of His Spine – 8th Amendment

NOW COMES, Scott Huminski ("Huminski"), and, and moves as above because Huminski suffers severe chronic pain from severe maladies of his spine that have presented themselves 8 years after bi-lateral hip replacements. The 8th Amendment prohibits cruelty that would arise from the interference with Huminski's neurosurgery. Huminski has been under the care of an orthopedic surgeon, Dr. Peter J. Curcione, DO of Fort Myers. After an MRI of Huminski's spine, he was referred to neurosurgeon Dr. Gary Correnti for spinal surgery.

Huminski is asserting his 5th Amendment right at trial and his 4th Amendment right to counsel. Huminski has been stripped of counsel. There is no chance Huminski can prevail at a trial where he is asserting his 5th Amendment right and has been stripped of counsel, has not been allowed compulsory process or confrontation of his accusers via compulsory process. Thus, this motion is filed

because Huminski has no chance of prevailing at a trial under the aforementioned circumstances indicative of a show trial.

Attached hereto is Huminski's MRI and the letter confirming Huminski's pre-surgical appointment. Incarceration of Huminski and denial of medical treatment to resolve severe and chronic pain is analogous to torture and is cruel punishment under the 8th Amendment.

Dated at Bonita Springs, Florida this 9th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

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Radiology Regional Center

www.radiologyregional.com

SCHEDULING
Lee County
Phone: (239) 936-4068
Fax: (239) 936-6989
Collier County
Phone: (239) 430-1513
Fax: (239) 430-1521

PATIENT NAME
SCOTT HUMINSKI

DATE OF SERVICE
02/23/2018

JACKET #
100886105

PETER J CURCIONE, DO
3210 CLEVELAND AVE
FORT MYERS FL 33901

SITE OF SERVICE
ESTERO
10201 ARCOS AVE, SUITE 101
ESTERO, FL 33928

DATE OF BIRTH
12/01/1959
AGE/SEX
58/Male

PATIENT COPY

EXAM: LUMBAR SPINE MRI WITHOUT CONTRAST

INDICATION: Bilateral leg radiculopathy. Patient complains of low back pain with left hip pain for three months.

COMPARISON: No prior comparison.

TECHNIQUE: MRI of the lumbar spine was performed without intravenous contrast. Sequences include T2 sagittal with or without fat suppression, T1 sagittal, and T1 and T2 axial.

FINDINGS: Slight leftward curvature of the thoracolumbar spine present without AP malalignment. Vertebral body heights are maintained. No fractures seen. Endplate changes with anterior and lateral osteophyte formation seen L2-3 through L4-5. Remote superior endplate Schmorl's node within L2. Spinal cord normal in signal and caliber, conus terminates at the L1 vertebral body. Limited assessment of retroperitoneum and paraspinal soft tissues within normal limits.

Evaluation of individual levels.

L1-L2: Early disc desiccation mild disc height loss eccentric to the right lateral margin. Minimal disc bulge indenting ventral thecal sac without canal stenosis or neural foraminal narrowing.

L2-L3: Disc desiccation with mild disc height loss eccentric to the left lateral margin with endplate changes. Mild disc bulge indenting ventral thecal sac, no canal stenosis. Early facet degenerative changes. No neural foraminal narrowing.

L3-L4: Disc height loss, moderate to prominent eccentric left lateral margin with accompanying endplate changes and reactive mild marrow edema. Broad-based disc bulge with superimposed left paracentral - lateral broad-based disc protrusion, pedicular hypoplasia, moderate facet arthropathy with ligamentum flavum thickening and element of epidural lipomatosis with prominent canal stenosis. Mild left neural foraminal narrowing.

L4-L5: Disc desiccation and mild disc height loss with endplate change. Remote superior endplate limbus deformity at the anterosuperior margin of L4. Broad-based disc bulge moderate to prominent, facet arthropathy ligamentum flavum thickening with pedicular hypoplasia and element of epidural lipomatosis with moderate to prominent canal stenosis. No neural foraminal narrowing.

L5-S1: No disc contour abnormality. No canal stenosis. Epidural lipomatosis present. Mild facet degenerative changes. No neural foraminal narrowing.

IMPRESSION:

CONTINUED:

PATIENT NAME:	SCOTT HUMINSKI
DOB:	12/01/1959
JACKET #:	100886105
DATE OF SERVICE:	02/23/2018

1. Degenerative disc disease of the lumbar spine present centered L2-3 through L4-5 with endplate changes at these levels, centered to L3-4 with multifactorial prominent canal stenosis with eccentric disc height loss and endplate marrow edema to the left lateral margin.
2. L4-5 multifactorial moderate to prominent canal stenosis.
3. Facet degenerative changes L2-3 through L5-S1, centered at L3-4 and L4-5.

Thank you for trusting Radiology Regional Center with your referral. If you are a Health Care Provider and would like to speak with a Radiologist concerning this exam, please call 239-425-4510.

DARIUS BISKUP, MD
DICTATING PHYSICIAN
ELECTRONICALLY SIGNED

APPROVING PHYSICIAN
DARIUS BISKUP, MD
02/23/2018 04:21 PM
SR/02/23/2018 01:31 PM

SOUTHWEST FLORIDA NEUROSURGICAL ASSOCIATES

SOUTHWEST FLORIDA REHAB & PAIN MANAGEMENT ASSOCIATES

12700 Creekside Lane, Suite 101 • Fort Myers, Florida 33919 • (239) 432-0774 • FAX (239) 432-9404
632 Del Prado Blvd., N., Suite 101 • Cape Coral, Florida 33909 • (239) 772-5577 • FAX (239) 772-9961

Ft Myers Neuro
12700 Creekside Lane Suite 101
Fort Myers, FL, 33919
(239) 432-0774

Scott Huminski
24544 Kingfish St
Bonita Springs, FL 34134

APPOINTMENT REMINDER

This is to confirm your appointment on 03/28/2018 at 03:00 pm with Correnti, Gary J.

REMINDER:
Please remember to bring your insurance cards, any co-pay amounts and your medication lists with you to all visits. If for any reason you are unable to keep this appointment and need to cancel, please contact our office 24 hours in advance to reschedule.

Thank you and we look forward to seeing you again soon.
Correnti, Gary J

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCTET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO CONSOLIDATE APPEALS IN THE FLORIDA SUPREME COURT

NOW COMES, Scott Huminski ("Huminski"), and moves as above, because, the two above-captioned cases are identical and are appeals to the Florida Supreme Court pursuant to its exclusive jurisdiction of judicial assignments and rule-making. The County has purportedly seized jurisdiction from the Circuit Court concerning criminal contempt charges absent any order, Rule, Statute or authority allowing such a transfer impacting the jurisdiction of the County Court. The illegal transfer occurred on 6/30/2017 absent any order. The Circuit case was listed as closed on or about 2/27/2018 on the Court's docket.

Dated at Bonita Springs, Florida this 9th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se

24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

Filing # 69057701 E-Filed 03/09/2018 01:54:57 PM

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCTET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Notice of Appeal (consolidated) to the Florida Supreme Court – Judicial Appointment/Rule-Making Exclusive Jurisdiction Appeal
Notice of Indigency in the court below and request for appointment of counsel on appeal
And Motion to Stay Criminal Trial and collateral appeals and MOTION TO HOLD APPEAL IN ABEYANCE WHILE HUMINSKI'S ADDRESS IS UNKNOWN

NOW COMES, Scott Huminski ("Huminski"), and notices of interlocutory/final (17-CA-421 was docketed as closed on or about 2/27/2018) appeal or for writs of certiorari/prohibition/"all writs" concerning of the act of re-assignment/transfer of criminal contempt to County Court from Circuit Court and the lack of a Florida Rule of Procedure / administrative rule allowing such a transfer. This is a consolidated appeal of a transfer from Circuit to County Court (17-MM-815, 17-CA-421) under the Judicial Appointment and Rule-Making exclusive authorities of the Florida Supreme Court.

This case, 17-CA-421, was closed briefly on or about February 27, 2018 and now lists the status as "re-opened", this appeal is akin to a final appeal. This appeal addresses the 20th Circuit procedure of transferring cases between Circuit Court and County Court absent any order or Rule allowing such a procedure. No order exists concerning this act that appears to be a flaw in operation of the 20th Circuit automatically moving all *sui generis* contempt cases to the misdemeanor court when a re-assignment issues in a contempt case. This is a rule-making/judicial assignment appeal that went far beyond assignment because along with assignment, the case was administratively moved from Circuit to County Court as part of the assignment function far exceeding the power of the chief circuit judge and even the assignment powers of the Chief Justice of the Florida Supreme Court, in the alternative, guidance from the Supreme Court's rule-making jurisdiction is required to address transfers from Circuit to County Courts, because it is currently the *wild west*. This unlawful assignment procedure also effectuates an administrative virtual dismissal of a Circuit Court matter not documented in any order and not anticipated by any Court Rule , thus, this appeal is centered partially on an administrative procedure that is not the product of any Court Rule, contrarily, the transfer is the product of a Circuit custom in want of a Rule. This matter is brought as a consolidated appeal as the material herein impact and arose from both the Circuit and County Courts.

JURISDICTION – EXCLUSIVELY FLORIDA SUPREME COURT

Exclusive jurisdiction of the Florida Supreme Court of judicial assignments and rule-making, See attached Motion to Vacate, Exhibit "A", Westlaw 5 Fla. Practice § 5.1. See also In re Clarification of Florida Rules of Practice and Procedure, 281 So.2d 204 (Fla. 1973) (Florida Supreme Court has exclusive jurisdiction over rule-making). Clearly, transfer from Circuit Court to County Court is a procedure in need of a Rule under the exclusive jurisdiction of this Court. Transfer of a case from Circuit to County is a judicial re-assignment subject to the exclusive jurisdiction of this Court.

Attached hereto are minutes issued in the County Court mentioning a "transfer" to criminal (i.e. County Court), an administrative act that happened, but, is not allowed and does not automatically accompany a judicial re-assignment under any Florida Rule, Law, Statute or Authority although it is a custom of the 20th Circuit. This situation requires the exclusive rule-making authority of the Supreme Court and rule-making clarification. *Id.*

Attached hereto is the order of assignment issued in the County Court, assigning the criminal contempt to itself after a hearing in the case without mention of the "transfer" from Circuit Court to County Court. The record is devoid of any administrative order transferring the case from Circuit to County or visa versa. This case is ripe for review of the non-order transferring a case from Circuit to County – no time limit applies as no order was issued.

The attached Motion to Vacate, Exhibit "**E**" is a true and correct copy of Judge Krier's recusal from the criminal contempt matter captioned in the Circuit

Court and signed in her capacity as a Circuit Court judge filed on 8/14/2017 contradicting the alleged transfer to County Court on 6/30/2017. This re-assignment/transfer process even confuses the presiding judges. On 8/14/2017, the exact same contempt actions existed in Circuit and County courts in violation of the multiple prosecution prohibition of Double Jeopardy as a result of this unlawful assignment/transfer procedure, rule clarification is necessary.

Below are true and correct docket entries appointing the Public Defender to Huminski in early March in 17-MM-815 and appeal 18-AP-0003. Huminski should be appointed an attorney in this appeal as he was appointed counsel in the case below and moves for appointment.

17-MM-815:

02/27/2018	Application for Indigency - Existing CaseUnable to Process Application is Incomplete Comments: Unable to Process Application is Incomplete	1
03/01/2018	Application for Indigency - Existing CasePD Appointed Comments: PD Appointed	

18-AP-0003:

02/27/2018	Application for Indigency - Existing CaseUnable to Process Application is Incomplete Comments: Unable to Process Application is Incomplete	1
03/01/2018	Application for Indigency - Existing CasePD Appointed Comments: PD Appointed	1

Attached hereto is Huminski's recent petition of indigency that resulted in appointment of a public defender after re-entry by pre-trial services on 3/1/2018 which he asserts in this Court.

Attached hereto is an "order on arraignment" dated 7/10/2017 captioned in the Circuit Court – Civil Division and signed in Judge Krier's capacity as a Circuit Court judge when the criminal contempt was purportedly transferred to County Court on 6/30/2017 without a court order by an unknown mechanism. Even Circuit Court judges are intensely confused concerning this procedure adopted by the 20th Circuit. A Rule is required to avoid this confusion and promote the orderly administration of justice. The Florida Supreme Court must set forth procedures concerning transfer from Circuit to County Courts or forbid it, because the current situation is chaotic, illegal and procedures need to be drafted and adopted. The same confusion exists in the recusal order of the Circuit Court attached to the attached Motion to Vacate again captioned in the Circuit Court – civil division and signed in Judge Krier's Circuit capacity. Litigants are just as confused and prejudiced by this dangerously casual transfer procedure.

Huminski notifies that his criminal trial concerning the material herein is on 3/16/2018 and he is asserting his right to remain silent and has been stripped of counsel despite his indigency. There will be no 4th Amendment right to counsel and the judge has ruled no compulsory process of witnesses or confrontation of accusers. Thus, Huminski's address after the trial without counsel is likely to be in a Florida jail or prison and Huminski requests that this matter be held in abeyance during

Huminski's imprisonment or that an attorney be appointed to him during incarceration to handle this appeal. Huminski at 58 has never been convicted or jailed for anything and doesn't know what his address will be or what mechanisms are allowed in prison to participate in this appeal.

This appeal is ripe as the order of assignment does not mention a transfer from Circuit to County and is proper under the Court's rule-making jurisdiction because transfer should have been documented by order and not be considered an automatic function of the 20th Circuit..

All relief requested herein is directed to the Florida Supreme Court or any other appellate court that may hear these issues.

WHEREFORE, an immediate stay should issue in the criminal trial court and collateral appeals. The County Case should be vacated as Void Ab Initio because of the procedural/administrative irregularities that rise to a Constitutional magnitude and the Court should consider crafting a rule regarding transfers between Circuit and County Courts to avoid this situation in the future. Appellant suggests such inter-Circuit transfers are illegal as they prohibit final disposition in one of the Courts. Finality is an essential element of the adversarial process.

Dated at Bonita Springs, Florida this 9th day of March, 2018.

-/S/- Scott Huminski

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(239) 300-6656
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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
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TOWN OF GILBERT, AZ, ET AL.	)	DOCKET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO VACATE ASSIGNMENT ORDER TO COUNTY COURT, in the alternative, MOTION FOR LEAVE TO CHALLENGE THE ASSIGNMENT AND OTHER ISSUES IN THE FLORIDA SUPREME COURT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because the assignment order was issued after the first hearing in the County Court and a County Court administrative judge can not assign Judges to cases in Circuit Court or cause the dismissal of a Circuit Court case. Fl 38.22 mandates that contempt actions be heard in the Court where the contempt occurred. The Court's reliance upon the procedure of an "administrative transfer" to dismiss the Circuit Court prosecution and initiate it in County Court does not exist. Huminski is prejudiced because the record of the case before and after the alleged contempt exists in the Circuit Court. The County Court record is devoid of critical portions of the record such as the order(s) Huminski allegedly violated, this prejudices Huminski's ability to defend himself and certainly prejudices any appeal or writ filed in the future.

Criminal contempt is creature of common law, neither a statutory felony nor misdemeanor, it should be heard in the Court where it allegedly occurred. FL 38.22. See attached opinion U.S. v. Cohn (11d Cir. 2009)("We conclude that criminal contempt is a sui generis offense and that it is neither a felony nor a misdemeanor.") In South Dade Farms v. Peters, 88 So.2d 891 (1956), the Florida Supreme Court approvingly cites Oswald, Contempt of Court: "It should always be borne in mind in considering and dealing with contempt of Court that it is an offense purely sui generis ... ". The desire to force contempts to the County Courts by misclassifying them as misdemeanors is erroneous. The Florida Supreme Court has exclusive jurisdiction to review judicial assignments. See Attached section 293 as to the exclusive jurisdiction of the Florida Supreme Court.

The attached Fl. Practice 5.1 reveals no provision for transfer of a case from Circuit to County Courts, only judicial assignments are anticipated and allowed. The effective dismissal of a case out of Circuit Court and re-initiation of that case in County Court is not within the authority, power or jurisdiction of the chief Circuit Judge or any administrative judge. This scenario is not merely a judicial assignment, it involves the manipulation of cases between courts that is not allowed or anticipated by any Rule, Statute or authority.

The record does not indicate the reason for the recusal of Judge Krier it only cites Cannon 3(e), whether the impartiality, bias or prejudice concerning the recusal was the result of "disrespect or criticism" is unknown and can be subjective, thus, the Chief Justice of the Supreme Court should have handled any assignment

pursuant to Rule 3.840(e). See attached. Up to and including the recusal of Judge Krier (the original recusal order was lost, a copy of a copy was filed) filed on 9/22/2017 and back-dated to 8/14/2017 the case was captioned by Judge Krier in the Circuit Court and signed in Judge Krier's capacity as a Circuit Court Judge. See attached recusal order.

The unlawful "administrative transfer" from Circuit Court to County Court created a new criminal case absent a legitimate charging document. In this instance a show cause order. On 6/30/2017 court staff printed out a copy of an unserved show cause order of Judge Krier dated 6/5/2017, hand modified it with a new County Court docket number and then filed that document as a legitimate County Court show cause order. The same court staff forgot to file the 117 pages of attachments to the show cause order. This conduct flirts with forgery and obstruction of justice. Court orders can not recklessly be copied and filed in other cases and held out to be valid. A somewhat valid show cause order only exists in the Circuit Court, on 6/5/2017 when the 6/5 show cause order was authored case 17-mm-815 did not exist. A cascade of dubious conduct accompanies so-called "administrative transfers".

As previously noted in a previous motion the initiation of a second prosecution while the first case has not been disposed of violated the multiple prosecution prohibition of Double Jeopardy. Failure to follow administrative procedure leads to flaws and as this case reveals, infirmities of a constitutional magnitude.

Dated at Bonita Springs, Florida this 5th day of March, 2018.

-/S/- Scott Huminski

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S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

EXHIBIT "A"

Florida Jurisprudence, Second Edition
Database updated February 2005

Courts and Judges

Carmela Pellegrino, J.D. and Kerry Hogan Lassus, J.D. of the National Legal Research Group, Inc.

Part Two. Judges
XV. Assignment and Substitution [§ § 291-299]
A. Assignment, in General [§ § 291-294]

Topic Summary; Correlation Table; References

§ 293. Review of judicial assignments

West's Key Number Digest

West's Key Number Digest, Courts 70

The Supreme Court has exclusive jurisdiction to review judicial assignments. [FN13] Thus, the district court of appeal lacks authority to review an administrative order assigning a county court judge to circuit court duty. [FN14]

Practice Guide:

A litigant who is affected by a judicial assignment made by a chief judge of a judicial circuit must challenge the assignment in the trial court and then seek review in the Supreme Court by way of petition for prohibition or petition for relief under the "all writs" power.[FN15]

CUMULATIVE SUPPLEMENT

Cases:

Because of the vital role temporary judicial assignments play in the administration of the state court system, the Supreme Court must have exclusive jurisdiction to review such assignments under its constitutional authority to oversee the administrative supervision of all courts. Fla. Const. Art. 5, § 2(a); Fla. R. Jud. Admin. 2.050(b)(4). Physicians Healthcare Plans, Inc. v. Pfeifler, 846 So. 2d 1129 (Fla. 2003).

The Supreme Court has exclusive jurisdiction to review judicial assignments. Fla. Const. Art. 5, § 2(a, b). Physicians Healthcare Plans, Inc. v. Pfeifler, 846 So. 2d 1129 (Fla. 2003).

District Court of Appeal lacked jurisdiction to consider defendant's argument that county court judge did not have jurisdiction to preside over his felony trial and violation of probation hearing; Supreme Court had exclusive jurisdiction to review temporary judicial assignments. Thweatt v. State, 861 So. 2d 1284 (Fla. Dist. Ct. App. 5th Dist. 2004).

[END OF SUPPLEMENT]

[FN13] Wild v. Dozier, 672 So. 2d 16, 21 Fla. L. Weekly S57 (Fla. 1996), reh'g denied, (Apr. 11, 1996); Rivkind v. Patterson, 671 So. 2d 788 (Fla. 1996); Holsman v. Cohen, 667 So. 2d 769, 21 Fla. L. Weekly S61 (Fla. 1996).

[FN14] Wild v. Dozier, 672 So. 2d 16, 21 Fla. L. Weekly S57 (Fla. 1996), reh'g denied, (Apr. 11, 1996); J.G. v. Holtzendorf, 669 So. 2d 1043, 21 Fla. L. Weekly S122 (Fla. 1996).

[FN15] Wild v. Dozier, 672 So. 2d 16, 21 Fla. L. Weekly S57 (Fla. 1996), reh'g denied, (Apr. 11, 1996).

FLJUR COURTS § 293
END OF DOCUMENT

EXHIBIT "B"

West's Florida Practice Series TM
Civil Practice
Philip J. Padovano FNa

Part I. Civil Procedure
Chapter 5. Judges

§ 5.1 Assignment

Judicial assignments are made in the discretion of the chief judge under local administrative procedures within the judicial circuit. A trial judge may be assigned to preside in a particular case for a variety of reasons but most often trial judges are assigned to handle an entire class of cases as part of a regular policy of judicial rotation. While most cases are handled according to the assignments made by the chief judge, the absence of a proper assignment order does not affect the jurisdiction of the court.

Rule 2.050(b)(4) of the Rules of Judicial Administration provides that the "[t]he chief judge shall assign judges to the courts and divisions, and shall determine the length of each assignment." This rule gives the chief judge authority to assign a judge the responsibility of handling an individual case. However, judges are most often assigned to a caseload consisting of a defined class of cases and the individual cases are selected at random. The authority vested in the chief judge by rule 2.050(b)(4) applies to the assignment of county judges as well as circuit judges. If there are two or more county judges in one county within the judicial circuit, the chief judge has authority to determine the nature and length of the assignment for each county judge.

An assignment order by the chief judge is not a jurisdictional prerequisite to the handling of a case that is otherwise within the subject matter jurisdiction of the court. FN1 All circuit judges are authorized to assert the jurisdiction of the circuit court within their respective judicial circuits and all county judges are authorized to assert the jurisdiction of the county court within their respective counties. The fact that a judge has handled a case not assigned by the chief judge does not affect the jurisdiction of the court as long as that judge is a member of the court. Jurisdiction of the court and the assignment of judges are separate matters.

Rule 2.050(b)(4) provides that the "[t]he chief judge may assign any judge to temporary service for which the judge is qualified in any court in the same circuit." This rule authorizes the chief judge to assign a qualified county judge to temporary service as a circuit judge and vice

versa. The supreme court has defined the phrase "temporary service" to mean that a county judge should not be assigned for more than sixty days to handle circuit court matters exclusively, or for more than six months to handle specific circuit court cases in addition to the regular county court duties. FN2

Although a cross-jurisdictional assignment should not ordinarily last for more than six months, the workload in a particular judicial circuit may justify successive assignment orders. In *Wild v. Dozier*, the supreme court held that the chief judge has authority to assign a county judge to circuit court duties by successive temporary assignment orders provided the overall workload does not amount to a *de facto* permanent assignment. FN3 Whether successive judicial assignments remain "temporary" as required by rule 2.050(b)(4) is not merely a function of the duration of the combined assignments. As the court explained in *Wild v. Dozier*, there are many other relevant factors:

The successive nature of the assignment, the type of case covered by the assignment, and the practical effect of the assignment on circuit court jurisdiction over a particular type of case also must be considered. For example, *Crusoe* [*v. Rowls*, 472 So.2d 1163 (Fla.1985)] illustrates that successive assignments totalling more than two years may be considered temporary if the class of circuit court case covered by the assignment is limited and the practical effect of the assignment is to aid and assist circuit judges rather than to usurp circuit court jurisdiction over a particular type of case. 472 So.2d at 1165. Similarly, *Payret* [*v. Adams*, 500 So.2d 136 (Fla.1986)] demonstrates that successive and repetitive assignments that, when considered individually, may be facially valid will not be considered temporary where their practical effect is to create a de facto permanent circuit judge by administrative order.

The power vested in the chief judge to assign trial court judges to particular duties is delegated under the rules by the chief justice of the Florida Supreme Court. In the applicable constitutional framework, the supreme court has exclusive jurisdiction to review judicial assignments. FN4 A party who is aggrieved by the assignment of a judge must first raise the issue in the circuit court. Thereafter, the proper method of review is to file a petition directly in the supreme court. The district courts of appeal lack jurisdiction to review judicial assignments.

FNa Judge, First District Court Of Appeal, State Of Florida.

FN1 **Jurisdiction.** An assignment order is not a jurisdictional prerequisite. That is so because jurisdiction is the power of the court and not the power of a particular judge. See Pantoja v. Reliable Trucking, Inc., 585 So.2d 955 (Fla. 4th DCA 1991). A procedural error in an assignment order does not affect the jurisdiction of the court. See Long Term Management, Inc. v. University Nursing Care Ctr., Inc., 704 So.2d 669 (Fla. 1st DCA 1997).

FN2 **Temporary Duty.** The chief judge may assign a qualified county judge to temporary duty on the circuit court. If the assignment consists entirely of circuit court work it should not exceed sixty days and if it consists of some circuit court work in addition to the judge's regular county court duties, it should not exceed six months. See Payret v. Adams, 500 So.2d 136 (Fla.1986); Crusoe v. Rowls, 472 So.2d 1163 (Fla.1985).

Westlaw.

FN3 **Successive Assignments.** Temporary assignments can be made successively provided they do not amount to a de facto permanent assignment. See Wild v. Dozier, 672 So.2d 16 (Fla.1996), holding limited by 1-888-Traffic Schools v. Chief Judge, Fourth Judicial Circuit, 734 So.2d 413 (Fla.1999); Rivkind v. Patterson, 672 So.2d 819 (Fla.1996).

FN4 **Review.** The supreme court has exclusive jurisdiction to review judicial assignments. See Physicians Healthcare Plans, Inc. V. Raymond Pfeifler, 846 So.2d 1129 (Fla.2003); Wild v. Dozier, 672 So.2d 16 (Fla.1996), holding limited by 1-888-Traffic Schools v. Chief Judge, Fourth Judicial Circuit, 734 So.2d 413 (Fla.1999); Rivkind v. Patterson, 672 So.2d 819 (Fla.1996); Griffin v. Kia Motors Corp., 843 So.2d 336 (Fla. 1st DCA 2003) (declining to resolve a dispute over the assignment of a judge, on the ground that judicial assignment is within the exclusive jurisdiction of the supreme court).

(2004)

5 FLPRAC § 5.1
END OF DOCUMENT

EXHIBIT "C"

C
West's Florida Statutes Annotated Currentness
Florida Rules of Criminal Procedure (Refs & Annos)

XVI. Criminal Contempt

➞Rule 3.840. Indirect Criminal Contempt

A criminal contempt, except as provided in rule 3.830 concerning direct contempts, shall be prosecuted in the following manner:

(a) Order to Show Cause. The judge, on the judge's own motion or on affidavit of any person having knowledge of the facts, may issue and sign an order directed to the defendant, stating the essential facts constituting the criminal contempt charged and requiring the defendant to appear before the court to show cause why the defendant should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for preparation of the defense after service of the order on the defendant.

(b) Motions; Answer. The defendant, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer the order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the judge. A defendant's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

(c) Order of Arrest; Bail. The judge may issue an order of arrest of the defendant if the judge has reason to believe the defendant will not appear in response to the order to show cause. The defendant shall be admitted to bail in the manner provided by law in criminal cases.

(d) Arraignment; Hearing. The defendant may be arraigned at the time of the hearing, or prior thereto at the defendant's request. A hearing to determine the guilt or innocence of the defendant shall follow a plea of not guilty. The judge may conduct a hearing without assistance of counsel or may be assisted by the prosecuting attorney or by an attorney appointed for that purpose. The defendant is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and testify in his or her own defense. All issues of law and fact shall be heard and determined by the judge.

(e) Disqualification of Judge. If the contempt charged involves disrespect to or criticism of a judge, the judge shall disqualify himself or herself from presiding at the hearing. Another judge shall be designated by the chief justice of the supreme court.

(f) Verdict; Judgment. At the conclusion of the hearing the judge shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the defendant has been found and adjudicated guilty.

(g) Sentence; Indirect Contempt. Prior to the pronouncement of sentence, the judge shall inform the defendant of the accusation and judgment against the defendant and inquire as to whether the defendant has any cause to show why sentence should not be pronounced. The defendant shall be afforded the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the defendant.

CREDIT(S)

Amended Sept. 24, 1992, effective Jan. 1, 1993 (606 So.2d 227).

COMMITTEE NOTES

1968 Adoption.

(a)(1) Order to Show Cause. The courts have used various and, at times, misleading terminology with reference to this phase of the procedure, viz. "citation," "rule nisi," "rule," "rule to show cause," "information," "indicted," and "order to show cause." Although all apparently have been used with the same connotation the terminology chosen probably is more readily understandable than the others. This term is used in Federal Rule

of Criminal Procedure 42(b) dealing with indirect criminal contempts.

In proceedings for indirect contempt, due process of law requires that the accused be given notice of the charge and a reasonable opportunity to meet it by way of defense or explanation. State ex rel. Giblin v. Sullivan, 157 Fla. 496, 26 So.2d 509 (1946); State ex rel. Geary v. Kelly, 137 So.2d 262, 263 (Fla. 3d DCA 1962).

The petition (affidavit is used here) must be filed by someone having actual knowledge of the facts and must be under oath. Phillips v. State, 147 So.2d 163 (Fla. 3d DCA 1962); see also Croft v. Culbreath, 150 Fla. 60, 6 So.2d 638 (1942); Ex parte Biggers, 85 Fla. 322, 95 So. 763 (1923).

(2) Motions; Answer. The appellate courts of Florida, while apparently refraining from making motions and answers indispensable parts of the procedure, seem to regard them with favor in appropriate situations. Regarding motions to quash and motion for bill of particulars, see Geary v. State, 139 So.2d 891 (Fla. 3d DCA 1962); regarding the answer, see State ex. rel. Huie v. Lewis, 80 So.2d 685 (Fla.1955).

Elsewhere in these rules is a recommended proposal that a motion to dismiss replace the present motion to quash; hence, the motion to dismiss is recommended here.

The proposal contains no requirement that the motions or answer be under oath. Until section 38.22, Florida Statutes, was amended in 1945 there prevailed in Florida the common law rule that denial under oath is conclusive and requires discharge of the defendant in indirect contempt cases; the discharge was considered as justified because the defendant could be convicted of perjury if the defendant had sworn falsely in the answer or in a motion denying the charge. The amendment of section 38.22, Florida Statutes, however, has been construed to no longer justify the discharge of the defendant merely because the defendant denies the charge under oath. See Ex parte Earman, 85 Fla. 297, 95 So. 755 (1923), re the common law; see Dodd v. State, 110 So.2d 22 (Fla. 3d DCA 1959) re the construction of section 38.22, Florida Statutes, as amended. There appears, therefore, no necessity of requiring that a pleading directed to the order to show cause be under oath, except as a matter of policy of holding potential perjury prosecutions over the heads of defendants. It is recommended, therefore, that no oath be required at this stage of the proceeding.

Due process of law in the prosecution for indirect contempt requires that the defendant have the right to assistance by counsel. Baumgartner v. Joughin, 105 Fla. 335, 141 So. 185 (1932), adhered to, 107 Fla. 858, 143 So. 436 (1932).

(3) Order of Arrest; Bail. Arrest and bail, although apparently used only rarely, were permissible at common law and, accordingly, are unobjectionable under present Florida law. At times each should serve a useful purpose in contempt proceedings and should be included in the rule. As to the common law, see Ex parte Biggers, supra.

(4) Arraignment; Hearing. Provision is made for a prehearing arraignment in case the defendant wishes to plead guilty to the charge prior to the date set for the hearing. The defendant has a constitutional right to a hearing under the due process clauses of the state and federal constitutions. State ex rel. Pipia v. Buchanan, 168

So.2d 783 (Fla. 3d DCA 1964). This right includes the right to assistance of counsel and the right to call witnesses. Baumgartner v. Joughin, supra. The defendant cannot be compelled to testify against himself. Demetree v. State ex rel. Marsh, 89 So.2d 498 (Fla.1956).

Section 38.22, Florida Statutes, as amended in 1945, provides that all issues of law or fact shall be heard and determined by the judge. Apparently under this statute the defendant is not only precluded from considering a jury trial as a right but also the judge has no discretion to allow the defendant a jury trial. See State ex rel. Huie v. Lewis, supra, and Dodd v. State, supra, in which the court seems to assume this, such assumption seemingly being warranted by the terminology of the statute.

There is no reason to believe that the statute is unconstitutional as being in violation of section 11 of the Declaration of Rights of the Florida Constitution which provides, in part, that the accused in all criminal prosecutions shall have the right to a public trial by an impartial jury. Criminal contempt is not a crime; consequently, no criminal prosecution is involved. Neering v. State, 155 So.2d 874 (Fla.1963); State ex rel. Saunders v. Boyer, 166 So.2d 694 (Fla. 2d DCA 1964); Ballengee v. State, 144 So.2d 68 (Fla. 2d DCA 1962).

Section 3 of the Declaration of Rights, providing that the right of trial by jury shall be secured to all and remain inviolate forever, also apparently is not violated. This provision has been construed many times as guaranteeing a jury trial in proceedings at common law, as practiced at the time of the adoption of the constitution (see, e.g., Hawkins v. Rellim Inv. Co., 92 Fla. 784, 110 So. 350 (1926)), i.e., it is applicable only to cases in which the right existed before the adoption of the constitution (see, e.g., State ex rel. Sellers v. Parker, 87 Fla. 181, 100 So. 260 (1924)). Section 3 was never intended to extend the right of a trial by jury beyond this point. Boyd v. Dade County, 123 So.2d 323 (Fla.1960).

There is some authority that trial by jury in indirect criminal contempt existed in the early common law, but this practice was eliminated by the Star Chamber with the result that for centuries the common law courts have punished indirect contempts without a jury trial. See 36 Mississippi Law Journal 106. The practice in Florida to date apparently has been consistent with this position. No case has been found in this state in which a person was tried by a jury for criminal contempt. See Justice Terrell's comment adverse to such jury trials in State ex rel. Huie v. Lewis, supra.

The United States Supreme Court has assumed the same position with reference to the dictates of the common law. Quoting from Eilenbecker v. District Court, 134 U.S. 31, 36, 10 S.Ct. 424, 33 L.Ed. 801 (1890), the Court stated, "If it has ever been understood that proceedings according to the common law for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it." United States v. Barnett, 376 U.S. 681, 696, 84 S.Ct. 984, 12 L.Ed.2d 23 (1964). In answer to the contention that contempt proceedings without a jury were limited to trivial offenses, the Court stated, "[W]e find no basis for a determination that, at the time the Constitution was adopted, contempt was generally regarded as not extending to cases of serious misconduct." 376 U.S. at 701. There is little doubt, therefore, that a defendant in a criminal contempt case in Florida has no constitutional right to a trial by jury.

Proponents for such trials seemingly must depend on authorization by the legislature or Supreme Court of Florida to attain their objective. By enacting section 38.22, Florida Statutes, which impliedly prohibits trial by jury the legislature exhibited a legislative intent to remain consistent with the common law rule. A possible alternative is for the Supreme Court of Florida to promulgate a rule providing for such trials and assume the position that under its constitutional right to govern practice and procedure in the courts of Florida such rule would supersede section 38.22, Florida Statutes. It is believed that the supreme court has such authority. Accordingly, alternate proposals are offered for the court's consideration; the first provides for a jury trial unless waived by the defendant and the alternate is consistent with present practice.

(5) Disqualification of Judge. Provision for the disqualification of the judge is made in federal rule 42(b). The proposal is patterned after this rule.

Favorable comments concerning disqualification of judges in appropriate cases may be found in opinions of the

Supreme Court of Florida. See Pennekamp v. State, 156 Fla. 227, 22 So.2d 875 (1945), and concurring opinion in State ex rel. Huie v. Lewis, supra.

(6) Verdict; Judgment. "Judgment" is deemed preferable to the term "order," since the proper procedure involves an adjudication of guilty. The use of "judgment" is consistent with present Florida practice. E.g., Dinnen v. State, 168 So.2d 703 (Fla. 2d DCA 1964); State ex rel. Byrd v. Anderson, 168 So.2d 554 (Fla. 1st DCA 1964).

The recital in the judgment of facts constituting the contempt serves to preserve for postconviction purposes a composite record of the offense by the person best qualified to make such recital: the judge. See Ryals v. United States, 69 F.2d 946 (5th Cir.1934), in which such procedure is referred to as "good practice."

(7) Sentence; Indirect Contempt. The substance of this subdivision is found in present sections 921.05(2), 921.07 and 921.13, Florida Statutes. While these sections are concerned with sentences in criminal cases, the First District Court of Appeal in 1964 held that unless a defendant convicted of criminal contempt is paid the same deference the defendant is not being accorded due process of law as provided in section 12 of the Declaration of Rights of the Florida Constitution and the Fourteenth Amendment of the Constitution of the United States. Neering v. State, 164 So.2d 29 (Fla. 1st DCA 1964).

Statement concerning the effect the adoption of this proposed rule will have on contempt statutes:

This rule is not concerned with the source of the power of courts to punish for contempt. It is concerned with desirable procedure to be employed in the implementation of such power. Consequently, its adoption will in no way affect the Florida statutes purporting to be legislative grants of authority to the courts to punish for contempt, viz., sections 38.22 (dealing with "all" courts), 932.03 (dealing with courts having original jurisdiction in criminal cases), and 39.13 (dealing with juvenile courts). This is true regardless of whether the source of power is considered to lie exclusively with the courts as an inherent power or is subject, at least in part, to legislative grant.

The adoption of the rule also will leave unaffected the numerous Florida statutes concerned with various situations considered by the legislature to be punishable as contempt (e.g., section 38.23, Florida Statutes), since these statutes deal with substantive rather than procedural law.

Section 38.22, Florida Statutes, as discussed in the preceding notes, is concerned with procedure in that it requires the court to hear and determine all questions of law or fact. Insofar, therefore, as criminal contempts are concerned the adoption of the alternate proposal providing for a jury trial will mean that the rule supersedes this aspect of the statute and the statute should be amended accordingly.

1972 Amendment. Same as prior rule.

HISTORICAL NOTE

Derivation:

1972 Revision (272 So.2d 65).

Prior Provisions:

1971 R.Cr.P. 3.840.
1968 Amendment (211 So.2d 203).
1968 Amendment (207 So.2d 430).
1967 R.Cr.P. 1.840.

CROSS REFERENCES

Disqualification of judge, see Judicial Administration Rule 2.160.
Punishment of contempts, see F.S.A. § 38.22.
Related court rule provision, see Traffic Court Rule 6.090.

LAW REVIEW AND JOURNAL COMMENTARIES

Contempt for nonsupport in Florida. Ruth Fleet Thurman, 9 Stetson L.Rev. 333 (1980).

Contempt of court in Florida. 9 Miami L.Q. 281 (1955).

Criminal contempt procedures in Florida. 18 U.Fla.L.Rev. 78 (1965).

Florida Rules of Criminal Procedure; amendments. 23 U.Miami L.Rev. 816 (Summer 1969).

Nonsupport contempt hearing. 12 Fla.St.U.L.Rev. 117 (1984).

Rules of Criminal Procedure: Pretrial Discovery. Albert J. Datz, 42 Fla.B.J. 285, 288 (May 1968).

Use of contempt of court to enforce Florida divorce decrees. 6 Nova L.J. 313 (1982).

When the lawyer's tone or manner can send him to jail. J. James McGuirk, 52 Fla.B.J. 747 (1978).

LIBRARY REFERENCES

Contempt 3, 53 to 63.
Westlaw Topic No. 93.
C.J.S. Contempt §§ 2 to 3, 11, 74 to 101.

RESEARCH REFERENCES

ALR Library

32 ALR 5th 31, Right to Appointment of Counsel in Contempt Proceedings.

52 ALR 3rd 1002, Right to Counsel in Contempt Proceedings.

33 ALR 3rd 448, Appealability of Contempt Adjudication or Conviction.

41 ALR 2nd 1263, Necessity of Affidavit or Sworn Statement as Foundation for Constructive Contempt.

EXHIBIT "D"

586 F.3d 844 (2009)

UNITED STATES of America, Plaintiff-Appellee,

v.

Lee A. COHN, Defendant-Appellant.

No. 07-13479.
United States Court of Appeals, Eleventh Circuit.

September 30, 2009.

J. David Bogenschutz, Bogenschutz & Dutko, P.A., Marc Fagelson, Ft. Lauderdale, FL, for Cohn.

Anne R. Schultz, Asst. U.S. Atty., Maria Kostantina Medetis, Miami, FL, Phillip D'Rosa, Ft. Lauderdale, FL, for U.S.

Before TJOFLAT and BLACK, Circuit Judges, and EVANS,[*] District Judge.

*845 PER CURIAM:

The principal question this appeal presents is whether criminal contempt, 18 U.S.C. § 401, should be classified as a felony or a misdemeanor. We conclude that criminal contempt is a **sui generis** offense and that it is neither a felony nor a misdemeanor.

I.

A.

On January 7 and 12, 2005, Lee A. Cohn, a member of the Florida bar, entered his appearance as retained counsel on behalf of Kenneth Lance Malbry, who had been indicted by a Southern District of Florida grand jury for possession of crack cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). Cohn represented Malbry through the final disposition of the case on August 5, 2005. On that date, the district court accepted Malbry's plea of guilty to the charge, which had been tendered at a change-of-plea hearing on April 18, and sentenced Malbry to 188 months' imprisonment and a four-year term of supervised release.

On January 24, 2006, the U.S. Attorney informed the district court that Cohn had been disbarred by the Florida Supreme Court on January 9, 2006, and that he had been declared "ineligible to practice law in Florida" on April 6,

2005 — nearly two weeks before Malbry tendered his plea of guilty. On March 29, 2006, Malbry, represented by a court-appointed attorney, moved the district court pursuant to 28 U.S.C. § 2255 to vacate his conviction and sentence on the ground that Cohn's inability to practice law had deprived him of the effective assistance of counsel at his change-of-plea hearing and sentencing. The court granted the motion on May 25, 2006.

B.

On August 31, 2006, the district court entered an order pursuant to Rule 42(a) of the Federal Rules of Criminal Procedure[1] requiring Cohn to show cause why he should not be held in criminal contempt, under 18 U.S.C. § 401,[2] for representing Malbry and appearing before the district court "after having been deemed not eligible to practice law in Florida by The Florida Bar." The order stated that such conduct constituted a clear violation of the Special Rules Governing the Admission and Practice of Attorneys for the Southern District of Florida.

Pursuant to the district court's order, the U.S. Attorney appeared to prosecute the contempt. At a hearing held on November 9, 2006, Cohn announced that he intended to plead guilty to the criminal contempt charge, and the district court instructed the prosecutor and defense counsel to submit memoranda addressing the question of which of the Sentencing Guidelines was "most analogous" to the § 401 offense. After the parties complied, the district court scheduled a plea and sentencing hearing for January 29, 2007. When the hearing convened, the court informed the parties of its determination that Cohn's offense was

> *846 a crime of criminal contempt pursuant to 18, U.S.C., Section 401(1), that is a Class A felony and, therefore, the statutory penalty would be life in prisonment, a maximum term of life in prisonment, probation would not be authorized, the maximum fine would be $250,000, supervised release would not be greater than five years, and there would be a mandatory special assessment of $100.[3]

Because the court's position was unanticipated, the court continued the hearing.

On April 23, 2007, the district court accepted Cohn's conditional plea to criminal contempt.[4] At a second sentencing hearing on July 9, 2007, the court, adhering to its January 29 announcement that criminal contempt constitutes a Class A felony, sentenced Cohn to forty-five days' imprisonment to be followed by a five-year term of supervised release, and a special assessment of $100.[5] This appeal followed.

II.

Cohn asks that we vacate his sentence and remand the case to the district court for resentencing on the ground that the court erred in treating criminal contempt as a Class A felony.[6] We review issues of statutory interpretation **de novo. United** *847 **States v. Maturin**, 499_F.3d_1243, 1245 (11th Cir. 2007).

III.

The parties agree that 18 U.S.C. § 401 covers Cohn's criminal contempt. It provides:

> A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
> (2) Misbehavior of any of its officers in their official transactions;
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Section 401 does not specify maximum or minimum penalties for its violation, nor does it assign a felony or misdemeanor designation or grade. Whether criminal contempt appropriately falls within either the felony or misdemeanor classification is a question of first impression in this circuit.[7]

Title 18 U.S.C. § 3559, which classifies offenses according to letter grades, states that "[a]n offense that is not specifically *848 classified by a letter grade in the section defining it, is classified ... [according to] the maximum term of imprisonment authorized." The district court reasoned that because a maximum penalty is not specified in § 401, a violation of the statute is punishable by life imprisonment. Pursuant to § 3559, crimes punishable by life imprisonment are classified as Class A felonies.[8] Class A felons cannot be sentenced to probation.

We disagree with the district court's conclusion that § 401 falls within the ambit of § 3559's classification scheme. Section 401 covers a broad range of conduct, as acknowledged by the Supreme Court. **See, e.g., Frank v. United States**, 395 U.S. 147, 149, 89 S. Ct. 1503, 1505, 23 L. Ed. 2d 162 (1969) ("[A] person may be found in contempt of court for a great many different types of offenses. ... Congress, perhaps in recognition of the scope of criminal contempt, has authorized courts to impose penalties but has not placed any specific limits on their discretion."); **Green v. United States**, 356 U.S. 165, 188, 78 S. Ct. 632, 645, 2 L. Ed. 2d 672 (1958) ("Congress has not seen fit to impose limitations on the sentencing power for contempts."), **overruled in part on other grounds by Bloom v. Illinois**, 391 U.S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968). Likewise, a broad array of penalties exists for § 401 violations. No single sentencing guideline applies to § 401. Courts, in sentencing contemners, are directed to the "Other Offenses" section of the Guidelines rather than a single guideline "[b]ecause misconduct constituting contempt varies significantly and the nature of the contemptuous conduct, the circumstances under which the contempt was committed, the effect the misconduct had on the administration of justice, and the need to vindicate the authority of the court are highly context-dependent." U.S.S.G. § 2J1.1, comment. (n.1).[8] Uniform classification of criminal contempt would be inconsistent with the breadth of § 401 and appropriate sentences for its violation. On the other hand, it would be an impracticable, painstaking task individually to classify each instance of criminal contempt. Accordingly, we hold that criminal contempt is best categorized as a **sui generis** offense, rather than a felony or misdemeanor.

*849 This reading of § 401 is supported by the Supreme Court's consistent categorization of criminal contempt as a **sui generis** offense. **See Cheff v. Schnackenberg**, 384 U.S. 373, 380, 86 S. Ct. 1523, 1526, 16 L. Ed. 2d 629 (1966) (referring to criminal contempt as "an offense **sui generis**"); **see also United States v. Holmes**, 822 F.2d 481, 493 (5th Cir. 1987) ("[T]he Supreme Court has never characterized contempt as either a felony or a misdemeanor, but rather has described it as 'an offense **sui generis**.'"). This reading also appropriately reflects the differences between criminal contempt and the traditional crimes classified pursuant to § 3359. Criminal contempt need not be charged by indictment. **See** Fed. R. Crim. P. 7(a)(1); Fed. R. Crim. P. 42(a). The district courts have authority to appoint private attorneys to initiate and prosecute a criminal contempt case. **Young v. United States ex rel. Vuitton et Fils S.A.**, 481 U.S. 787, 799-801, 107 S. Ct. 2124, 2133-34, 95 L. Ed. 2d 740 (1987); Fed. R. Crim. P. 42(a)(2).
Considering the scope of § 401 and the wide range of sentences that may be imposed for its violation, Supreme Court jurisprudence, and the differences between criminal contempt and other crimes, we hold that criminal contempt is an offense **sui generis** that cannot be classified pursuant to § 3559. The district court accordingly erred in classifying criminal contempt as a Class A felony.

IV.

For the foregoing reasons, the sentence the district court imposed is vacated and the case is remanded for resentencing.

VACATED AND REMANDED.

NOTES

[*] Honorable Orinda D. Evans, United States District Judge for the Northern District of Georgia, sitting by designation.

[1] Fed. R. Crim. P. 42 states, in pertinent part:

(a) Disposition After Notice. Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.

(1) Notice. The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must:

. . . .

(C) state the essential facts constituting the charged criminal contempt.

[2] The text of § 401 is set out in part III, *infra*.

[3] As we point out *infra*, 18 U.S.C. § 401 does not classify criminal contempt by letter grade. According to 18 U.S.C. § 3559(a)(1), governing sentencing classification of offenses, if an offense "is not specifically classified by a letter grade in the section defining it," the offense is classified as a Class A felony "if the maximum term of imprisonment authorized is ... life imprisonment."

[4] Fed.R.Crim.P. 11(a)(2) states, in pertinent part: "With the consent of the court and the government, a defendant may enter a conditional plea of guilty ... reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion." The conditional plea enabled Cohn to challenge on appeal the district court's determination that criminal contempt is a Class A felony.

[5] The district court accepted the Sentencing Guidelines determination articulated in the presentence report ("the PSI") prepared by the court's probation office. The PSI designated U.S.S.G. § 2J1.2(b)(2) as the guideline most analogous to the criminal contempt Cohn had committed. Section 2J1.2 provides for a base offense level of 14. The PSI increased the base offense level by three levels for "substantial interference with the administration of justice," but reduced it by three levels for acceptance of responsibility, for a total offense level of 14. Based on a total offense level of 14 and a criminal history category of I, the sentence range called for imprisonment of 15 to 21 months. Given a maximum term of imprisonment of 21 months, the PSI stated that Cohn's criminal contempt constituted a Class E felony. (18 U.S.C. § 3559(a)(5) provides that a crime for which the maximum penalty of imprisonment is less than five years but more than one year is a Class E felony.) The court, however, considered the crime a Class A felony. Addressing the questions of restitution and fine, the court found that Cohn, who had already made restitution, was unable to pay a fine, but directed him to participate in a substance abuse and mental health program.

[6] As an alternative ground for vacating his sentence, Cohn also argues that the district court erred in determining that U.S.S.G. § 2J1.2, "Obstruction of Justice," is the guideline most analogous to the offense of criminal contempt. Section 2J1.1, "Contempt," is the guideline applicable to 18 U.S.C. § 401. It instructs the sentencing court to apply U.S.S.G. § 2X5.1, "Other Offenses," because "misconduct constituting contempt varies significantly." U.S.S.G. § 2J1.1, comment. (n.1). Section 2X5.1 provides that if an offense is "a felony for which no guideline expressly has been promulgated, apply the most analogous offense guideline." The district court determined that Cohn's criminal contempt is a Class A felony and that the most analogous offense is obstruction of justice. Because we reverse the district court's determination that Cohn's contempt was a felony, § 2X5.1 does not apply, and we need not reach the question of whether obstruction of justice was the crime most analogous to Cohn's contempt.

[7] The Ninth Circuit is the only court of appeals to have ruled on this precise issue in a reported decision. In **United States v. Carpenter**, the contemner refused to testify in response to a grand jury subpoena. 91_F.3d_1282, 1282 (9th Cir. 1996) (per curiam). The government argued that Carpenter's criminal contempt constituted a Class A felony based on the reasons articulated by the district court in this case. **Id.** at 1284. The district court accepted the argument and treated the contempt as a Class A felony. The Ninth Circuit reversed, holding that the only similarity criminal contempt bore to other Class A felonies was that § 401 did not specify a maximum term of imprisonment. Although a maximum penalty is not specified "for Class A felonies because Congress views all such felonies as extraordinarily serious crimes," the court observed that criminal contempts, "in contrast, include a broad range of conduct, from trivial to severe." **Id.** The Ninth Circuit elected to classify criminal contempt in accordance with the maximum sentence a court could impose for the most analogous offense. **Id.** at 1285. The district court had found that obstruction of justice, with a sentence range under the Guidelines of 6–12 months, was the most analogous offense to Carpenter's contempt. **Id.** Accordingly, the Ninth Circuit classified Carpenter's criminal contempt as a Class A misdemeanor. **Id.** We decline to adopt this method of classification. The method does not address how to classify criminal contempt if a sufficiently analogous guideline is absent. More importantly, maximum penalties are established by statute, not the Sentencing Guidelines. It is far from clear whether a district court, in classifying a criminal contempt, should use the maximum penalty called for by the base offense level or the total offense level, including all possible enhancements.
Judge Barkett, in a special concurrence, has addressed the issue of classifying criminal contempt. **See United States v. Love**, 449_F.3d_1154, 1157–59 (11th Cir.2006) (per curiam) (Barkett, J., specially concurring). In that case, the defendant was convicted of violating 18 U.S.C. § 401(3) and sentenced to 45 days' imprisonment and five years' supervised release by the same district court who sentenced Cohn. The court classified contempt as a Class A felony. On appeal, this court did not address the merits of the district court's classification decision because it found

that the defendant had "induced or invited the ruling." **Id.** at 1157. Judge Barkett opined "that criminal contempt, as an offense **sui generis**, cannot be branded a Class A felony in every instance." **Id.** at 1157-58. Otherwise, "patently absurd" and likely unconstitutional results, including harsh or disparate punishments, would result. **Id.** at 1158. Judge Barkett emphasized that criminal contempts are not universally "extraordinarily serious" but rather "include a broad range of conduct, from trivial to severe." **Id.** at 1158 (quoting **Carpenter**, 91 F.3d at 1284). Judge Barkett asserted that the **Carpenter** approach would appropriately address these concerns; nonetheless, we do not adopt the **Carpenter** approach for the reasons above.

[8] In its entirety, subsection (a) of 18 U.S.C. § 3559 states:

(a) Classification.—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—

(1) life imprisonment, or if the maximum penalty is death, as a Class A felony;

(2) twenty-five years or more, as a Class B felony;

(3) less than twenty-five years but ten or more years, as a Class C felony;

(4) less than ten years but five or more years, as a Class D felony;

(5) less than five years but more than one year, as a Class E felony;

(6) one year or less but more than six months, as a Class A misdemeanor;

(7) six months or less but more than thirty days, as a Class B misdemeanor;

(8) thirty days or less but more than five days, as a Class C misdemeanor; or

(9) five days or less, or if no imprisonment is authorized, as an infraction.

[9] Forcing a district court to pigeonhole a criminal contempt into a felony or misdemeanor category would impinge on its ability to impose appropriate sentences. Pursuant to § 3559, different classifications prescribe various periods of imprisonment and supervised release and fines. Due to the variety of conduct which may be punished as criminal contempt, it is important that the district courts have flexibility in sentencing. For example, a court may be inclined to impose a short period of imprisonment but a lengthy term of supervised release or a steep fine. Section 3559's classification system would not permit this flexibility.

EXHIBIT "E"

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

vs.

SCOTT HUMINSKI

Defendant

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

17mm815

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CIVIL ACTION**

Huminski, Scott
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421
Date: **June 29, 2017**
Judge: **Elizabeth V Krier**
Deputy Clerk: **Brenda Horton**
Court Reporter:

MINUTES

Attorney for Plaintiff: **Kevin Sarlo** ☑ Present ☐ Not Present
Attorney for Defendant: **Anthony Kunasck** ☑ Present ☐ Not Present

Hearing Information:

SHOW CAUSE / ARRAIGNMENT PROCEEDING:

-Plea of Not Guilty Entered
-CMC scheduled on 8/15/17 at 1:00 for 10 minutes
-CMC is set to review how the State is proceeding with the case and at that Point we can schedule future hearings. Also to be discussed transfer case From civil to criminal
-Pretrial release without bond / Conditions: Mr. Huminski is to check in with Pretrial officer every 2 weeks, along with the condition to not violate anymore Orders. Only Mr. Huminski's PD or licensed attorney may contact the courts. He must not contact the courts or Sheriff's Department by email

☐ Motion _____ ☐ Granted ☐ Denied ☐ Reserved

Notes:
-Scott Huminski-present
-Copies of orders on file given to Mr. Huminski, Mr. Sarlo, and Mr. Kunasck In court

*Sworn

☐ For additional details refer to Court Reporter transcript ☐ Hearing Cancelled

☐ Waived the 15 day exception rule ☑ Order signed in open court

Order to be prepared by:

☐ Magistrate ☐ Plaintiff's Attorney ☐ Defendant's Attorney

☐ Exhibits Received

*Sworn

Filing # 60433686 E-Filed 08/15/2017 03:15:52 PM

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL DIVISION

STATE OF FLORIDA,

vs.

Case No.: 17-MM-815

SCOTT A. HUMINSKI,

Defendant.
_____/

ORDER OF REASSIGNMENT

THIS CAUSE came before the Court on August 15, 2017, it is hereby

ORDERED AND ADJUDGED that the above case shall be reassigned to the Honorable James R. Adams. You are to appear before Judge Adams on September 1, 2017 at 8:30 a.m. in Courtroom 1-A for docket sounding.

DONE AND ORDERED in Lee County, Florida this 15th day of August 2017.

JAMES R. ADAMS
Administrative County Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via e-service to the following on this 15th day of August 2017:

Office of the State Attorney, 20th Judicial Circuit
Pro Se Defendant, S_Huminski@live.com

Judicial Assistant

IN THE CIRCUIT/COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA vs.
Scott Humiski
Defendant/Minor Child

For Both Contempt Cases

CASE NO. 17-CA-421
17-MM-815
Both Criminal Contempt

APPLICATION FOR CRIMINAL INDIGENT STATUS

X I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER OR

___ I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENCE STATUS FOR COSTS

Notice to Applicant: The provision of a public defender/court appointed lawyer and costs/due process services are not free. A judgment and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for whom you are making this application. There is a $50.00 fee for each application filed. If the application fee is not paid to the Clerk of the Court within 7 days, it will be added to any costs that may be assessed against you at the conclusion of this case. If you are a parent/guardian making this affidavit on behalf of a minor or tax-dependent adult, the information contained in this application must include your income and assets.

1. **I have** 0 **dependents.** *(Do not include children not living at home and do not include a working spouse or yourself.)*

2. **I have a take home income of $** 0 paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly ( ) yearly
*(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, **minus** deductions required by law and other court ordered support payments)*

3. **I have other income** paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly (X) yearly: *(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No.")*

Social Security benefits	Yes $ 1481	No	Veterans' benefit	Yes $	No
Unemployment compensation	Yes $	No	Child support or other regular support from family members/spouse	Yes $	No
Union funds	Yes $	No	Rental income	Yes $	No
Workers compensation	Yes $	No	Dividends or interest	Yes $	No
Retirement/pensions	Yes $	No	Other kinds of income not on the list	Yes $	No
Trusts or gifts	Yes $	No			

4. **I have other assets:** *(Circle "yes" and fill in the value of the property, otherwise circle "No")*

Cash	Yes $ 200	No	Savings	Yes $	No
Bank account(s)	Yes $ 100	No	Stocks/bonds	Yes $	No
Certificates of deposit or money market accounts	Yes $	No	*Equity in homestead real estate	Yes $	No
*Equity in motor vehicles	Yes $ 1200	No	*Equity in non-homestead real estate	Yes $	No
*Equity in boats/other tangible property	Yes $ 50	No			

*include expectancy of an interest in such property

5. **I have a total amount of liabilities and debts in the amount of $** 49500

6. **I receive:** *(Circle "Yes" or "No.")*
Temporary Assistance for Needy Families-Cash Assistance ...Yes No
Poverty- related veterans' benefits.....Yes No
Supplemental Security Income (SSI).....Yes No

7. **I have been released on bail in the amount of $** 0 **Cash** ___ **Surety** ___ **Posted by**: Self ___ Family ___ Other ___

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 27.52, F.S., commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. **I attest that the information I have provided on this Application is true and accurate.**

2/21/18
Signed on

12-1-59
Date of Birth

4327
Last four digits of Driver's License or ID Number

Signature of applicant for indigent status
Print full legal name: Scott A Humiski
Address: 2444 Kinsth
City, State, Zip: Bonita Springs
Phone number: 239 300 6256
E-mail Address: S-Humiski@live.com

CLERK DETERMINATION

___ Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent

___ The Public Defender is hereby appointed to the case listed above until relieved by the Court.

Dated this ___ day of _____, 20__

LINDA DOGGETT
Clerk of the Circuit Court, by Deputy Clerk

This form was completed with the assistance of:

Clerk/Deputy Clerk/Other authorized person

APPLICANTS FOUND NOT INDIGENT MAY SEEK REVIEW BY ASKING FOR A HEARING TIME. Sign here if you want the judge to review the clerk's decision of not indigent.

Florida Supreme Court Form 3.984, Updated 11/23/15

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

Vs. CASE NO: 17-MM-815

SCOTT HUMINSKI

_____/

ORDER ON ARRAIGNMENT

THIS CAUSE having come before this Court on 6/29/17 for Arraignment on the Order to Show Cause issued on 6/5/17 and SCOTT HUMINSKI having been served with the Order and having appeared before the Court and the Court having appointed the Public Defender's Office to represent SCOTT HUMINSKI, and being advised of the premises, it is ORDERED and ADJUDGED as follows:

1. SCOTT HUMINSKI was advised of his rights.

2. The Public Defender's Office was appointed to represent SCOTT HUMINSKI.

3. SCOTT HUMINSKI entered a plea of not guilty.

4. The Court ordered pre-trial release for SCOTT HUMINSKI with the conditions set forth below. **Failure to comply with the conditions may result in this pre-trial release being revoked.**

   A. SCOTT HUMINSKI shall check in with the pre-trial release program and thereafter check in with a pre-trial officer every two (2) weeks.;

   B. SCOTT HUMINSKI shall comply with all previously entered orders of the Court in Case number 17-CA-421 including:
      (1) SCOTT HUMINSKI shall not contact the Lee County Sherriff's Office except through their legal counsel, unless said contact is initiated by the Sherriff's office, such as if SCOTT HUMINSKI is arrested or stopped for a traffic violation.

      (2) SCOTT HUMINSKI shall not file anything in the Court file in Case No. 17-CA-421 unless such filing occurs by an attorney licensed in the State of Florida.

(3) SCOTT HUMINSKI shall not contact the Court's office except through an attorney licensed in the State of Florida.

5. This Case is scheduled for case management on 8/15/17 at 1PM. At the time of Case Management, the State shall inform the Court and Defendant whether they will be requesting a sentence less than 60 days that would entitle SCOTT HUMINSKI to a non-jury trial or a greater sentence that would require a jury trial. At the time of case management, the Court will set a trial date.

DONE and ORDERED this 7 day of July, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
SAO
PD
Pre-trial release program, Scott Peckham

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCTET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

Notice of Appeal Supplemental
TRIAL COURT WAS NEVER DIVESTED OF JURISDICTION OF CRIMINAL CONTEMPT CHARGES

NOW COMES, Scott Huminski ("Huminski"), and notices as above, because, this is a criminal appeal to the Florida Supreme Court pursuant to its exclusive jurisdiction of judicial assignments and rule-making. This is a criminal appeal as the Circuit Court, 17-ca-421, was never divested of jurisdiction of the criminal contempt charges. Appointment of counsel is required under the 6th Amendment because Huminski was found to be indigent in collateral County Court case, 17-mm-815 and this appeal challenges the transfer of criminal charges from Circuit Court to County Court absent any order, Rule, Statute or authority allowing such a transfer impacting the jurisdiction of the County Court.

Dated at Bonita Springs, Florida this 9th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's e-filing system to all parties of record on this 9th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCTET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STAY CIRCUIT COURT TRIAL PENDING APPEALS IN THE FLORIDA SUPREME COURT,
For filing with notice of appeals in the Supreme Court

NOW COMES, Scott Huminski ("Huminski"), and moves as above, because, the County Court denied a stay pending appeal and the County Court is proceeding in the absence of all jurisdiction. Jurisdiction was/is proper in the Circuit Court. There is no lawful procedure to transfer an entire case from Circuit to County Court.

Dated at Bonita Springs, Florida this 9th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's e-filing system to all parties of record on this 9th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	DOCTET NO. 17-CA-421
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO APPOINT 6TH AMENDMENT COUNSEL UNDER THE AUTHORITY SET FORTH IN 18-AP-0003

NOW COMES, Scott Huminski ("Huminski"), and moves as above, because, the appointment of counsel in the appeal of this case mandates is controlling as to the appointment of counsel in the trial court (County Court). The County Court should adopt the wisdom of the appellate court, 18-AP-0003.

Dated at Bonita Springs, Florida this 9th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's e-filing system to all parties of record on this 9th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER STRIKING SUCCESSIVE MOTIONS

THIS CAUSE comes before the Court on Defendant's "Motion To Dismiss – No Nelson/Faretta Inquiry," "Motion To Dismiss – First Amendment," "Memorandum Of Law," "Motion To Dismiss – Double Jeopardy – Collateral Estoppel – Res Judicata," all filed March 1, 2018, "Motion For Competency Exam" filed March 2, 2018, and "Motion To Vacate Assignment Order," filed March 5, 2018. The Court has previously ruled on the issues raised in these motions, and the motions are successive. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 7 day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 12th day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF PROPOSED SETTLEMENT 18-AP-0003

NOW COMES, Scott Huminski ("Huminski"), and notices of proposed settlement of the aforementioned appeal by stipulation that the finding of indigency and required appointment of counsel under the 4th Amendment be stipulated to be applicable to the County Court. Huminski never waived counsel under Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). See discussion below in State v. Bowen, 698 So.2d 248 (1997).

Dated at Bonita Springs, Florida this `12th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's e-filing system to all parties of record on this 12th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

698 So.2d 248 (1997)

STATE of Florida, Petitioner,
v.
Jimmy Dell BOWEN, Respondent.
Jimmy Dell BOWEN, Petitioner,
v.
STATE of Florida, Respondent.

Nos. 88219, 88748.

Supreme Court of Florida.

April 24, 1997.
Rehearing Denied August 18, 1997.

249*249 Robert A. Butterworth, Attorney General; Robert J. Krauss, Sr. Assistant Attorney General, Chief of Criminal Law, and Angela D. McCravy, Assistant Attorney General, Tampa, Florida, for Petitioner/Respsondent.

Jimmy Dell Bowen, Bushnell, pro se.

SHAW, Justice.

We have for review *Bowen v. State*, 677 So.2d 863 (Fla. 2d DCA 1996), wherein the court certified:

Once a trial court has determined that a defendant has knowingly and intelligently waived his or her right to counsel, may that court nonetheless require the defendant to be represented by counsel because of concern that the defendant might be deprived of a fair trial if tried without such representation?

Id. at 867. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We answer in the negative and approve *Bowen* as explained below.

Following a dispute outside a bar, February 6, 1993, Bowen fired three shots, killing Floyd Hall and wounding Mickey Lemons. Bowen was arrested and indicted for firstdegree murder, attempted first-degree murder, and carrying a concealed weapon. Prior to trial, he claimed irreconcilable conflict with his public defender and filed a motion to allow his lawyer to withdraw. At the hearing on the motion, Bowen announced that he wanted to represent himself, and the court, after conducting an inquiry pursuant to *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), concluded: "I don't think he's competent, based on his high school diploma, to represent himself in a case of this nature."

Bowen proceeded to trial with his public defender and was convicted of second-degree murder with a firearm, attempted first-degree murder, and carrying a concealed weapon. The district court, sitting en banc, reversed:

The trial court properly undertook its *Faretta* function but it improperly denied Bowen self-representation because of its belief that he was not competent to provide his own defense. Notwithstanding that the 250*250trial court did not express a basis for its determination that Bowen was not "competent" to fulfill self-representation, there is no doubt that it focused exclusively upon whether Bowen could provide himself with a substantively qualitative defense—a fair trial.

Bowen, 677 So.2d at 864.

The State argues that only a defendant who is intellectually capable of mounting an effective defense should be allowed to exercise the right of self-representation. The State contends that Florida can provide more protection than the United States Constitution for a defendant's right to a fair trial and by requiring a minimum level of legal capability this Court will also be safeguarding the State's right to an efficient and unimpeded trial.

The United States Supreme Court in *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), explained that the Sixth Amendment grants to each criminal defendant the right of self-representation, regardless of consequences:

It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts. But where the defendant will not voluntarily accept representation by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly. To force a lawyer on a defendant can only lead him to believe that the law contrives against him. Moreover, it is not inconceivable that in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense. Personal liberties are not rooted in the law of averages. The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of "that respect for the individual which is the lifeblood of the law."

Faretta, 422 U.S. at 834, 95 S.Ct. at 2540-41 (quoting *Illinois v. Allen*, 397 U.S. 337, 350-51, 90 S.Ct. 1057, 1064, 25 L.Ed.2d 353 (Brennan, J., concurring)).

Because the consequences are serious, courts must ensure that the accused is competent to make the choice and that selfrepresentation is undertaken "with eyes open":

When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must "knowingly and intelligently" forgo those relinquished benefits. Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open."

Id. at 835, 95 S.Ct. at 2541 (citations omitted) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279, 63 S.Ct. 236, 242, 87 L.Ed. 268 (1942)).

The federal Court in *Faretta* made no provision for an additional layer of protection requiring courts to ascertain whether the defendant is intellectually capable of conducting an effective defense. Such a requirement would be difficult to apply and would constitute a substantial intrusion on the right of self-representation. We note that before denying Faretta's bid for self-representation the trial court asked him a number of questions, including the following:

THE COURT: Let's see how you have been doing on your research.
How many exceptions are there to the hearsay rule?
THE DEFENDANT: Well, the hearsay rule would, I guess, be called the best evidence rule, your Honor. And there are several exceptions in case law, but in actual statutory law, I don't feel there is none.
THE COURT: What are the challenges to the jury for cause?
251*251 THE DEFENDANT: Well, there is twelve peremptory challenges.

Id. at 808 n. 3, 95 S.Ct. at 2528 n. 3. In spite of these and other dubious responses, the federal Court's position was firm:

We need make no assessment of how well or poorly Faretta had mastered the intricacies of the hearsay rule and the California code provisions that govern challenges of potential jurors on *voir dire.* For his technical legal knowledge, as such, was not relevant to an assessment of his knowing exercise of the right to defend himself.

Id. at 836, 95 S.Ct. at 2541 (footnote omitted).

The Florida Supreme Court recently reaffirmed this view in *Hill v. State,* 688 So.2d 901 (Fla.1996):

We emphasize that a defendant does not need to possess the technical legal knowledge of an attorney before being permitted to proceed pro se. As the [United States] Supreme Court stated in *Godinez v. Moran,* 509 U.S. 389, 399, 113 S.Ct. 2680, 2687, 125 L.Ed.2d 321 (1993), "the competence that is required of a defendant seeking to waive his right to counsel is the competence to waive the right,*not the competence to represent himself.*"

Id. at 905 (emphasis added and omitted).

Based on the foregoing, we hold that once a court determines that a competent defendant of his or her own free will has "knowingly and intelligently" waived the right to counsel, the dictates of *Faretta*are satisfied, the inquiry is over, and the defendant may proceed unrepresented. *See* Fla. R.Crim. P. 3.111.[1] The court may not inquire further into whether the defendant "could provide himself with a substantively qualitative defense," *Bowen,* 677 So.2d at 864, for it is within the defendant's rights, if he or she so chooses, to sit mute and mount no defense at all.

In the present case, we agree with the district court that the dictates of *Faretta*were satisfied. The trial court's inquiry comprises nearly fifteen pages of transcript wherein Bowen stated unequivocally that he wanted to proceed unrepresented: "Is it your desire to proceed without a lawyer?" "Yes." Bowen attested to having "a high school education and approximately two years reading of the law." He explained that he has done legal research and, "I run a law library in the Florida State Prison for two years." He knew the maximum penalty for the present offenses.

Bowen further explained that he had represented himself in two proceedings, one of which involved a DUI charge in Florida and the other a felony charge in Illinois. He queried and

selected jurors, and called and questioned witnesses. He won the DUI case, but "went to state prison" on the other. When the present trial judge responded, "So you obviously lost," Bowen retorted (referring to his present public defender), "Is Mr. Lopez a guaranteed winner?"

The record conclusively shows that Bowen "was literate, competent, and understanding, and that he was voluntarily exercising his informed free will." *Faretta*, 422 U.S. at 835, 95 S.Ct. at 2541. "In forcing [Bowen], under these circumstances, to accept against his will a state-appointed public defender, the [trial court] deprived him of his constitutional right to conduct his own defense." *Id.*at 836, 95 S.Ct. at 2541. We answer the certified question in the negative and approve the decision in *Bowen* as explained herein.[2]

252*252 Where a competent defendant "knowingly and intelligently" waives the right to counsel and proceeds unrepresented "with eyes open," he or she *ipso facto*receives a "fair trial" for right to counsel purposes. As for Mr. Bowen, no citizen can be denied the right of self-representation—or any other constitutional right—because he or she has only a high school diploma.

It is so ordered.

OVERTON, GRIMES and HARDING, JJ., concur.

WELLS, J., concurs with an opinion.

KOGAN, C.J., and ANSTEAD, J., concur in result only.

WELLS, Justice, concurring.

I concur. The majority is clearly correct in holding that *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), requires answering the certified question in the negative and approving the district court's decision.

I write because the thoughtful majority and dissenting opinions of the en banc district court illustrate the difficulty which the courts frequently face in applying our Rule of Criminal Procedure 3.111(d)(3) in cases involving indigent criminal defendants who state dissatisfaction with appointed counsel. These cases present an interplay between *Faretta*, *Hardwick v. State*, 521 So.2d 1071 (Fla.1988), and *Nelson v. State*, 274 So.2d 256 (Fla. 4th DCA 1973). I am concerned because rule 3.111(d)(3) may not follow these cases with sufficient clarity and may in fact lead to confused application. I believe that the Criminal Procedure Rules Committee of The Florida Bar should immediately review the rule, particularly regarding its references to mental condition, age, education, and experience as factors in determining whether to accept a waiver of assistance of counsel. The committee should consider the rule in light of our decision and the district court decision in the instant case, as well as our decision in *Hill v. State*, 656 So.2d 1271 (Fla.1995), in which we emphasized that a defendant does not need the technical legal knowledge of an attorney before being permitted to proceed pro se.

I also believe that the Florida Conference of Circuit Judges should develop a colloquy for trial judges to use when questioning defendants who wish to waive the assistance of counsel.

[1] Florida Rule of Criminal Procedure 3.111 provides in relevant part:

(d) Waiver of Counsel.

....

(2) A defendant shall not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and thorough inquiry has been made into both the accused's comprehension of that offer and the accused's capacity to make an intelligent and understanding waiver.

(3) No waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of a mental condition, age, education, experience, the nature or complexity of the case, or other factors.

[2] The other issue raised by Bowen (i.e., that because the middle initial of a victim's name on the indictment was wrong, Bowen is entitled to discharge) is without merit.

Filing # 69184535 E-Filed 03/13/2018 12:30:16 PM

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

SUPPLEMENTAL NOTICE OF APPEAL TO FLORIDA SUPREME COURT

NOW COMES, Scott Huminski ("Huminski"), and notices of appeal (supplemental) as to the order (s) filed on 3/12/2018 attached hereto denying vacatur of the illegal transfer from Circuit to County Court. Although, Huminski asserts that no transfer order existed supporting appellate jurisdiction.

Dated at Bonita Springs, Florida this `12th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER STRIKING SUCCESSIVE MOTIONS

THIS CAUSE comes before the Court on Defendant's "Motion To Dismiss – No Nelson/Faretta Inquiry," "Motion To Dismiss – First Amendment," "Memorandum Of Law," "Motion To Dismiss – Double Jeopardy – Collateral Estoppel -- Res Judicata," all filed March 1, 2018, "Motion For Competency Exam" filed March 2, 2018, and "Motion To Vacate Assignment Order," filed March 5, 2018. The Court has previously ruled on the issues raised in these motions, and the motions are successive. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 7 day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 12th day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

SUPPLEMENTAL NOTICE OF APPEAL TO FLORIDA SUPREME COURT

NOW COMES, Scott Huminski ("Huminski"), and notices of appeal (supplemental) as to the order (s) filed on 3/12/2018 attached hereto denying vacatur of the illegal transfer from Circuit to County Court. Although, Huminski asserts that no transfer order existed supporting appellate jurisdiction.

Dated at Bonita Springs, Florida this `12th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's e-filing system to all parties of record on this 12th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER STRIKING SUCCESSIVE MOTIONS

THIS CAUSE comes before the Court on Defendant's "Motion To Dismiss – No Nelson/Faretta Inquiry," "Motion To Dismiss – First Amendment," "Memorandum Of Law," "Motion To Dismiss – Double Jeopardy – Collateral Estoppel – Res Judicata," all filed March 1, 2018, "Motion For Competency Exam" filed March 2, 2018, and "Motion To Vacate Assignment Order," filed March 5, 2018. The Court has previously ruled on the issues raised in these motions, and the motions are successive. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 7 day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 12th day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO STAY PENDING APPEAL DISPOSITION IN THE FLORIDA SUPREME COURT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above. Circuit Court referred the consolidated appeal to the Florida Supreme Court under the exclusive jurisdiction of that Court. This Court's ruling on the motion to vacate assignment, perfected Huminski's appeal. Below is the docket entry in collateral case 17-ca-421.

03/13/2018 Certified Copy of Notice of Appeal and Supplemental Notice of Appeal Sent to the Supreme Court

Dated at Bonita Springs, Florida this 6th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 6th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

SUPPLEMENTAL NOTICE OF APPEAL TO FLORIDA SUPREME COURT and MOTION TO STAY TRIAL COURT PENDING APPEAL

NOW COMES, Scott Huminski ("Huminski"), and notices of appeal (supplemental) as to the order (s) filed on 3/12/2018 and moves that the Florida Supreme Court stay the County Court as Huminski had been stripped of counsel without a proper inquiry and finding of waiver of counsel as set forth in to Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). Huminski does not have access to the order(s) of 3/12/2018. Upon information and belief the order (s) of 3/12/2018 denied Huminski's assertion of his double jeopardy rights or denied his motion to Vacate the illegal transfer from Circuit to County. Huminski is scheduled for trial without an attorney on 3/16/2018 and he is asserting his 5th Amendment Right to silence. It is likely that Huminski will be imprisoned after a show trial despite his

objection to violation of his 4th Amendment right to counsel, confrontation and compulsory process.

The trial Court conducted no Faretta inquiry and made no findings and Huminski never waived or declined representation under the 4th Amendment. See discussion below in State v. Bowen, 698 So.2d 248 (1997). Huminski was stripped of 4th Amendment counsel with zero compliance to federal or state strict prescriptions regarding the waiver of such a quintessential and bedrock right. Further, the County Court has no jurisdiction as set forth in the two Florida Supreme Court appeals arising out of the purported transfer from Circuit Court to County Court. The Circuit Court was never divested of jurisdiction over the criminal contempt. The County Court should be stayed because is simply does not have jurisdiction and a stay would allow this Court to evaluate the purported transfer.

Dated at Bonita Springs, Florida this `12th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's e-filing system to all parties of record on this 12th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

698 So.2d 248 (1997)

STATE of Florida, Petitioner,
v.
Jimmy Dell BOWEN, Respondent.
Jimmy Dell BOWEN, Petitioner,
v.
STATE of Florida, Respondent.

Nos. 88219, 88748.

Supreme Court of Florida.

April 24, 1997.
Rehearing Denied August 18, 1997.

249*249 Robert A. Butterworth, Attorney General; Robert J. Krauss, Sr. Assistant Attorney General, Chief of Criminal Law, and Angela D. McCravy, Assistant Attorney General, Tampa, Florida, for Petitioner/Respsondent.

Jimmy Dell Bowen, Bushnell, pro se.

SHAW, Justice.

We have for review *Bowen v. State*, 677 So.2d 863 (Fla. 2d DCA 1996), wherein the court certified:

Once a trial court has determined that a defendant has knowingly and intelligently waived his or her right to counsel, may that court nonetheless require the defendant to be represented by counsel because of concern that the defendant might be deprived of a fair trial if tried without such representation?

Id. at 867. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We answer in the negative and approve *Bowen* as explained below.

Following a dispute outside a bar, February 6, 1993, Bowen fired three shots, killing Floyd Hall and wounding Mickey Lemons. Bowen was arrested and indicted for firstdegree murder, attempted first-degree murder, and carrying a concealed weapon. Prior to trial, he claimed irreconcilable conflict with his public defender and filed a motion to allow his lawyer to withdraw. At the hearing on the motion, Bowen announced that he wanted to represent himself, and the court, after conducting an inquiry pursuant to *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), concluded: "I don't think he's competent, based on his high school diploma, to represent himself in a case of this nature."

Bowen proceeded to trial with his public defender and was convicted of second-degree murder with a firearm, attempted first-degree murder, and carrying a concealed weapon. The district court, sitting en banc, reversed:

The trial court properly undertook its *Faretta* function but it improperly denied Bowen self-representation because of its belief that he was not competent to provide his own defense. Notwithstanding that the 250*250trial court did not express a basis for its determination that Bowen was not "competent" to fulfill self-representation, there is no doubt that it focused

exclusively upon whether Bowen could provide himself with a substantively qualitative defense—a fair trial.

Bowen, 677 So.2d at 864.

The State argues that only a defendant who is intellectually capable of mounting an effective defense should be allowed to exercise the right of self-representation. The State contends that Florida can provide more protection than the United States Constitution for a defendant's right to a fair trial and by requiring a minimum level of legal capability this Court will also be safeguarding the State's right to an efficient and unimpeded trial.

The United States Supreme Court in *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), explained that the Sixth Amendment grants to each criminal defendant the right of self-representation, regardless of consequences:

It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts. But where the defendant will not voluntarily accept representation by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly. To force a lawyer on a defendant can only lead him to believe that the law contrives against him. Moreover, it is not inconceivable that in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense. Personal liberties are not rooted in the law of averages. The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of "that respect for the individual which is the lifeblood of the law."

Faretta, 422 U.S. at 834, 95 S.Ct. at 2540-41 (quoting *Illinois v. Allen*, 397 U.S. 337, 350-51, 90 S.Ct. 1057, 1064, 25 L.Ed.2d 353 (Brennan, J., concurring)).

Because the consequences are serious, courts must ensure that the accused is competent to make the choice and that selfrepresentation is undertaken "with eyes open":

When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must "knowingly and intelligently" forgo those relinquished benefits. Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open."

Id. at 835, 95 S.Ct. at 2541 (citations omitted) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279, 63 S.Ct. 236, 242, 87 L.Ed. 268 (1942)).

The federal Court in *Faretta* made no provision for an additional layer of protection requiring courts to ascertain whether the defendant is intellectually capable of conducting an effective defense. Such a requirement would be difficult to apply and would constitute a substantial intrusion on the right of self-representation. We note that before denying Faretta's bid for self-representation the trial court asked him a number of questions, including the following:

THE COURT: Let's see how you have been doing on your research.
How many exceptions are there to the hearsay rule?

THE DEFENDANT: Well, the hearsay rule would, I guess, be called the best evidence rule, your Honor. And there are several exceptions in case law, but in actual statutory law, I don't feel there is none.
THE COURT: What are the challenges to the jury for cause?
251*251 THE DEFENDANT: Well, there is twelve peremptory challenges.

Id. at 808 n. 3, 95 S.Ct. at 2528 n. 3. In spite of these and other dubious responses, the federal Court's position was firm:

We need make no assessment of how well or poorly Faretta had mastered the intricacies of the hearsay rule and the California code provisions that govern challenges of potential jurors on *voir dire*. For his technical legal knowledge, as such, was not relevant to an assessment of his knowing exercise of the right to defend himself.

Id. at 836, 95 S.Ct. at 2541 (footnote omitted).

The Florida Supreme Court recently reaffirmed this view in *Hill v. State*, 688 So.2d 901 (Fla.1996):

We emphasize that a defendant does not need to possess the technical legal knowledge of an attorney before being permitted to proceed pro se. As the [United States] Supreme Court stated in *Godinez v. Moran*, 509 U.S. 389, 399, 113 S.Ct. 2680, 2687, 125 L.Ed.2d 321 (1993), "the competence that is required of a defendant seeking to waive his right to counsel is the competence to waive the right, *not the competence to represent himself.*"

Id. at 905 (emphasis added and omitted).

Based on the foregoing, we hold that once a court determines that a competent defendant of his or her own free will has "knowingly and intelligently" waived the right to counsel, the dictates of *Faretta*are satisfied, the inquiry is over, and the defendant may proceed unrepresented. *See* Fla. R.Crim. P. 3.111.[1] The court may not inquire further into whether the defendant "could provide himself with a substantively qualitative defense," *Bowen*, 677 So.2d at 864, for it is within the defendant's rights, if he or she so chooses, to sit mute and mount no defense at all.

In the present case, we agree with the district court that the dictates of *Faretta*were satisfied. The trial court's inquiry comprises nearly fifteen pages of transcript wherein Bowen stated unequivocally that he wanted to proceed unrepresented: "Is it your desire to proceed without a lawyer?" "Yes." Bowen attested to having "a high school education and approximately two years reading of the law." He explained that he has done legal research and, "I run a law library in the Florida State Prison for two years." He knew the maximum penalty for the present offenses.

Bowen further explained that he had represented himself in two proceedings, one of which involved a DUI charge in Florida and the other a felony charge in Illinois. He queried and selected jurors, and called and questioned witnesses. He won the DUI case, but "went to state prison" on the other. When the present trial judge responded, "So you obviously lost," Bowen retorted (referring to his present public defender), "Is Mr. Lopez a guaranteed winner?"

The record conclusively shows that Bowen "was literate, competent, and understanding, and that he was voluntarily exercising his informed free will." *Faretta*, 422 U.S. at 835, 95 S.Ct. at 2541. "In forcing [Bowen], under these circumstances, to accept against his will a

state-appointed public defender, the [trial court] deprived him of his constitutional right to conduct his own defense." *Id.*at 836, 95 S.Ct. at 2541. We answer the certified question in the negative and approve the decision in *Bowen* as explained herein.[2]

252*252 Where a competent defendant "knowingly and intelligently" waives the right to counsel and proceeds unrepresented "with eyes open," he or she *ipso facto*receives a "fair trial" for right to counsel purposes. As for Mr. Bowen, no citizen can be denied the right of self-representation—or any other constitutional right—because he or she has only a high school diploma.

It is so ordered.

OVERTON, GRIMES and HARDING, JJ., concur.

WELLS, J., concurs with an opinion.

KOGAN, C.J., and ANSTEAD, J., concur in result only.

WELLS, Justice, concurring.

I concur. The majority is clearly correct in holding that *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), requires answering the certified question in the negative and approving the district court's decision.

I write because the thoughtful majority and dissenting opinions of the en banc district court illustrate the difficulty which the courts frequently face in applying our Rule of Criminal Procedure 3.111(d)(3) in cases involving indigent criminal defendants who state dissatisfaction with appointed counsel. These cases present an interplay between *Faretta*, *Hardwick v. State*, 521 So.2d 1071 (Fla.1988), and *Nelson v. State*, 274 So.2d 256 (Fla. 4th DCA 1973). I am concerned because rule 3.111(d)(3) may not follow these cases with sufficient clarity and may in fact lead to confused application. I believe that the Criminal Procedure Rules Committee of The Florida Bar should immediately review the rule, particularly regarding its references to mental condition, age, education, and experience as factors in determining whether to accept a waiver of assistance of counsel. The committee should consider the rule in light of our decision and the district court decision in the instant case, as well as our decision in *Hill v. State*, 656 So.2d 1271 (Fla.1995), in which we emphasized that a defendant does not need the technical legal knowledge of an attorney before being permitted to proceed pro se.

I also believe that the Florida Conference of Circuit Judges should develop a colloquy for trial judges to use when questioning defendants who wish to waive the assistance of counsel.

[1] Florida Rule of Criminal Procedure 3.111 provides in relevant part:

(d) Waiver of Counsel.

....

(2) A defendant shall not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and thorough inquiry has been made into both the accused's comprehension of that offer and the accused's capacity to make an intelligent and understanding waiver.

(3) No waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of a mental condition, age, education, experience, the nature or complexity of the case, or other factors.

[2] The other issue raised by Bowen (i.e., that because the middle initial of a victim's name on the indictment was wrong, Bowen is entitled to discharge) is without merit.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA APPELLATE DIVISION

SCOTT HUMINSKI,

Plaintiff,

v.

CASE NUMBER: 18-AP-3
Lower Case No. 17MM815

TOWN OF GILBERT AZ.

(Court appointed in 18AP3 only)

Defendant.
_____/

MOTION TO WITHDRAW AND CERTIFICATION OF CONFLICT

COMES NOW, the undersigned Attorney and files his motion to withdraw as counsel and certification of conflict and who pursuant to Rule 4-1.16(a)(1), Rules of Professional Conflict certifies to the court the following:

1. On March 9th 2018, the undersigned was appointed to represent the above-named defendant.
2. After careful evaluation of the undersigned counsel's current case load and the Rules Regulating the Florida Bar, the undersigned counsel has determined that he would not be able to render effective representation to the defendant in the above appeal. Additionally, the undersigned's office has requested to court administration several times to remove the undersigned from the appellate appointment list.
3. Counsel's existing case load as well as his wife being in the hospital and his request to be removed from the appellate registry and his responsibility to his other clients materially limit counsel's ability to perform his duties effectively and ethically to the defendant in the instant case, thereby violating Rule 4-1.3 and Rule 4-1.7(a)(2), Rules of Professional Conduct.

Wherefore, the undersigned certifies to this Honorable Court that he cannot represent the defendant due to the foregoing conflict of interests and requests that another private attorney be appointed to represent the said defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been provided by electronic means or by mailing to the Office of the State Attorney (Lee County); Town of Gilbert AZ; and the defendant; and hand delivered to the Office of the Honorable Judge Fuller (9th floor Lee County Justice Center) on this 14th day of March 2018.

MICHAEL J.P. BAKER LAW OFFICE
Attorney for the Defendant, FBN 0003451
1136 NE Pine Island Road, Ste 37
Cape Coral, FL 33909
Phone (239) 313-7350
Fax (239) 313-7420
bakerassociateslaw@aol.com

By _____
MICHAEL J.P. BAKER, ESQUIRE

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE OF JUDGE KRIER'S REFUSAL TO SERVE PAPERS/ORDERS

NOW COMES, Scott Huminski ("Huminski"), and, notices as above. See attached order of Judge Krier without service.

Dated at Bonita Springs, Florida this 14th day of March, 2018.

-/S/- Scott Huminski

_____

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's efiling system on this 14th day of March, 2018.

-/s/- Scott Huminski

_____

Scott Huminski

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

Huminski, Scott et al
Plaintiff
vs
Town of Gilbert AZ et al
Defendant

Case No: 17-CA-000421

Judge: Elizabeth V Krier

DENYING

ORDER ~~GRANTING~~ PLAINTIFF'S MOTION TO DISMISS

THIS MATTER comes before the Court upon the Plaintiff's Motion to Dismiss and the Court having reviewed the motion, and court file, it is hereby:

ORDERED AND ADJUDGED as follows:

The Motion is ~~**GRANTED and this action is Dismissed.**~~ Denied. Plaintiff has filed a bankruptcy Case. There is an automatic Stay in the Civil Case (NOT in the related criminal case) once the (*) Bankruptcy case has been dealt with, this Court may dismiss this Case.

DONE AND ORDERED this 18th day of July, 2017, in Lee County Florida.

Elizabeth V. Krier, Circuit Judge

Copies: Plaintiff and Defendant shall pull their respective copies from the Lee Clerk's Court Records Online Access

Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO
CLERK
MARK CLAYTON
CHIEF DEPUTY CLERK
JULIA BREEDING
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

ACKNOWLEDGMENT OF NEW CASE

March 15, 2018

RE: SCOTT HUMINSKI vs. TOWN OF GILBERT, AZ, ET AL.

CASE NUMBER: SC18-403
Lower Tribunal Case Number(s): 362017MM000815000ACH; 362017CA000421A001CH

The Florida Supreme Court has received the following documents reflecting a filing date of 3/13/2018.

Notice of Appeal (Consolidated) to the Florida Supreme Court Judicial Appointment/Rule-Making Exclusive Jurisdiction Appeal; Notice of Indigency in the Court Below and Request for Appointment of Counsel on Appeal and Motion to Stay Criminal Trial and Collateral Appeals and Motion to Hold Appeal in Abeyance While Huminski's Address is Unknown

The above listed notice has been treated as a Petition for Writ of Prohibition.

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

tr
cc:
ROBERT C. SHEARMAN
STEVEN DOUGLAS KNOX
SCOTT HUMINSKI
HON. LINDA DOGGETT, CLERK

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO DISQUALIFY PRESIDING JUDGE

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because the County Court has refused to refer the notice of appeal to the Florida Supreme Court to that tribunal contrary to law and contrary to the proper conduct of the Circuit Court and District Court of Appeal. Both courts of superior jurisdiction, the Circuit Court and DCA, acted properly. An improper motive, animus or bias is implicated in the County Court's refusal to refer the notice of appeal citing exclusive Supreme Court jurisdiction to the Supreme Court. This issue is rudimentary. See concurrently filed motion to compel.

Dated at Bonita Springs, Florida this 15th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

NOTICE CONSENT OF STATE TO 4TH AMENDMENT APPOINTMENT

NOW COMES, Scott Huminski ("Huminski"), and, notices as above because the State has not filed opposition in 18-AP-0003 to the appointment of counsel for Huminski, thereby consenting to representation. In the light of absence of a Nelson/Faretta hearing, the position of the State is constitutional.

Dated at Bonita Springs, Florida this 15th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

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-/s/- Scott Huminski

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	FOR FILING IN BOTH CASES
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION TO COMPEL JUDGE ADAMS TO ALLOW THE FLORIDA SUPREME COURT TO EXERCISE EXCLUSIVE JURISDICTION
And to Compel Judge Adams to Appoint 4th Amendment counsel per 18-AP-0003

NOW COMES, Scott Huminski ("Huminski"), and, moves as above to allow the Supreme Court to exercise its exclusive judicial assignment and rule-making and rule-clarification jurisdiction. Both the Circuit Court and District Court of Appeal has recognized exclusive jurisdiction of the Supreme Court regarding these issues. Only the County Court asserts that its jurisdiction is superior to the Supreme Court regarding jurisdiction and is unwilling to allow the Supreme Court to determine jurisdiction under its exclusive jurisdiction. The judicial assignment from Circuit to County Court is a sham and unsupported by any legal precept and an "administrative transfer" from Circuit to County Court does not exists. Contrarily, the State may dismiss a case in Circuit Court and re-file it in County Court.

Docket Entries:

17-CA-421

03/13/2018 Certified Copy of Notice of Appeal and Supplemental Notice of Appeal Sent to the Supreme Court

03/13/2018 Notice of Appeal (Amended)to the Supreme Court

Comments: to the Supreme Court

2DCA 18-804

Date	Type	Pleading	Note	
	03/14/2018	Notice	Notice	Notice of NO ORDER EXISTS CIRCUIT TO COUNTY COURT
	03/14/2018	SC Event	Review Sent to Supreme Court	
	03/14/2018	SC	NOTICE OF DISCRETN. JURISDICTN	

Florida Rule of Appellate Procedure 9.130(f) prohibits a lower tribunal from entering an order disposing of a case during the pendency of an interlocutory appeal. Final judgments and subsequent orders entered during the pendency of an interlocutory appeal are entered without jurisdiction and are "a nullity." Connor Realty, Inc. v. Ocean Terrace N. Condo. Ass'n, 572 So. 2d 4, 4 (Fla. 4th DCA 1990); see also McKenna v. Camino Real Vill. Ass'n, 8 So. 3d 1172, 1175 (Fla. 4th DCA 2009).

The Court should adopt the wisdom set forth in 18-AP-0003 and appoint counsel to Huminski under the 4th Amendment. This is law of this case, especially when the Court refused to hold a Nelson/Faretta hearing.

Dated at Bonita Springs, Florida this 15th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CRIMINAL ACTION**

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

/

ORDER STRIKING SUCCESSIVE MOTIONS

THIS CAUSE comes before the Court on the Defendant's "Motion to Dismiss – 38.22 Improper Venue," "Motion to Dismiss – Gideon v. Wainwright," both filed on March 5, 2018, Motion to Forbid Final Judgment While Interlocutory Appeal is Pending," Motion to Dismiss – 5th Amendment Right to Remain Silent – Faretta Inquiry," both filed on March 6, 2018, "Objection no compulsory process of witnesses or confrontation of accusers," filed on March 8, 2018, and "Motion to Dismiss – Bait and Switch 4th Amendment" filed on March 9, 2018. The Court has previously ruled on the issues raised in these motions, and the motions are successive. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motions are STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 14 day of March, 2018.

for

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: **Scott Huminski**, 24544 Kingfish St., Bonita Springs, FL, 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL 33902-0399; and **Court Administration (XXXI)**, 1700 Monroe St., Ft. Myers, FL 33901, this 16 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: _____
Deputy Clerk

LeeClerk.ORG

LINDA DOGGETT : CLERK OF COURT

Record of Exhibit List

State of Florida
vs
Huminski, Scott A

Case Number: 17-MM-000815
Judge: James R Adams
Submitting Party: ☒ State ☐ Defense ☐ Courts

Exhibit Number	Detailed Description of Exhibit	Date Proffered or Identified	Date Received as Evidence
1	Certified Copy of Court Minutes from 4/18/17	3/16/18	3/16/18
C-2	Certified Copies of 2 Court Orders Filed 4/20/17	3/16/18	3/16/18
3	Certified Copy of Motion to Recuse Judge Krier Filed 4/19/17	3/16/18	3/16/18
4	Certified Copy of Motion for Contempt Filed 4/19/17	3/16/18	3/16/18
5	Certified Copy of Motion to Recuse Judge Krier Filed 4/20/17	3/16/18	3/16/18
6	Certified Copy of Motion to Vacate Orders Filed 4/22/17	3/16/18	3/16/18
7	Certified Copy of Supplement to Recusal Filed 4/22/17	3/16/18	3/16/18
8	Certified Copy of Voluntary Notice of Dismissal Filed 4/26/17	3/16/18	3/16/18
9	Certified Copy of Motion to Dismiss Filed 4/26/17	3/16/18	3/16/18
10	Certified Copy of Motice No Intent to File Filed 4/26/17	3/16/18	3/16/18
11	Certified Copy of Order to Show Cause Filed 4/26/17	3/16/18	3/16/18
12	Certified Copy of Served Order to Show Cause Filed 6/14/17	3/16/18	3/16/18
13	Certified Copy of Order to Show Cause Filed 6/30/17	3/16/18	3/16/18
14	Certified Copy of Notice of Removal Filed 6/26/17	3/16/18	3/16/18
15	Certified Copy of Objection to Continuance Filed 6/28/17	3/16/18	3/16/18
16	Certified Copy of Court Minutes from 6/29/17	3/16/18	3/16/18
17	Certified Copy of Order on Arraignment	3/16/18	3/16/18
18	Certified Copy of Notice of Bankruptcy Court Docket Filed 7/1/17	3/16/18	3/16/18
19	Certified Copy of Motion to Dismiss Filed 7/8/17	3/16/18	3/16/18

LeeClerk.ORG

LINDA DOGGETT : CLERK OF COURT

20	Certified Copy of Notice of Taking Deposition Filed 7/9/17	3/16/18	3/16/18
Type of Proceeding:			
☐ Jury	☒ Non-Jury	☐ Hearing: _____ (Fill in type of hearing)	
Outcome of Trial:			
☐ Mistrial	☐ Not Guilty	☒ Guilty	

Clerk: _____ (Signature)

Submitting Party _____ (Signature) Anthony W. Kunasek (Print Name)

To be completed by Lee County Clerk of Court Records Department:

Verified by Clerk: _____ (Signature) 03/16/2018 (Date)

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge _____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	03/16/2018	DM

BENCH

Attorney: AT Huminski, Scott A

APPEARANCE
____ Failed to Appear
X Present w/o Attorney
____ Present w/ Attorney
____ Present by Attorney
____ Present w/ Interpreter
____ Interpreter Services Requested
Language _____
____ Victim/Other _____

PLEA
____ Guilty
X Not Guilty
____ Nolo Contender
____ Lesser Offense
_____
Degree _____
Statute _____

ADJUDICATION
____ Withheld by Judge
X Adjudicated Guilty
____ Withheld by Clerk
_____

VERDICT
X Guilty by Judge
____ Not Guilty by Judge
____ Guilty by Jury
____ Not Guilty by Jury
____ Mistrial
_____

DISPOSITION
____ Acquitted
____ Nolle Pros
____ No Information
____ Dismissed
____ Adm.Dismissed
____ Merge & Dismiss

SENTENCE
X Probation (Reporting) 6 DD/MM/YY
____ Consecutive/Concurrent with _____
____ One Time Cost $_____ Waive COS $_____
X Report to Probation (Today) or Upon Release Within _____
____ Probation may terminate early when conditions are met
____ May Transfer Probation to _____
____ May Report to Probation and/or Instruct by Mail
____ Ignition Interlock Device _____ DD/MM/YY
____ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
____ Statutory Exception to Vehicle Impound
____ Does Not Own Vehicle ____ Shared Vehicle
____Other_____
____ Random ____ Alcohol ____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
____ No Possession or Consumption of Alcohol or Illicit Substances
____ DUI School - Follow recommendations/Phase ____ I ____ II
____ School to Determine which Phase
____ Sign up w/in _____ days
____ Traffic School 4 Hr / 8Hr / 12 Hr
____ Attend and Complete Lee Memorial High Risk Driver's Course or ____ Victim Impact Panel
____ Psychiatric Evaluation ____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
____ Sign up for Batterer's Intervention Program w/in 30 Days
____ Attend & Complete ____ Anti-Theft ____ Mile Post Program
____ Attend & Complete Program_____
____ DNA Testing Collected ____ in Court ____ at LCJ
____ Other Testing ____ HIV ____ STD _____
____ Defendant Advised of Habitual and/or Felony Status

X Jail Time 45 (DD)MM/YY
____ Consecutive/Concurrent with _____
____ Weekend Time Fri 6pm to Sun 6pm
____ Beginning _____
____ Day Work Program* _____ Days
___ Minimum ___ day(s) a week ___ consecutive weeks
____ Credit Time Served _____DD/MM/YY
____ Credit Time Served Applied to ___ Straight Time
___ Weekends ___ Day Work Program
____ Defendant Remanded X Sentence Suspended -45 DAYS
____ DL Suspended/Revoked _____ DD/MM/YY
____ Spec. Conditions - Drive for Work/Business purposes
____ Show Valid Driver's License within _____
____ Produced Valid Driver's License in Court
____ Community Service _____ Hours and/or Pay $_____
____ Must complete _____ hours of community service before buyout
____ Show Proof of Com. Service to Clerk w/in _____
____ Stay Away from arrest location _____
____ No Contact with victim _____
____ State Orally Amends Charge in Open Court
____ Formal Filing of Information is Waived
____ Information Filed in Open Court
____ Successfully Completed Pretrial Diversion Program
____ Judicial Warning
____ Defendant Accepted DV Diversion
____ Defendant to be Released ROR on this Charge Only

CONTINUANCES
Date Continued to _____

MANDATORY COURT APPEARANCE

For _____ AR _____ DS _____ TR _____ DA _____ DD _____ DT _____ RH

Time _____ AM / PM Court Room _____ ____Speedy Trial Waived ____ Speedy Trial Tolled
____ (ARA) ____ HAS ____MEG ____ZMG ____DSG ____JMG ____TPP ____ABH _____
_____ Report to PTS/Screen for Public Defender

Defendant/Attorney _____ **Date** _____

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Rev.05/05/2017

ORDER / COMMITMENT FORM — **COUNTY COURT, LEE COUNTY, FLORIDA**

17-MM-000815 **State of Florida vs Huminski, Scott A**

____ Previously FTA for assigned Judge ____
____ Felony Reduction ____ Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level §900.04

Citation	Issuing Agency	Court Date	Court Clerk
	OTH	03/16/2018	____________

FINE ASSESSMENTS (statutes indicated)
- ✓ Fine $ 500 (775.083)
- ✓ 5% Surcharge $ 25 (938.04)

MANDATORY ASSESSMENTS
- ✓ Court Costs (Include Crime Stoppers & Crime Prevention) (318.18 / 775.083 / 938.01 / 938.03 / 938.05 / 938.06 / 939.185)
  ✓ $220.00 ___ Other $________
  If Ordered Under - Reason: ________
- ____ $33.00 Certain Traffic Offense Court Cost (318.17 / 318.18)
- ____ $135.00 DUI Court Costs (938.07)
- ____ $70.00 Reckless Driving Court Costs (318.18 / 316.192)
- ____ $65.00 Racing Court Costs (318.18)
- ____ $5.00 Leaving the Scene Court Costs (316.061)
- ____ $195.00 BUI Court Costs (938.07 / 327.35)
- ____ $201.00 Domestic Violence Trust Fund (938.08)
- ____ $151.00 Rape Crisis Trust Fund (938.085)
- ____ $151.00 Crimes Against Minors (938.10)
- ____ $5000.00 Civil Penalty (796.07)
- ____ $40.00 Contested By Nonprevailing Party Fee (34.045)

DISCRETIONARY ASSESSMENTS
- ____ $100.00 FDLE Trust Fund/Statewide Crime Lab (938.25)
- ____ Investigative Fee $________ to
  to ___ FDLE ___ FMP ___ LCSO ___ Statewide Pros.
  ___ Other ________ (938.27)
- ____ Worthless Check Diversion Fee $________ (832.08)
- ____ Diversion Cost of Supervision $________ (948.09)

Pay Within 5 DD/(MM)/YY

____ Upon release from In-Custody

MOTION HEARINGS
- ____ Revoke Bond ____ Reinstate Bond
- ____ Set/Reduce/Increase Bond to ________
- ____ Suppress ____ Dismiss ____ Continue
- ____ Expunge/Seal (All outstanding monetary obligations must be paid to the Clerk's office before the case is officially expunged/sealed.)
- ____ Withdraw Plea
- ____ Withdraw as Counsel
- ____ Modify No Contact Order ____ Lift No Contact Order
- ____ Other ________

Motion Result (Circle One): Granted Denied Reserves Ruling

- ____ State & Defense Stipulate to Suppress the Breath Test Results
- ____ State Amends Information from BAL of .15 or Above to .08
- ____ Clerk to Update Case w/ Defendants Information Listed

ATTORNEY FEES & SURCHARGES
- ✓ $50.00 Cost of Prosecution (938.27)
- ____ $50.00 Public Def Application Fee (27.52)
  Additional Application Fees $________ (Must be addressed on the record)
- ____ Defense Attorney Costs at Conviction (938.29)
  ___ $50.00 ___ Other $________

RESTITUTION
- ____ Minimum Payment of $________ per Month to ________
  ___ As a Condition of Probation
- ____ Restitution Ordered $________ to ________
- ____ Restitution Reduced to Judgment
- ____ Court Orders Restitution - Reserves on Amount

DISPOSITION OF MONETARY OBLIGATIONS
- ✓ May Convert (Fine/Cost) ________ All or In Part to Community Service at $10 per Hour
  ___ Defendant Advised of Notary Requirement for Community Service (For Non-Probationary Sentences)
- ____ Credit Time Served for Fines/Costs/Fees ________
- ____ Monetary Obligations Referred to Clerk of Court Collections
- ____ Monetary Obligations Reduced to Judgment ___ Previous Only
- ____ Monetary Obligations (VOP) ___ Carried Forward
- ____ Defendant to sign up for Payment Plan
- ____ First Payment Due within 30 Days
- ____ Waive all Additional Mandatory Costs

WARRANTS/BONDS
- ____ BW/D6 Ordered Balance $________
- ____ Issue Bench Warrant ________ MM/DD/YYYY
- ____ Bond Estreature $________
- ____ Non-Compliance/Non-Appearance $________
- ____ Set Aside BW/D6 $________
- ____ Set Aside Estreature $________
- ____ Cash Bond to pay Fine/Cost including ________
- ____ Return Cash Bond to Depositor ________
- ____ Conflicting Appearance Date Addressed in Court

REVOCATION HEARINGS
- ____ Defendant Pleas Guilty/Admits Allegations
- ____ Defendant Pleas Not Guilty/Denies Allegations
- ____ Adjudicated Guilty ____ Adjudication Withheld
- ____ Probation Reinstated ________
- ____ Probation Modified ________
- ____ Same Terms and Conditions to Apply
- ____ Probation Revoked & Terminated ____ Probation Terminated
- ____ COS Fees Due & Owing in the amount $________

DEFENSE MOTION FOR MISTRIAL - DENIED; MOTION TO DISMISS - DENIED; ANY FUTURE FILINGS ARE TO BE UNDER THE SIGNATURE OF A LICENSED ATTORNEY; NO COMMUNICATION WITH THE PARTIES IN THE CIVIL OR CRIMINAL CASE

Pre-Sentence Investigation/Sentencing ________ Full/Partial

If probation has not been imposed, you must pay your financial obligation within the time allowed by the Judge or sign up for the payment plan option offered by the Clerk of Court. If sentenced to Probation, you must adhere to standards as directed.
Failure to comply with any part of this order may result in a suspension of your driver license privilege and/or warrant being issued for your arrest (322.245).
Unpaid financial obligations still remaining 90 days after payment due date will be referred by the Clerk of Court to a collection agency and an additional fee of up to 40% of the outstanding balance owed will be added at that time (28.246).
Mandatory assessments are imposed and shall be included in the judgment without regard to whether the assessment was announced in open court.

Asst. State Attorney ~~[illegible]~~ /A. Kunasek Bar No. ~~[illegible]~~ / 26999 Date ________

Judge James R Adams [signature] Date ________

Rev.05/05/2017

DISTRICT COURT OF APPEAL

SECOND DISTRICT
Post Office Box 327
LAKELAND, FLORIDA 33802
(863)940-6060

ACKNOWLEDGMENT OF NEW CASE

DATE: March 16, 2018

STYLE: SCOTT HUMINSKI v. TOWN OF GILBERT, AZ, ET AL

2DCA#: 2D18-1009

The Second District Court of Appeal has received the Petition reflecting a filing date of March 16, 2018.

The county of origin is Lee.

The lower tribunal case number provided is 17-CA-421
17-MM-815.

The filing fee is: Waived.

Case Type: Prohibition Civil

The Second District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

cc: Scott Huminski Linda Doggett, Clerk

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

March 16, 2018

CASE NO.: 2D18-1009
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI	v.	TOWN OF GILBERT, AZ, ET AL
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

The affidavit of insolvency and accompanying motion filed in this original proceeding persuade this court that petitioner is insolvent, and petitioner is accordingly declared insolvent within the meaning of chapter 57, Florida Statutes, for purposes of the filing fee associated with this petition. This determination is subject to rebuttal by respondent within twenty days.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Scott Huminski

Linda Doggett, Clerk

ls

Mary Elizabeth Kuenzel
Clerk

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

March 16, 2018

CASE NO.: 2D18-1009
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI	v.	TOWN OF GILBERT, AZ, ET AL
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

The petition filed in this original proceeding either fails to include a certificate of service demonstrating service of a copy of the petition on the respondent(s), or fails to identify the respondent(s) sufficiently to insure this court that the respondent(s) has received a copy of the petition. Petitioner shall within 15 days submit to this court a certificate certifying service of the petition on the respondent(s), failing which this proceeding will be dismissed.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Scott Huminski

Linda Doggett, Clerk

ls

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

IN THE COUNTY COURT, IN AND FOR LEE COUNTY, FLORIDA
TRIAL BEFORE JUDGE WIHTOUT A JURY

Date: 3/16/18 **Judge: Adams** **Courtroom: 2A** **Time: 9:36 AM**

State of Florida
Vs.
Scott Huminski

Case No. 17MM815

Offense(s)
Contempt of Court

The State appeared by its attorney, Anthony Kunasek, Assistant State Attorney.

The Defendant appeared, in person,

Deputy Sheriff R. Downey

Deputy Clerk Sherri M.

The Court heard the sworn testimony of:

State

1. Brenda Horton
2. Richard White

Defense

Exhibits: Refer to exhibit list.

The Court found the defendant:

Not Guilty

Guilty as charged, withhold adjudication

Guilty as charged

Guilty of

Sentence: Refer to commitment form.

FLORIDA SUPREME COURT

SCOTT HUMINSKI, FOR HIMSELF	)	
AND SCOTT HUMINSKI, FOR HIMSELF	)	DOCKET NO. SC18-403
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	LOWER DOCKET NOS. 17-MM-815, 17-CA-421
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	AKA: STATE V. HUMINSKI

MOTION FOR REHEARING in FLORIDA SUPREME COURT

***** 20TH Cir. Clerk Please Transmit to Supreme Court *****

NOW COMES, Scott Huminski ("Huminski"), and moves for re-hearing because Huminski's Notice of Appeal / petition invokes this Court's original and exclusive jurisdiction concerning judicial assignments, rule-making and rule-clarification jurisdiction concerning the transfer of a case from 20th Circuit Court to County Court absent any order, rule, statute or authority to do so. See generally Notice of Appeal/Petition asserting original and exclusive jurisdiction of this Court. This appeal/case is not discretionary.

Dated at Bonita Springs, Florida this `18th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served via the court's e-filing system to all parties of record on this 18th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER STRIKING NOTICE OF PROPOSED SETTLEMENT

THIS CAUSE comes before the Court on the Defendant's "Notice of Proposed Settlement" filed March 12, 2018. There is no provision for settlement in a criminal case. The only settlement is a negotiated plea agreement with the State, or an open plea to the Court.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's notice of proposed settlement is STRICKEN.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 16 day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: **Scott Huminski**, 24544 Kingfish St., Bonita Springs, FL, 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL 33902-0399; and **Court Administration (XXXI)**, 1700 Monroe St., Ft. Myers, FL 33901, this 19 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTIONS TO STAY PROCEEDINGS

THIS CAUSE comes before the Court on the Defendant's "Motion to Stay Circuit Court Trial Pending Appeals in the Florida Supreme Court," filed on March 9, 2018, "Supplemental Notice of Appeal to Florida Supreme Court and Motions to Stay Trial Court Pending Appeal," and "Motion to Stay Pending Appeal Disposition in the Florida Supreme Court" both filed on March 13, 2018. The Court is not required to stay proceedings unless directed to do so by a higher court.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion to stay is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 16 day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: **Scott Huminski**, 24544 Kingfish St., Bonita Springs, FL, 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL 33902-0399; and **Court Administration (XXXI)**, 1700 Monroe St., Ft. Myers, FL 33901, this 19 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER ON DEFENDANT'S NOTICE CONSENT OF STATE TO 4TH AMENDMENT APPOINTMENT

THIS CAUSE comes before the Court on Defendant's "Notice Consent of State to 4th Amendment Appointment" filed March 15, 2018. The Court has already ruled on the issue raised in this motion, and the motion is successive.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is DENIED.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 16 day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: **Scott Huminski**, 24544 Kingfish St., Bonita Springs, FL, 34134; **Office of the State Attorney**, P.O. Box 399, Ft. Myers, FL 33902-0399; and **Court Administration (XXXI)**, 1700 Monroe St., Ft. Myers, FL 33901, this 19 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs. **Case No. 17-MM-815**

SCOTT HUMINSKI,

Defendant.

_____/

ORDER DENYING MOTION TO DISQUALIFY AS LEGALLY INSUFFICIENT

THIS CAUSE comes before the Court on Scott Huminski's "Motion to Disqualify Presiding Judge," filed March 15, 2018. Having reviewed the motion in accordance with Fla. R. Jud. Admin. 2.330, it is

ORDERED AND ADJUDGED that the motion to disqualify is DENIED as legally insufficient.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 16th day of March, 2018.

James Adams
County Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to: Scott Huminski, 24544 Kingfish St., Bonita Springs, FL, 34134; Office of the State Attorney, P.O. Box 399, Ft. Myers, FL 33902-0399; and Court Administration (XIV), 1700 Monroe St., Ft. Myers, FL 33901, this 19 day of March, 2018.

LINDA DOGGETT
Clerk of Court

By: B. McDonald
Deputy Clerk

Supreme Court of Florida

MONDAY, MARCH 19, 2018

CASE NO.: SC18-403
Lower Tribunal No(s).:
362017MM000815000ACH;
362017CA000421A001CH

SCOTT HUMINSKI vs. TOWN OF GILBERT, AZ, ET AL.

Petitioner(s) Respondent(s)

Petitioner's motion for rehearing is hereby denied.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

db
Served:

ROBERT C. SHEARMAN
STEVEN DOUGLAS KNOX
SCOTT HUMINSKI
HON. LINDA DOGGETT, CLERK
HON. MARY BETH KUENZEL, CLERK

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA APPELLATE DIVISION

SCOTT HUMINSKI,

Appellant,

vs.

Case No. 18-AP-3
Lower Case No. 17-MM-815

TOWN OF GILBERT AZ

Appellee.

_____/

ORDER GRANTING COURT-APPOINTED COUNSEL'S MOTION TO WITHDRAW AND APPOINTING NEW PRIVATE REGISTRY ATTORNEY FOR APPEAL

THIS CAUSE comes before the Court on court-appointed counsel Michael J.P. Baker's "Motion to Withdraw and Certification of Conflict," filed one March 14, 2018. In an order rendered on March 9, 2018, the Court found Defendant indigent for appeal, found that a conflict exists with both the Office of the Public Defender and the Office of Regional Counsel, and appointed an attorney from the registry to represent Appellant on this appeal only. The present motion was filed by court-appointed counsel Michael J.P. Baker. Mr. Baker indicates that he cannot render effective representation in this case due to his case load and his unsuccessful past efforts to have himself removed from the appellate appointment list.

Therefore, upon review of the motion and the case file, the Court finds that Mr. Baker has a conflict of interest, and that the following private attorney from the registry is appointed to represent Defendant on this non-final misdemeanor appeal: **Anthony M. Candela**, Bar Number: 332010; mailing address: Candela Law Firm, P.A., 10312 Bloomingdale Ave Ste 108-170, Riverview, FL 33578-3603 ; telephone number: 813-417-3645; e-mail address: tony@candelalawfirm.com.

Thus, it is hereby

ORDERED AND ADJUDGED that Defendant's motion is GRANTED. The attorney

Anthony M. Candela is appointed to represent Defendant on this non-final appeal. Furthermore, the Court finds that Defendant is entitled to the waiver of filing fees in the pursuit of his non-final appeal and is declared indigent for the purposes of appeal.

DONE AND ORDERED in Chambers at Ft. Myers, Lee County, Florida this 16TH day of March, 2018.

Joseph C. Fuller, Jr.
Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the forgoing filed in the above styled case has been e-mailed/mailed to:

- **Court Administration (XXIV)**
- **Scott Huminski**
- **Town of Gilbert AZ**
- **Michael J.P. Baker, Esq.**
- **Anthony M. Candela, Esq.**

Dated: MAR 21 2018

LINDA DOGGETT, CLERK OF COURT

By: _____
Deputy Clerk

Filing # 69526746 E-Filed 03/20/2018 12:40:07 PM

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	CIRCUIT COURT APPEAL 18-AP-0003
DEFENDANTS.	)	AKA: STATE V. HUMINSKI
	)	2DCA 2D18-1009

NOTICE OF APPEAL - SUPPLEMENTAL

NOW COMES, Scott Huminski ("Huminski"), and, notices of appeal from conviction, sentencing and final judgment at trial on 3/16/2018. Huminski has already been found indigent in the Florida Supreme Court, the 2nd District Court of Appeal, the County Court and the 20th Circuit. An appellate attorney has been assigned to 18-AP-0003, a 6th Amendment right that was stripped from Huminski at trial and at pre-trial proceedings.

Dated at Bonita Springs, Florida this 20th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served to all parties of record via the court's e-filing system, except those ordered by the County Court to not be served, on this 20th day of March, 2018.

-/s/- Scott Huminski

_____

Scott Huminski

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	CIRCUIT COURT APPEAL 18-AP-0003
DEFENDANTS.	)	AKA: STATE V. HUMINSKI
	)	2DCA 2D18-1009

NOTICE OF APPEAL - SUPPLEMENTAL

NOW COMES, Scott Huminski ("Huminski"), and, notices of appeal from conviction, sentencing and final judgment at trial on 3/16/2018. Huminski has already been found indigent in the Florida Supreme Court, the 2nd District Court of Appeal, the County Court and the 20th Circuit. An appellate attorney has been assigned to 18-AP-0003, a 6th Amendment right that was stripped from Huminski at trial and at pre-trial proceedings.

Dated at Bonita Springs, Florida this 20th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served to all parties of record via the court's e-filing system, except those ordered by the County Court to not be served, on this 20th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

March 22, 2018

CASE NO.: 2D18-1009
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI	v.	TOWN OF GILBERT, AZ, ET AL
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition for writ of prohibition is denied.

Petitioner's motion to vacate final judgment in court and to stay that matter is denied.

Petitioner's motion to vacate county court proceedings and to stay that matter is denied.

Petitioner's motion to correct/clarify filings is denied.

Petitioner's motions to appoint counsel in this proceeding are denied.

LaROSE, C.J., and NORTHCUTT and ROTHSTEIN-YOUAKIM, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Scott Huminski Linda Doggett, Clerk

lb

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

Circuit Court of the Twentieth Judicial Circuit
In and for Lee County, Florida
- Civil/Criminal Division -

SCOTT HUMINSKI, FOR HIMSELF	)	
AND FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	DOCKET NO. 17-MM-815
TOWN OF GILBERT, AZ, ET AL.	)	CIRCUIT COURT APPEAL 18-AP-0003
DEFENDANTS.	)	AKA: STATE V. HUMINSKI
	)	2DCA 2D18-1009

NOTICE OF APPEAL - SUPPLEMENTAL – CLARIFIED

NOW COMES, Scott Huminski ("Huminski"), and, notices of appeal from conviction, sentencing and final judgment at trial on 3/16/2018. This notice was potentially misfiled in the 2 DCA instead of Circuit Court by the clerk's office. Huminski has already been found indigent in the Florida Supreme Court, the 2nd District Court of Appeal, the County Court and the 20th Circuit. An appellate attorney has been assigned to 18-AP-0003, a 6th Amendment right that was stripped from Huminski at trial and at pre-trial proceedings.

If the 2 DCA is the correct forum as reflected in the Courtt's reasoning in transmitting the prior notice to the DCA, Huminski withdraws this notice as moot.

Dated at Bonita Springs, Florida this 24th day of March, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street

Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served to all parties of record via the court's e-filing system, except those ordered by the County Court to not be served, on this 24th day of March, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT/COUNTY OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
ADMINISTRATIVE OFFICE OF THE COURTS
CRIMINAL DIVISION/COUNTY PROBATION

Officer: Maria E Wendel

ORDER OF PROBATION

STATE OF FLORIDA,
Plaintiff
vs.
Scott A Huminski

Case Number(s): 17-MM-000815

This cause coming before the Court to be heard, and you, the defendant, Scott A Huminski being now present before the court, and you having: Pled Not Guilty to the offense(s) of:

Charge(s): 1 CONTEMPT OF COURT CIRCUIT OR COUNTY

The court herby adjudges you to be guilty of said offense. Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld, and that you are hereby placed on probation for a period of 6 months under the supervision of the Lee County Probation Department, subject to Florida law.

IT IS FURTHER ORDERED that you shall comply with the following standard conditions of supervision as provided by Florida law:

1. Not later than the fifth day of each month, unless otherwise directed by your officer, you will make a full and truthful report to your officer on the form provided for that purpose.
2. You will pay the Clerk of Court the amount of $50.00 per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
3. You will not change your residence or employment or leave the state of your residence without first obtaining permission from your officer.
4. You will not possess, carry, or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.
5. You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your probation.
6. You will not associate with any person engaged in any criminal activity.
7. You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.
8. You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.

9 You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site, or elsewhere, and you will comply with all instructions your officer may give you.

10 You will pay restitution, costs, and/or fees in accordance with special conditions imposed or in accordance with the attached orders.

11 You will submit to alcohol/drug testing as directed by your officer or the professional staff of the treatment center where you are receiving treatment to determine the presence or use of alcohol or controlled substances. You shall be required to pay for the test unless payment is waived by your officer.

12 You will report in person within 24 hours of your release from incarceration to the Lee County Probation Department, in Lee County, Florida, unless otherwise instructed by the court or department.

13 All conditions of probation must be completed four weeks prior to termination date, unless otherwise directed in the order.

14 You will pay Fine and Court Costs totaling $745.00 by 5 months; or may convert Fine and Costs to community service at the rate of $10.00 per hour and perform 75 hours.

15 You will pay a Cost of Prosecution totaling $50.00 by 5 months.

16 You will serve 45 days mandatory jail time in the Lee County Jail.

17 You will report to the Lee County Probation Department today.

4 week prior to termination date:	Probation termination date:
8/16/2018	09/15/2018

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

I understand that if I fail to pay any financial obligations ordered by the court, it may result in a suspension of my driver license privilege (F.S. 322.245) and that unpaid financial obligations still remaining 90 days after payment due date will be referred by the Clerk of Court to a collection agency and an additional fee of up to 40% of the outstanding balance owed will be added at that time (F.S. 28.246).

DONE AND ORDERED, on March 16, 2018

Adams, James R

I acknowledge receipt of a true copy of this order. The conditions have been explained to me and I agree to abide by them.

This _____ day of _____, 20____ _____
Probationer

Original: Clerk of the Court
Copies: Probationer
Lee County Probation
Instructed by: _____

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 06, 2018

CASE NO.: 2D18-1009
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI	v.	TOWN OF GILBERT, AZ, ET AL
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's motion for clarification and for appointment of counsel is denied.
Petitioner's motion to transfer and/or consolidate is denied.
Petitioner's emergency motion to stay is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Scott Huminski

Linda Doggett, Clerk

td

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

20th Circuit Court and/or Lee County Court
CRIMINAL DIVISIONS

STATE OF FLORIDA	)	
V.	)	2DCA 2D18-1009
SCOTT HUMINSKI, FOR HIMSELF	)	
AND	)	Lee Cty DOCKET NO. 17-MM-815
SCOTT HUMINSKI,	)	20TH Cir. DOCKET NO. 17-CA-421
FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	
	)	

NOTICE OF APPEAL FROM TRIAL OF 3/16/2018 CONCERNING INDIRECT CRIMINAL CONTEMPT INITIATED AND ARRAIGNED IN CIRCUIT COURT AND TRIED IN COUNTY COURT – SUPPLEMENTAL

NOW COMES, Scott Huminski ("Huminski"), and, notices of appeal of the criminal matters held both in the 20th Circuit Court and Lee County Court. The initiation and arraignment in Circuit Court and then trial in County Court has confused clerks in the 20th Circuit and in the District Court of Appeal as to where appeal from final judgment should be held. As the case was initiated and arraigned in the 20th Circuit, the DCA would seem the likely venue for direct appeal. Although that Court has refused to docket the matter and assign a case number. Huminski is attempting to protect his rights to direct appeal from judgment by noticing of appeal

from the final judgement. To date, only an interlocutory appeal has been docketed in the Circuit Court, 18-ap-0003. No direct appeal from final judgement has been docketed anywhere, despite Huminski's attempts to file a proper Notice of Appeal.

Criminal litigation in this case began in the Circuit Court and was never disposed of and the Circuit Court was never divested of jurisdiction of this matter again implicating the DCA as the correct venue for direct appeal. The County Court matter violated the multiple prosecution prohibition of double jeopardy as it brought identical criminal claims in a second court.

Dated at Bonita Springs, Florida this 6th day of April, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served to all parties of record via the court's e-filing system or via U.S, Mail, except those ordered by the County Court to not be served, on this 6th day of April, 2018.

-/s/- Scott Huminski

Scott Huminski

20th Circuit Court and/or Lee County Court
CRIMINAL DIVISIONS

STATE OF FLORIDA	)	
V.	)	2DCA 2D18-1009
SCOTT HUMINSKI, FOR HIMSELF	)	
AND	)	Lee Cty DOCKET NO. 17-MM-815
SCOTT HUMINSKI,	)	20TH Cir. DOCKET NO. 17-CA-421
FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
V.	)	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	
	)	

NOTICE OF APPEAL FROM TRIAL OF 3/16/2018 CONCERNING INDIRECT CRIMINAL CONTEMPT INITIATED AND ARRAIGNED IN CIRCUIT COURT AND TRIED IN COUNTY COURT – SUPPLEMENTAL

NOW COMES, Scott Huminski ("Huminski"), and, notices of appeal of the criminal matters held both in the 20th Circuit Court and Lee County Court. The initiation and arraignment in Circuit Court and then trial in County Court has confused clerks in the 20th Circuit and in the District Court of Appeal as to where appeal from final judgment should be held. As the case was initiated and arraigned in the 20th Circuit, the DCA would seem the likely venue for direct appeal. Although that Court has refused to docket the matter and assign a case number. Huminski is attempting to protect his rights to direct appeal from judgment by noticing of appeal

from the final judgement. To date, only an interlocutory appeal has been docketed in the Circuit Court, 18-ap-0003. No direct appeal from final judgement has been docketed anywhere, despite Huminski's attempts to file a proper Notice of Appeal.

Criminal litigation in this case began in the Circuit Court and was never disposed of and the Circuit Court was never divested of jurisdiction of this matter again implicating the DCA as the correct venue for direct appeal. The County Court matter violated the multiple prosecution prohibition of double jeopardy as it brought identical criminal claims in a second court.

Dated at Bonita Springs, Florida this 6th day of April, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served to all parties of record via the court's e-filing system or via U.S, Mail, except those ordered by the County Court to not be served, on this 6th day of April, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE CIRCUIT/COUNTY OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
ADMINISTRATIVE OFFICE OF THE COURTS
CRIMINAL DIVISION/COUNTY PROBATION

Officer: Maria E Wendel

*****CORRECTED*****
ORDER OF PROBATION

STATE OF FLORIDA,
Plaintiff
vs.
Scott A Huminski

Case Number(s): 17-MM-000815

This cause coming before the Court to be heard, and you, the defendant, Scott A Huminski being now present before the court, and you having: Pled Not Guilty to the offense(s) of:

Charge(s): 1 CONTEMPT OF COURT CIRCUIT OR COUNTY

The court herby adjudges you to be guilty of said offense. Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld, and that you are hereby placed on probation for a period of 6 months under the supervision of the Lee County Probation Department, subject to Florida law.

IT IS FURTHER ORDERED that you shall comply with the following standard conditions of supervision as provided by Florida law:

1. Not later than the fifth day of each month, unless otherwise directed by your officer, you will make a full and truthful report to your officer on the form provided for that purpose.
2. You will pay the Clerk of Court the amount of $50.00 per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
3. You will not change your residence or employment or leave the state of your residence without first obtaining permission from your officer.
4. You will not possess, carry, or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.
5. You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your probation.
6. You will not associate with any person engaged in any criminal activity.
7. You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.
8. You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.

9 You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site, or elsewhere, and you will comply with all instructions your officer may give you.
10 You will pay restitution, costs, and/or fees in accordance with special conditions imposed or in accordance with the attached orders.
11 You will submit to alcohol/drug testing as directed by your officer or the professional staff of the treatment center where you are receiving treatment to determine the presence or use of alcohol or controlled substances. You shall be required to pay for the test unless payment is waived by your officer.
12 You will report in person within 24 hours of your release from incarceration to the Lee County Probation Department, in Lee County, Florida, unless otherwise instructed by the court or department.
13 All conditions of probation must be completed four weeks prior to termination date, unless otherwise directed in the order.
14 You will pay Fine and Court Costs totaling $745.00 by 5 months; or may convert Fine and Costs to community service at the rate of $10.00 per hour and perform 75 hours.
15 You will pay a Cost of Prosecution totaling $50.00 by 5 months.
16 You will serve 45 days mandatory jail time in the Lee County Jail; suspended sentence.
17 You will report to the Lee County Probation Department today.

4 week prior to termination date:	Probation termination date:
8/16/2018	09/15/2018

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

I understand that if I fail to pay any financial obligations ordered by the court, it may result in a suspension of my driver license privilege (F.S. 322.245) and that unpaid financial obligations still remaining 90 days after payment due date will be referred by the Clerk of Court to a collection agency and an additional fee of up to 40% of the outstanding balance owed will be added at that time (F.S. 28.246).

DONE AND ORDERED, on March 16, 2018

Defendant:
Scott A Huminski

Case Number(s):
17-MM-000815

Officer: Maria E Wendel

Adams, James R

I acknowledge receipt of a true copy of this order. The conditions have been explained to me and I agree to abide by them.

This _____ day of _____, 20____ _____
Probationer

Original: Clerk of the Court
Copies: Probationer
Lee County Probation
Instructed by: _____

20th Circuit Court and/or Lee County Court
CRIMINAL DIVISIONS

STATE OF FLORIDA	)	
v.	)	2DCA 2D18-1512
SCOTT HUMINSKI,	)	
AND	)	Lee Cty DOCKET NO. 17-MM-815
SCOTT HUMINSKI,	)	20TH Cir. DOCKET NO. 17-CA-421
FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	
	)	

Amended NOTICE OF APPEAL FROM TRIAL OF 3/16/2018 CONCERNING INDIRECT CRIMINAL CONTEMPT INITIATED AND ARRAIGNED IN CIRCUIT COURT AND TRIED IN COUNTY COURT * FOR FILING IN 20TH Cir., Lee Cty and 2DCA ***

NOW COMES, Scott Huminski ("Huminski"), and, notices of appeal of the criminal matters held both in the 20th Circuit Court and Lee County Court and appeals the trial, conviction order, sentencing order and final judgment issued the same day as trial on 3/16/2016. The initiation and arraignment in Circuit Court and then trial in County Court, by the assignment order of 8/14/2017 by the County judge is also subject to this appeal as well as the holding of a pro se trial without waiver of the 6th Amendment assistance of counsel and the right to a jury trial.

Huminski asserts his 6th Amendment Right concerning assistance of counsel with this appeal and notifies that Anthony Candela, Esq., has been assigned to collateral interlocutory appeal in the 20th Circuit 18-AP-0003. Clearly, Huminski qualifies for assigned counsel, 18-AP-0003 was initiated on 2/21/2018 and remains pending. Huminski reserves the right to re-file this notice with the assistance of counsel pursuant to the 6th Amendment.

Criminal litigation in this case began in the Circuit Court and was never disposed of and the Circuit Court was never divested of jurisdiction of this matter again implicating the DCA as the correct venue for direct appeal. The County Court matter violated the multiple prosecution prohibition of double jeopardy as it brought identical criminal claims in a second court without disposition in the first court or divesting of jurisdiction from the first court. Appeals concerning judicial assignments are the exclusive jurisdiction of the Florida Supreme Court. See Petition in 2D18-1009.

Dated at Bonita Springs, Florida this 19th day of April, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served to all parties of record via the court's e-filing system or via U.S, Mail, except those ordered by the County Court to not be served, on this 19th day of April, 2018.

-/s/- Scott Huminski

Scott Huminski

20th Circuit Court and/or Lee County Court
CRIMINAL DIVISIONS

STATE OF FLORIDA	)	
v.	)	2DCA 2D18-1512
SCOTT HUMINSKI,	)	
AND	)	Lee Cty DOCKET NO. 17-MM-815
SCOTT HUMINSKI,	)	20TH Cir. DOCKET NO. 17-CA-421
FOR THOSE SIMILARLY SITUATED,	)	
PLAINTIFF	)	
v.	)	
TOWN OF GILBERT, AZ, ET AL.	)	
DEFENDANTS.	)	
	)	

Corrected Amended NOTICE OF APPEAL FROM TRIAL OF 3/16/2018 CONCERNING INDIRECT CRIMINAL CONTEMPT INITIATED AND ARRAIGNED IN CIRCUIT COURT AND TRIED IN COUNTY COURT * FOR FILING IN 20TH Cir., Lee Cty and 2DCA ***

NOW COMES, Scott Huminski ("Huminski"), and, notices of appeal of the criminal matters held both in the 20th Circuit Court and Lee County Court and appeals the trial, conviction order, sentencing order and final judgment issued the same day as trial on 3/16/2018. The initiation and arraignment in Circuit Court and then trial in County Court, by the assignment order of 8/14/2017 by the County judge is also subject to this appeal as well as the holding of a pro se trial without waiver of the 6th Amendment assistance of counsel and the right to a jury trial.

Huminski asserts his 6th Amendment Right concerning assistance of counsel with this appeal and notifies that Anthony Candela, Esq., has been assigned to collateral interlocutory appeal in the 20th Circuit 18-AP-0003. Clearly, Huminski qualifies for assigned counsel, 18-AP-0003 was initiated on 2/21/2018 and remains pending. Huminski reserves the right to re-file this notice with the assistance of counsel pursuant to the 6th Amendment.

Criminal litigation in this case began in the Circuit Court and was never disposed of and the Circuit Court was never divested of jurisdiction of this matter again implicating the DCA as the correct venue for direct appeal. The County Court matter violated the multiple prosecution prohibition of double jeopardy as it brought identical criminal claims in a second court without disposition in the first court or divesting of jurisdiction from the first court. Appeals concerning judicial assignments are the exclusive jurisdiction of the Florida Supreme Court. See Petition in 2D18-1009.

Dated at Bonita Springs, Florida this 19th day of April, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was served to all parties of record via the court's e-filing system or via U.S, Mail, except those ordered by the County Court to not be served, on this 19th day of April, 2018.

-/s/- Scott Huminski

Scott Huminski

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

March 22, 2018

CASE NO.: 2D18-1009
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI	v.	TOWN OF GILBERT, AZ, ET AL
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition for writ of prohibition is denied.

Petitioner's motion to vacate final judgment in court and to stay that matter is denied.

Petitioner's motion to vacate county court proceedings and to stay that matter is denied.

Petitioner's motion to correct/clarify filings is denied.

Petitioner's motions to appoint counsel in this proceeding are denied.

LaROSE, C.J., and NORTHCUTT and ROTHSTEIN-YOUAKIM, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Scott Huminski Linda Doggett, Clerk

lb

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

ORDER NOW FINAL

APR 18 2018

Clerk, Second District
Court of Appeal

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

March 22, 2018

CASE NO.: 2D18-1009
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI	v.	TOWN OF GILBERT, AZ, ET AL
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition for writ of prohibition is denied.

Petitioner's motion to vacate final judgment in court and to stay that matter is denied.

Petitioner's motion to vacate county court proceedings and to stay that matter is denied.

Petitioner's motion to correct/clarify filings is denied.

Petitioner's motions to appoint counsel in this proceeding are denied.

LaROSE, C.J., and NORTHCUTT and ROTHSTEIN-YOUAKIM, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Scott Huminski

Linda Doggett, Clerk

lb

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

ORDER NOW FINAL

APR 18 2018

Clerk, Second District
Court of Appeal

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 27, 2018 18-AP-9

CASE NO.: 2D18-1512
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

As the appellant is seeking review of two related orders entered by the Lee County Court in case number 17-MM-000815, the appellant's misdemeanor case, the notice of appeal in this case 2D18-1512, along with all other filings in the case, are hereby transferred to the appellate division of the Circuit Court of the Twentieth Judicial Circuit in and for Lee County for review. The circuit court shall address all motions filed by the appellant that are not resolved in the present order, and shall in particular promptly resolve the appellant's motions for appointment of counsel. If counsel is appointed, the circuit court shall provide counsel with a copy of the present order and should allow a reasonable period of time for counsel to review the appellant's other motions. Counsel should promptly inform the circuit court of whether he or she wishes to adopt any of the motions or whether any of them should be withdrawn.

Counsel may at his or her discretion examine any jurisdictional issues raised by the appellant in his filings.

In light of this transfer, the appellant's "motion to transfer and/or consolidate interlocutory appeal with this appeal from final judgment" is denied.

LaROSE, C.J., and VILLANTI and SALARIO, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

John M. Klawikofsky, A.A.G. Scott Huminski Linda Doggett, Clerk

ks

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

May 04, 2018

CASE NO.: 2D18-1512
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

John M. Klawikofsky, A.A.G. Scott Huminski Linda Doggett, Clerk

ag

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

May 15, 2018

CASE NO.: 2D18-1512
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion to transmit order of transfer is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

John M. Klawikofsky, A.A.G. Scott Huminski Linda Doggett, Clerk

ec

Mary Elizabeth Kuenzel
Clerk

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA APPELLATE DIVISION

SCOTT HUMINSKI,

Appellant,

vs.

Case No. 18-AP-9
Lower Case No. 17-MM-815

STATE OF FLORIDA,

Appellee.
_____/

ORDER APPOINTING REGISTRY ATTORNEY FOR APPEAL

THIS CAUSE comes before the Court upon review of the pleadings that were transferred to the 20th Judicial Circuit Appellate Division from the Second District Court of Appeal on April 27, 2018. The order of transfer from the Second District directs this Court to resolve Appellant's pending motions for appointment of appellate counsel. Having reviewed the transferred record, the Court finds that Appellant is indigent and has prior conflicts with the Public Defender and Regional Counsel. Moreover, Appellant has a related appeal pending under case number 18-AP-3. Appellant has been appointed counsel to represent him in appeal number 18-AP-3 and he requests in his transferred motions that the same attorney be appointed to handle this related appeal.

Therefore, the private attorney from the registry who is representing Appellant in case number 18-AP-3 is also appointed to represent Appellant on this misdemeanor appeal: Anthony M. Candela, Bar Number: 332010; mailing address: Candela Law Firm, P.A., 10312 Bloomingdale Ave Ste 108-170, Riverview, FL 33578-3603; telephone number: 813-417-3645; e-mail address: tony@candelalawfirm.com. In the event that appointed counsel has a conflict and cannot represent Appellant in this case, he shall inform the Court immediately.

A copy of the Second District Court of Appeal's order of transfer is attached to this order. Pursuant to the Second District's order, Attorney Candela shall review the other motions that

were transferred to this circuit appellate case. Attorney Candela shall, within 30 days, inform the Court whether he wishes to adopt any of Appellant's previously filed motions. In particular, Attorney Candela shall indicate whether he wishes to adopt Appellant's motions to consolidate this case with Lee County circuit appellate case number 18-AP-3. Timely motions for extension of time will be considered on a showing of good cause.

Thus, it is hereby

ORDERED AND ADJUDGED that Defendant's motions for appointment of appellate counsel are GRANTED. Defendant is declared indigent for the purposes of appeal. The attorney Anthony M. Candela is appointed to represent Defendant on this appeal. Attorney Candela shall, within 30 days, inform the Court whether he wishes to adopt any of Appellant's pro se motions that were filed before the Second District Court of Appeal, including his motion to consolidate this appeal with case number 18-AP-3.

DONE AND ORDERED in Chambers at Ft. Myers, Lee County, Florida this 18TH day of May, 2018.

Joseph C. Fuller, Jr.
Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the forgoing filed in the above styled case has been e-mailed/mailed to:

- **Court Administration (XXIV)**
- **Scott Huminski**
- **State of Florida**
- **Anthony M. Candela, Esq.**

Dated: 5/21/18

LINDA DOGGETT, CLERK OF COURT

By: _____
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 27, 2018

CASE NO.: 2D18-1512
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

As the appellant is seeking review of two related orders entered by the Lee County Court in case number 17-MM-000815, the appellant's misdemeanor case, the notice of appeal in this case 2D18-1512, along with all other filings in the case, are hereby transferred to the appellate division of the Circuit Court of the Twentieth Judicial Circuit in and for Lee County for review. The circuit court shall address all motions filed by the appellant that are not resolved in the present order, and shall in particular promptly resolve the appellant's motions for appointment of counsel. If counsel is appointed, the circuit court shall provide counsel with a copy of the present order and should allow a reasonable period of time for counsel to review the appellant's other motions. Counsel should promptly inform the circuit court of whether he or she wishes to adopt any of the motions or whether any of them should be withdrawn.

Counsel may at his or her discretion examine any jurisdictional issues raised by the appellant in his filings.

In light of this transfer, the appellant's "motion to transfer and/or consolidate interlocutory appeal with this appeal from final judgment" is denied.

LaROSE, C.J., and VILLANTI and SALARIO, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

John M. Klawikofsky, A.A.G. Scott Huminski Linda Doggett, Clerk

ks

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

July 03, 2018

CASE NO.: 2D18-1512
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

The appellant's motion to vacate order transferring case is stricken as unauthorized. This case is closed. Further motions filed in this case will be subject to being stricken without further notice.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

John M. Klawikofsky, A.A.G. Scott Huminski Linda Doggett, Clerk

ec

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA APPELLATE DIVISION

SCOTT HUMINSKI,

Appellant,

17-MM-815

vs.

TOWN OF GILBERT, A.Z. **Appellate Case No. 18-AP-3**

Appellee,

STATE OF FLORIDA, **Appellate Case No. 18-AP-9**

Appellee.

CONSOLIDATED APPEAL NO. 18-AP-3

_____/

ORDER GRANTING MOTION TO CONSOLIDATE, DIRECTING CLERK TO TRANSFER CONTENTS OF CASE NUMBER 18-AP-9 TO CASE NUMBER 18-AP-3, GRANTING LEAVE TO FILE DIRECTIONS TO THE CLERK AND DESIGNATIONS TO THE COURT REPORTER, STRIKING PRO SE MOTIONS AT REQUEST OF APPOINTED COUNSEL, AND DISMISSING MOTION TO TRANSFER TO SECOND DISTRICT COURT OF APPEAL WITHOUT PREJUDICE

THIS CAUSE comes before the Court on Appellant's "Motion to Consolidate Appeals, Strike Pro Se Motions, and Transfer Jurisdiction to Second District," filed in both of the above circuit appeals on June 5, 2018. Having reviewed the motion, the Court finds the following:

1. Both of the above circuit appeals were initiated pro se, following Appellant's prosecution in county court for misdemeanor contempt. Case number 18-AP-3 was initiated following Appellant's filing of a notice of appeal in the lower case. A second appeal was also initiated before the Second District Court of Appeal, and it was eventually transferred to circuit court on April 27, 2018, and assigned case number 18-AP-9.

2. Appellant was granted court-appointed counsel for appeal in both circuit appeal cases. Counsel was directed to inform the Court whether he wished to adopt any of the pro se

motions filed before the Second District Court of Appeal in case number 18-AP-9.

3. In the present motion, court-appointed counsel candidly states that Appellant's pro se filings and pro se attempts to initiate appeals have "made a mess of the dockets." Counsel states that although civil case number 17-CA-421 is written on Appellant's pro se filings as a lower case number, it is not the case that his appeals originate from. The *appeals* arise from a criminal contempt prosecution, which occurred under case number 17-MM-815.

4. Similarly, the caption of appeal number 18-AP-3 is incorrect as a result of the pro se filings. Because the appeal originates from the misdemeanor case, not 17-CA-421, the named Appellee should be the State of Florida.

5. Counsel further states that the notice of appeal filed in 18-AP-3 is "improper and incomplete to [initiate] appeal." However, the clerk will open a new appeal file even if a notice of appeal is improper or incomplete; moreover, an order directing Appellant to file an amended notice of appeal was rendered on March 5, 2018. An amended notice appeal was filed pro se on March 6, 2018. A cursory review of the amended notice of appeal suggests that it may still be deficient or improperly filed.

6. Counsel further states that he is not adopting any of Appellant's other pro se motions.

7. Counsel further states that Appellant did not file directions to the clerk or designations to the court reporter and that no record has been completed and filed in either 18-AP-3 or 18-AP-9.

8. Counsel requests that 18-AP-3 or 18-AP-9 be consolidated, as they are essentially appeals of the same case and same issues. Counsel requests that, after the cases are consolidated, he be granted leave to file proper directions to the clerk or designations to the court reporter, so

that the record of appeal may be prepared and filed.

9. Counsel's request to have the cases consolidated and for leave to file additional pleadings that Appellant did not or was unable to file while representing himself is granted. Counsel may also file an amended notice of appeal if necessary.

10. Furthermore, counsel asserts that an appeal of the contempt proceedings should have been filed before the Second District Court of Appeal under Puleo v. State, 109 So. 2d 39 (Fla. 2d DCA 1959), a case from nearly sixty years ago. Counsel requests that, after the record of appeal has been prepared, the case be transferred back to the district court.

11. However, this appeal was already before the Second District Court of Appeal and the Second District apparently determined that jurisdiction lies before this circuit court, leading to its transfer. If Appellant wishes to have it transferred back to the Second District, a more thoroughly argued motion for transfer is required. Should such a motion be filed, Appellee will be given the opportunity to respond. This will better assist the Court to determine if the Second District incorrectly transferred the appeal back to circuit court.

Having considered the record and the motion, it is

ORDERED AND ADJUDGED that in an effort to achieve a more efficient and expeditious determination of the issues presented, Appellant's motion to consolidate is GRANTED. The Clerk is directed to consolidate and transfer the contents of case number 18-AP-9 into case number 18-AP-3. All further pleadings shall be filed under case number 18-AP-3.

It is further **ORDERED AND ADJUDGED** that Appellant's motion to strike all remaining pro se pleadings and for leave to file directions to the clerk or designations to the court reporter is GRANTED. The pro se pleadings that were not adopted by counsel are stricken. Within the next **fifteen (15) days**, counsel may file any pleadings necessary and proper to initiate

a direct appeal of case number 17-MM-815, which may include an amended notice of appeal, directions to the clerk, or designations to the court reporter.

It is further **ORDERED AND ADJUDGED** that Appellant's motion to transfer this appeal back to the Second District Court of Appeal is DISMISSED without prejudice for Appellant to move for transfer in the future, following the filing of the record and transcripts, if he desires to do so. Appellee may be required to respond to any future motion to transfer.

ADAMS, FULLER and HAWTHORNE, JJ., concur.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the forgoing filed in the above styled case has been e-mailed/mailed to:

- **Court Administration (XXIV)**
- **State of Florida**
- **Anthony M. Candela, Esq.**

Dated: JUL 2 7 2018

LINDA DOGGETT, CLERK OF COURT

By: _____
Deputy Clerk

IN THE CIRCUIT COURT
OF THE TWENTHIETH JUDICIAL
CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA

APPELLATE DIVISION

SCOTT HUMINSKI — CASE NO.: 18-AP-3 and 18-AP-9

v.

STATE OF FLORIDA — LOWER CASE: 17-MM-815

MOTION TO WITHDRAW AS COUNSEL

COMES NOW, ANTHONY M. CANDELA, Esquire, and Candela Law Firm, PA, and hereby moves this Court for an Order granting this Motion to Withdraw as Counsel, and as grounds therefore would state as follows:

1. Irreconcilable differences have arisen between the attorney and the client that cannot be resolved amicably.
2. Regrettably, the client insists, *inter alia*, on filing unauthorized appellate pleadings with both Second District Court of Appeal and the Florida Supreme Court concerning the appeal that the undersigned was appointed to represent this client. *See* SC18-1282 (filed 6 August 2018) and 2D18-1512 (pending).
3. The client refuses to cease this behavior.
4. The unauthorized filings are creating an utter mess and confusion for this appeal at various levels of the Florida Court systems and thwarting the undersigned's ability to effectively represent the client in the appeal concerning his conviction in 17-MM-815.

5. Based on a review of the court files, it appears unauthorized or unwarranted court filings are what created the Appellant's situation in the first place.

6. The client insists on a destructive course of action.

7. As such, Anthony M. Candela, Esquire, and Candela Law Firm, P.A., are not willing to participate in "hybrid representation" with the client. *See* Logan v. State, 846 So. 2d 472 (Fla. 2003).

8. Based upon these irreconcilable differences, Anthony M. Candela, Esquire, and Candela Law Firm, PA, are no longer able to represent Scott Huminski.

9. On 6 August 2018, Mr. Huminski terminated the services of Anthony M. Candela, Esquire, and Candela Law Firm, P.A., regarding his representation.

10. The relationship has morphed into a seemingly adversarial relationship which continues to deteriorate.

11. Mr. Huminski has filed a motion to terminate counsel with the Florida Supreme Court, but not with this Court (which is the proper venue to determine the representation).

12. The undersigned is well-aware and cognizant of the fact that the undersigned has not been able to comply with this Court's order dated 27 July 2018.[1]

13. The differences dictate that Anthony M. Candela, Esquire, and Candela Law Firm, PA, to withdraw as counsel of record for the above-captioned appeal concerning Mr. Huminski.

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[1] The undersigned has not yet been appointed to 18-AP-9. Based on the undersigned's understanding of the JAC's contract, the office of regional conflict has to be appointed or the court has to find a sua sponte conflict. Nonetheless, prior to withdraw (if so granted) the trial court would need to appoint the undersigned for JAC billing purposes.

14. There is no prejudice to Mr. Huminski.

15. The undersigned takes no position regarding the appointment of further conflict counsel.

WHEREFORE, the undersigned and Candela Law Firm, PA, pray that this Honorable Court will enter an order allowing them to withdraw as counsel of record for Scott Huminski, and granting any and all such other and further relief as the Court may deem proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Withdraw has been furnished to the Office of the State Attorney, Court Administration and Mr. Scott Huminski via the Court's e-filing system on this 6th day of August 2018.

Respectfully submitted,

CANDELA LAW FIRM, P.A.
Attorney for Defendant
10312 Bloomingdale Ave Ste 108-170
Riverview FL 33578
Office: (813) 417-3645
Facsimile: (813) 330-2400

ANTHONY M. CANDELA, Esquire
Board Certified Criminal Trial
Florida Bar No: 0332010
Primary E-mail: service@candelalawfirm.com
Secondary E-mail: tony@candelalawfirm.com

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA APPELLATE DIVISION

SCOTT HUMINSKI,

Appellant,

vs.

TOWN OF GILBERT, A.Z. **Appellate Case No. 18-AP-3**

Appellee,

STATE OF FLORIDA, **Appellate Case No. 18-AP-9**

Appellee.

CONSOLIDATED APPEAL NO. 18-AP-3
Lower Case No. 17-MM-815

_____/

ORDER DISMISSING MOTION TO WITHDRAW AND DIRECTING APPELLANT TO FILE INITIAL BRIEF WITHIN TWENTY (20) DAYS

THIS CAUSE comes before the Court upon appointed counsel's "Motion to Withdraw as Counsel," filed on August 7, 2018. Having reviewed the motion and the consolidated appellate record, the Court finds that the motion fails to set forth facts showing that a true conflict of interest has arisen between Appellant and counsel. Moreover, the record reflects that Appellant has not filed any motion requesting to proceed pro se in this case. Accordingly, at this time, the motion is denied.

Furthermore, upon review of the appeal files, the Court finds that Appellant's initial brief is due. Thus, it is hereby

ORDERED AND ADJUDGED that appointed counsel's motion to withdraw is DISMISSED without prejudice.

It is further **ORDERED AND ADJUDGED** that that Appellant show cause within thirty (30) days from the date this order is rendered as to why this appeal should not be dismissed for failure to file an initial brief in compliance with Fla. R. App. P. 9.140(g). Appellant may also

comply with this order by filing an initial brief, or an Anders brief if necessary and proper, within thirty (30) days from the date this order is rendered. The briefing schedule shall thereafter proceed in accordance with Fla. R. App. P. 9.210. Failure to comply may result in dismissal without further notice pursuant to Fla. R. App. P. 9.410.

DONE AND ORDERED in Chambers at Ft. Myers, Lee County, Florida this 17th day of Aug., 2018.

Joseph C. Fuller, Jr.
Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the forgoing filed in the above styled case has been e-mailed/mailed to:

- **Court Administration (XXIV)**
- **State of Florida**
- **Anthony M. Candela, Esq.**
- **Town of Gilbert, A.Z.**

Dated: 8/22/18

LINDA DOGGETT, CLERK OF COURT

By: _____
Deputy Clerk

IN THE CIRCUIT COURT
OF THE TWENTHIETH JUDICIAL
CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA

APPELLATE DIVISION

SCOTT HUMINSKI — CASE NO.: 18-AP-3 and 18-AP-9

v.

STATE OF FLORIDA — LOWER CASE: 17-MM-815

RESPONSE TO SHOW CAUSE

COMES NOW, ANTHONY M. CANDELA, Esquire, and Candela Law Firm, PA, and hereby files this Response to Show Cause and states as follows:

1. The undersigned has been appointed[1] to prosecute the Appellant's appeal in 18-AP-3 and 18-AP-9.
2. The undersigned moved to consolidate the matters based on the limited information that the undersigned has regarding the Appellant's actions.

[1] The undersigned does not have an appropriate JAC order appointing for 18-AP-9. The undersigned fears that he is being asked to represent the Appellant *pro bono* without proper JAC appointment and what is the classification for the appointment (felony appeal, misdemeanor appeal…etc.). The JAC has no category for an appeal for direct criminal appeal and may not compensate the undersigned for the appointment (which would confiscatory). The concern for the undersigned is that this matter may not be compensable under the JAC contract and/or §27.5304, Fla. Stat.

3. This is an appeal of a conviction regarding indirect criminal contempt filed in 17-MM-815 based upon the Appellant's actions in 17-CA-412.
4. The contempt (which neither a felony nor a misdemeanor) stems apparently from the Appellant's behavior in 17-CA-421.
5. On 6 August 2018, the undersigned moved to withdraw.
6. The court failed to conduct a Nelson[2] and/or a Faretta[3] hearing in open court to address the matter.
7. The Appellant is not required to file anything disputing the matter.
8. The Appellant is entitled to effective assistance of counsel in an appeal and therefore (by operation of law both Nelson and Faretta apply). *See* Baker v. State, 877 So. 2d 856 (Fla. 2d DCA 2004) (for the proposition that appellate counsel can be ineffective for falling short on his/her constitutional responsibilities to a client).
9. On 22 August 2018, this Honorable Court denied the request without prejudice, without an evidentiary hearing, and issued an order to show cause.
10. Putting aside the Nelson/Faretta issues, when the Appellant filed his notice of appeal, he failed to file the proper paper work with the clerk as there are

[2] Nelson v. State, 274 So. 2d 256 (Fla. 4th DCA 1973)
[3] Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

no directions to the clerk and/or designations to the court reporter for transcripts filed as required by the rules of appellate procedure.

11. At this time, there is no record to review for error.

12. The Appellant filed thousands of pages of documents with the trial courts in 17-MM-815 and 17-CA-412.

13. The undersigned was not the attorney of record at the trial level in either matter and based on a visual review of the dockets cannot narrow the field of relevant matters to assist in the creation of the record.4

14. As a result, the undersigned, if asked to remain on the appeal, will require the clerk to produce the record of all the hearings, pleadings, and ruling, in their entireties.

15. The undersigned contacted the clerk's office late last month to determine when the record would be created and was informed that the clerk's office did not automatically create a record for this matter.

16. There are hundreds of entries between these dockets.

17. The undersigned has attached the dockets of these matters to this pleading to

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[4] The undersigned as appointed counsel should not have to review the docket to decide the starting point for the appeal. It would be unacceptable for actual trial counsel to not designate hearings and file directions with the clerk to at least start the process.

demonstrate and illustrate the amount of pleadings that must be reviewed to properly represent the Appellant.[5]

18. In Florida, an Appellant has a right to effective assistance of the counsel. *See* Baker, *supra*.

19. It is impossible for the undersigned to assess any issues in this case without a complete record for this appeal.[6]

20. The undersigned cannot even make a strategic decision as to which issues to raise and brief versus not brief and/or whether to file an Anders brief.

21. As of the filing of this motion, the undersigned has **no record** from any of the appealed cases to draft an initial brief on the merits.

22. Without a record, the undersigned cannot effective represent the Appellant.

23. These are extraordinary and usual matters outside the initial appointment created by the Appellant's action.

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[5] If there were a limited number of pleadings or court hearings, the undersigned might be inclined to simply draft and file the declarations and the directions, but the Appellant filed so many documents, pleadings, and things that the undersigned has no idea what might be important or even tangently important to this appeal.

[6] Based on a cursory review of the docket, the following issues are potentially viable (but without a record) the undersigned has no idea. The potential issues are: waiver of jury trial, Sixth Amendment right to counsel, waiver of counsel, waiver of the Fifth Amendment, right to represent himself, right to have counsel appointed, and the agreement between the state and bench as to the punishment pre-trial as a way to manipulate the right to counsel and/or type of trial.

24. Further, the Second District in Puleo v. State, 109 So. 2d 39 (Fla. 2d DCA 1959), explained that the proper jurisdiction for an appeal from a conviction of criminal contempt is the district court and not the circuit court. The undersigned had planned, before moving to withdraw because the Appellant terminated[7] the undersigned's representation, to move jurisdiction to the Second District based upon Puleo. *See* attached case.

25. Puelo is controlling in this matter and proper jurisdiction should be the Second District.[8]

26. The undersigned is willing to appear at an evidentiary hearing to address the motion to withdraw, Nelson, Faretta, and any other matters before this Court.

27. Based on the confidential communications and threats of profession

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[7] Without disclosing attorney-client privilege communications, the undersigned has confidential email communication with the client that where the Appellant terminates the undersigned's services. The undersigned would be inclined to present what is absolutely necessary of those documents to demonstrate and prove the matter up to the court and also protect the attorney-client privilege. The best course of action would to have an actual hearing where the Appellant can present the evidence. The undersigned is not without a sense of irony that the Appellant's pro se activities have gotten all of us into this situation, but he has a constitutional right to represent himself and refuse the appointment.

[8] Even if the matter is shipped to the Second District, that Court is going to want the lower court to address the withdraw, Nelson, and Faretta issues prior to shipping the case.

harassment, the undersigned believes that further representation would be a violation of the rules of professional ethics.

WHEREFORE, the undersigned and Candela Law Firm, PA, pray that this Honorable Court will enter an order granting any and all such other and further relief as the Court may deem proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response has been furnished to the Office of the State Attorney, Court Administration and Mr. Scott Huminski via the Court's e-filing system on this 6th day of August 2018.

Respectfully submitted,

CANDELA LAW FIRM, P.A.
Attorney for Defendant
10312 Bloomingdale Ave Ste 108-170
Riverview FL 33578
Office: (813) 417-3645
Facsimile: (813) 330-2400

ANTHONY M. CANDELA, Esquire
Board Certified Criminal Trial
Florida Bar No: 0332010
Primary E-mail: service@candelalawfirm.com
Secondary E-mail: tony@candelalawfirm.com

Lee County Clerk - Court Records Search

17-CA-000421 : Huminski, Scott et al Plaintiff vs Town of Gilbert AZ et al Defendant

Case Type:	CA Libel / Slander	Date Filed:	02/03/2017
Location:	Circuit Civil	UCN:	362017CA000421A001CH
Judge:	Michael T McHugh	Status:	Reclosed
Citation Number:	CA Libel / Slander	Appear By Date:	

Parties

Name	Type	Attorney	Atty Phone
Scott Huminski	Plaintiff		
Town of Gilbert AZ	Defendant	Steven Knox	813-387-0300
Gilbert Police Department	Defendant		
Ryan Pillar	Defendant	Steven Knox	813-387-0300
Stephanie Ameiss	Defendant	Steven Knox	813-387-0300
Jason Bentley	Defendant		
Lee County Florida	Defendant		
Lee County Sheriffs Office	Defendant	Robert Shearman	239-344-1346
Mike Scott	Defendant	Robert Shearman	239-344-1346
Brian Allen	Defendant		
City of Glendale AZ	Defendant	Steven Knox	813-387-0300
Glendale Police	Defendant		
Tracey Wood	Defendant		
scott huminski	Plaintiff		

Charge Details

Offense Date	Charge	Plea	Arrest	Disposition	Sentence

Docket Events

Date	Description	Pages
02/03/2017	Civil Cover Sheet	2
02/03/2017	Complaint	25
02/03/2017	Motion to Appoint Process Server unsigned	2
02/03/2017	Motion for Extension of Time unsigned	2

Date	Description	Pages
02/03/2017	Subpoena Submitted for Issuance - Existing Case unable to issue - no Notice of Production filed	2
02/03/2017	Certificate of Service unsigned	2
02/03/2017	Subpoena Submitted for Issuance - Existing Case unable to issue - no Notice of Production filed	2
02/03/2017	Subpoena Submitted for Issuance - Existing Case unable to issue - no Notice of Production filed	2
02/03/2017	Subpoena Submitted for Issuance - Existing Case unable to issue - no Notice of Production filed	2
02/03/2017	Subpoena Submitted for Issuance - Existing Case unable to issue - no Notice of Production filed	2
02/03/2017	Subpoena Submitted for Issuance - Existing Case unable to issue - no Notice of Production filed	2
02/03/2017	Subpoena Submitted for Issuance - Existing Case unable to issue - no Notice of Production filed	2
02/03/2017	Summons Submitted for Issuance - New Case issued	1
02/03/2017	Summons Submitted for Issuance - New Case issued	1
02/03/2017	Summons Submitted for Issuance - New Case issued	1
02/03/2017	Summons Submitted for Issuance - New Case issued	1
02/03/2017	Summons Submitted for Issuance - New Case unable to issue - 2 capacities on summons	1
02/03/2017	Motion (Emergency) for Temporary Injunction - unsigned	3
02/07/2017	Standing Order in Civil Cases	2
02/07/2017	Motion to Expedite Ruling on Temporary Injunction	2
02/09/2017	Summons Submitted for Issuance - Existing Case -Issued-	1
02/13/2017	Affidavit Scott Huminski	3
02/15/2017	Return of Service on Summons Served	1
02/25/2017	Return of Service	1
03/02/2017	Affidavit of Service	1
03/02/2017	Motion for Extension of Time	2
03/02/2017	Notice of Appearance	2
03/03/2017	Motion for Temporary Injunction	2
03/06/2017	Motion for Extension of Time	2
03/06/2017	Motion for Extension of Time	3
03/06/2017	Notice of Appearance	2
03/06/2017	Memorandum of Opposition	2

Date	Description	Pages
03/07/2017	Motion to Dismiss Defendant City of Surprise, Arizona and Defendant Surprise Police Department	10
03/07/2017	Notice of Appearance	2
03/07/2017	Motion for Leave	2
03/09/2017	Notice of Settlement Proposal	2
03/10/2017	Notice of Hearing 4/18/17 @ 9:15 am	2
03/10/2017	Motion for Leave	2
03/10/2017	Notice of Hearing 4-18-17 at 9:15am	2
03/10/2017	Motion to Enlarge Hearing Time	2
03/16/2017	Return of Service on Summons Served	2
03/20/2017	Motion for Protective Order SCRIBD, Inc	23
03/20/2017	Motion to Dismiss SCRIBD, Inc	28
03/20/2017	Motion to Quash	9
03/20/2017	Response to Motion	2
03/20/2017	Response to Motion	2
03/23/2017	Motion to Appear Telephonically	3
03/24/2017	Summons Submitted for Issuance - Existing Case alias issued	1
03/24/2017	Motion for Leave	2
03/24/2017	Affidavit Scott Huminski	3
03/24/2017	Notice of Appearance	2
03/29/2017	Motion to Dismiss Defendant Mike Scott	5
03/29/2017	Motion Defendant Mike Scott's Motion to Prohibit Plaintiff From Directly Contacting	3
03/29/2017	Notice of Hearing on 4-17-17 at 9:15am	3
03/30/2017	Amended Notice of Hearing 4/17/17 @ 9:00	3
03/30/2017	Order Granting Telephonic Hearing	1
04/01/2017	Notice consent to limit contact	2
04/04/2017	Notice of Hearing 7/31/17 @ 9:15 AM	3
04/05/2017	Response to Notice of Hearing	3

Date	Description	Pages
04/05/2017	Notice of Hearing 4/18/17 @ 10:30	2
04/05/2017	Correspondence From Scott Huminski	35
04/05/2017	Motion to Dismiss Defendant City of Glendale	10
04/07/2017	Affidavit	5
04/07/2017	Notice of Hearing 4/18/17 @ 10:30 am	3
04/08/2017	Correspondence	1
04/08/2017	Motion for Leave	1
04/08/2017	Motion for Leave	68
04/08/2017	Response to Motion Page 3 is blank	10
04/09/2017	Summons Submitted for Issuance - Existing Case issued	1
04/10/2017	Motion for Partial Summary Judgment	2
04/10/2017	Affidavit Scott Huminski	22
04/10/2017	Motion For Appointment of Pro Bono Counsel in This Civil Death Penalty Case and as an ADA Accomodation	1
04/17/2017	Minutes	1
04/18/2017	Exhibit List	1
04/18/2017	Minutes	1
04/18/2017	Minutes	1
04/18/2017	Minutes	2
04/18/2017	Voluntary Dismissal	2
04/19/2017	Motion	2
04/19/2017	Motion for Contempt	7
04/19/2017	Motion to Recuse / Page 2 Blank	24
04/20/2017	Motion to Recuse	2
04/20/2017	Notice of Joinder	3
04/20/2017	Order of Dismissal	3
04/20/2017	Order of Dismissal	3
04/22/2017	Motion to Vacate	9
04/22/2017	Notice of Filing Attached Documents copies of mail/email	72
04/26/2017	Order to Show Cause	119
04/26/2017	Certified Copy of Show Cause Order for Service handed to LCSO	0

Date	Description	Pages
04/26/2017	Order Denying Motion to Vacate	1
04/26/2017	Order Denying Motion to Recuse	1
04/26/2017	Notice of Intent	1
04/26/2017	Motion to Dismiss	1
04/26/2017	Motion for Extension of Time	3
04/26/2017	Voluntary Dismissal	1
04/26/2017	Notice of Appearance	3
04/28/2017	Order Prohibiting Contact	2
05/02/2017	Motion to Show Cause	1
05/02/2017	Affidavit of Service	1
05/09/2017	Suggestion of Bankruptcy	5
05/10/2017	Motion to Show Cause	2
05/11/2017	Notice of Appearance	3
05/12/2017	Order to Show Cause Returned Not Served	120
05/12/2017	Motion to Dismiss	9
05/25/2017	Certified Copy of Show Cause Order for Service handed to LCSO	0
05/25/2017	Minutes	1
05/25/2017	Order to Show Cause Returned Not Served	120
06/05/2017	Order to Show Cause	3
06/05/2017	Certified Copy of Show Cause Order for Service handed to LCSO	0
06/14/2017	Order to Show Cause Returned Served	3
06/26/2017	Notice of Removal to US District Court Bankruptcy Court	13
06/27/2017	Motion to Allow Service of Sheriff	16
06/28/2017	Order of Dismissal	3
06/28/2017	Objection	1
06/29/2017	Minutes	2
07/01/2017	Correspondence	15
07/02/2017	Correspondence	28
07/05/2017	Order Setting Case Management Conference (Rescheduled) to 8/15/17	1
07/05/2017	Bankruptcy Document	5
07/08/2017	Motion to Dismiss	2
07/09/2017	Notice of Taking Deposition	2
07/09/2017	Notice of Taking Deposition	2
07/11/2017	Bankruptcy Document	2
07/11/2017	Correspondence	3
07/31/2017	Minutes	1
08/01/2017	Order Denying Motion to Dismiss	1
08/02/2017	Order of Recusal	1
08/08/2017	Order of Reassignment	1

Date	Description	Pages
08/08/2017	Order Remanding Case to Circuit Court	2
08/08/2017	Order Denying Motion	2
08/09/2017	Withdrawal of Motion to Dismiss	1
08/09/2017	Motion to Vacate	1
08/09/2017	Motion to Vacate	1
08/09/2017	Motion to Vacate	1
08/14/2017	Copy of order	1
08/16/2017	Motion for Hearing	1
08/16/2017	Motion to Vacate Arraignment	1
08/16/2017	Motion For Change of Venue	1
08/23/2017	Order of Recusal	2
09/20/2017	Motion to Vacate	2
09/20/2017	Notice Of Support. Not signed	2
09/20/2017	Correspondence	4
09/22/2017	Order of Reassignment	1
09/22/2017	Notice	1
09/22/2017	Motion to Show Cause	1
09/22/2017	Motion to Transfer	2
09/23/2017	Motion for Protective Order Emergency	2
09/23/2017	Motion	2
11/27/2017	Motion to Dismiss	8
11/30/2017	Motion to Appear Telephonically	3
11/30/2017	Notice of Hearing	3
12/02/2017	Petition	17
12/02/2017	Motion for Temporary Injunction	3
12/02/2017	Motion	2
12/02/2017	Motion	4
12/04/2017	Order from DCA appellant to submit amended certificate of service within 5 days	1
12/04/2017	Order from DCA directing appellant to forward their filing fees	1
12/04/2017	Order from DCA denying appellants motion for appointment of counsel without prejudice	1
12/04/2017	Acknowledgment from DCA 2D17-4740 prohibition	1
12/07/2017	Notice of Related Cases	2
12/12/2017	Motion to Replead	5
12/12/2017	Minutes	1
12/13/2017	Order Granting Telephonic Appearance	1

Date	Description	Pages
12/16/2017	Document Filed Copy of Appeal Appendix 2	130
12/18/2017	Motion to Enjoin Orders	2
12/20/2017	Document Filed Supplement to Petition	2
12/20/2017	Order from DCA 17-4740 denying petition and supplement to petition; denying motion to stay; denying motion and supplement to motion to enjoin orders; denying motion and second motion for assistance of counsel	1
12/27/2017	Order of Dismissal	1
12/27/2017	Correspondence	7
01/04/2018	Motion	2
01/17/2018	Order from DCA denying petitioners motion for rehearing en banc	1
01/19/2018	Notice of Hearing 2/13/18 @ 2:30	4
01/19/2018	Motion to Appear Telephonically	6
01/21/2018	Motion to Vacate Protective Order	18
01/21/2018	Notice of Attorney General Concerning Corruption	3
01/22/2018	Motion Motion to Dismiss and Motion to allow Plaintiff to Opine	1
01/25/2018	Order Granting Telephonic Hearing 02/13/18 @ 2:30	3
01/25/2018	Motion for Continuance	19
01/26/2018	Motion to Vacate	4
01/26/2018	Motion for Disqualification	7
01/26/2018	Motion for Disqualification	2
01/26/2018	Motion	2
01/26/2018	Motion for Disqualification	9
01/27/2018	Motion for Disqualification	2
01/27/2018	Motion	2
01/27/2018	Motion for Continuance	1
01/27/2018	Motion to disqualify	2
01/27/2018	Motion to disqualify	39
01/28/2018	Motion for Disqualification	1
01/28/2018	Motion	2
01/28/2018	Motion to Vacate	2
01/28/2018	Motion to Vacate	2
01/28/2018	Motion	39
01/28/2018	Motion to Dismiss	2
01/28/2018	Notice of Unavailability	1

Date	Description	Pages
01/28/2018	Motion for injunction	2
01/28/2018	Motion to Remand	19
01/28/2018	Motion to refer parties to attorney general	2
01/28/2018	Motion for court to assert jurisdiction in criminal matter	2
01/28/2018	Motion to dismiss	2
01/28/2018	Motion for ADA accomadations	9
01/29/2018	Motion to Vacate or Strike 2/13/18 hearing	2
01/29/2018	Motion to Show Cause	2
01/29/2018	Motion	2
01/29/2018	Motion to Dismiss Criminal Case 17MM815 and Allow the State to Respond to Motions	2
01/29/2018	Motion	2
01/29/2018	Motion	2
01/29/2018	Motion	2
01/29/2018	Motion	2
01/29/2018	Motion to Compel	1
01/30/2018	Motion	2
01/30/2018	Motion	41
01/30/2018	Motion	3
01/30/2018	Notice	2
01/30/2018	Motion	2
01/30/2018	Motion	1
01/31/2018	Motion to Vacate	2
02/01/2018	Motion for Change of Venue	2
02/01/2018	Motion to Clarify Jurisdiction	2
02/01/2018	Motion to Transfer Case	9
02/01/2018	Motion for ADA Accomodations	8
02/01/2018	Motion to Stay	1
02/01/2018	Motion to Vacate	2
02/02/2018	Response to Motion	4
02/02/2018	Response to Notice of Unavailibity	4
02/02/2018	Response to Motion	8
02/02/2018	Response to Motion	8

Date	Description	Pages
02/02/2018	Motion to Narrow Protective order	2
02/02/2018	Motion	1
02/02/2018	Motion	1
02/03/2018	Motion to Advance	12
02/03/2018	Motion to Dismiss	2
02/03/2018	Motion to Dismiss	3
02/03/2018	Motion	1
02/03/2018	Motion for Writ of Mandamus	1
02/04/2018	Motion to Dismiss	152
02/04/2018	Motion to Dismiss	152
02/04/2018	Motion	5
02/05/2018	Order Denying Motion to Disqualify Judge	1
02/06/2018	Motion to Vacate	2
02/06/2018	Notice of Affirmative Defense	2
02/06/2018	Notice of Affirmative Defense	2
02/06/2018	Motion for Issuance of Subpoenas	2
02/06/2018	Motion for Issuance of Service	1
02/06/2018	Motion	1
02/06/2018	Motion to Disclose Specifics	1
02/06/2018	Correspondence	2
02/06/2018	Correspondence	1
02/06/2018	Motion to Disclose Statute	2
02/07/2018	Order Granting Motion to Strike Pro-se Pleadings	1
02/07/2018	Motion to Update Online Court Access	1
02/07/2018	Notice	3
02/07/2018	Motion to Issue Subpoenas	2
02/07/2018	Motion	2
02/08/2018	Notice	1
02/09/2018	Motion	2
02/09/2018	Motion for Order Mandating 6th Amendment Process	4
02/09/2018	Motion to Dismiss	1

Date	Description	Pages
02/09/2018	Motion for Appointment of Counsel	3
02/11/2018	Motion	82
02/11/2018	Motion to Dismiss	10
02/11/2018	Motion to Dismiss	15
02/11/2018	Motion for Disqualification	2
02/11/2018	Motion to Vacate	12
02/11/2018	Memorandum of Law	82
02/12/2018	Motion for Nelson Hearing	2
02/12/2018	Motion to Classify Contempt as Civil	9
02/12/2018	Motion to Re-assert all pro-se Motions	2
02/12/2018	Motion to Dismiss	2
02/12/2018	Motion for Nelson Hearing	2
02/12/2018	Notice of ADA Claims	16
02/13/2018	Notice to Dismiss	9
02/13/2018	Memorandum of Law in Support	20
02/13/2018	Minutes	1
02/13/2018	Order of Clarification	1
02/13/2018	Motion for Sanctions	5
02/14/2018	Motion to Set Nelson Hearing	3
02/14/2018	Motion to Dismiss	3
02/14/2018	Motion to Clarify	2
02/14/2018	Motion for Leave	2
02/14/2018	Motion to Stay	2
02/15/2018	Motion to Re-Assert Motions	1
02/15/2018	Motion for State to Divulge Names	1
02/15/2018	Motion to Set Findings	18
02/16/2018	Motion for Sanctions	2
02/16/2018	Motion for Hearing	2

Date	Description	Pages
02/16/2018	Motion to Dismiss	9
02/16/2018	Motion for Competency Exam	2
02/16/2018	Motion in Lieu of Issuance	2
02/16/2018	Motion to Certify Issue	2
02/16/2018	Motion to Dismiss	2
02/16/2018	Motion to Dismiss	2
02/18/2018	Notice of Appeal Set Up MM as a Non Final Appeal Filing Number 68113613 Copy Provided to the MM and CA Judges	2
02/18/2018	Notice of Appeal Set Up MM as a Non Final Appeal Filing Number 68113596 Copy Provided to the MM and CA Judges	2
02/18/2018	Application for Indigency - Existing Case Unable to Process Application is Incomplete	3
02/19/2018	Motion to Dismiss	57
02/19/2018	Memorandum of Law	8
02/19/2018	Motion to Stay	2
02/19/2018	Notice of Appeal (Amended) Set up MM as Non Final Appeal Filing Number 6814660 Copy Provided to the MM and CA Judges	3
02/20/2018	Motion for Order Concerning Appeal	2
02/20/2018	Affidavit	55
02/21/2018	Motion	2
02/21/2018	Report	1
02/21/2018	Notice of Indigency Unable to Process	3
02/21/2018	Order from DCA order dated 12/20/17 now final	1
02/22/2018	Notice of Clerk's Review	1
02/22/2018	Notice of Clerk's Review	0
02/22/2018	Notice of Clerk's Review	0
02/22/2018	Notice of Clerk's Review	0
02/22/2018	Notice of Clerk's Review	0
02/22/2018	Notice of Clerk's Review	0
02/22/2018	Notice of Clerk's Review	0
02/22/2018	Notice of Clerk's Review	0
02/22/2018	Notice of Service	8
02/22/2018	Motion to Stay	1
02/22/2018	Waiver	1
02/23/2018	Motion for Contempt	5
02/23/2018	Notice of Appeal (Amended) Amended-Supplemental Copy Provided to the MM Judge and CA Judge 2D18-804	5
02/23/2018	Notice of Contempt	2

Date	Description	Pages
02/23/2018	Notice of Contempt	3
02/26/2018	Order of Dismissal	4
02/26/2018	Notice of Appeal Copy Provided to the Judge (2DCA filed under 18-804	2
02/26/2018	Application for Indigency - Existing Case Unable to Process	3
02/26/2018	Notice of Appeal Sent to 2nd DCA the notice of appeals filed 2-18-18 and 2-19-18	0
02/27/2018	Memorandum of Law	7
02/27/2018	Motion to Dismiss	2
02/27/2018	Motion to Dismiss	2
02/27/2018	Motion to Dismiss	6
02/27/2018	Motion to Dismiss	11
02/27/2018	Notice of Appeal Amended-Supplemental Copy Provided to the Judge	1
02/27/2018	Application for Indigency - Existing Case Unable to Process	1
02/27/2018	Memorandum	3
02/28/2018	Motion to Compel the Clerk to Forward Notice of Appeal	1
03/01/2018	Motion to Dismiss	8
03/01/2018	Motion to Dismiss	20
03/01/2018	Motion to Dismiss	6
03/01/2018	Memorandum of Law	9
03/03/2018	Motion to Refer Case	2
03/05/2018	Motion to Vacate	20
03/05/2018	Acknowledgment from DCA 2D18-804	1
03/05/2018	Order from DCA 18-804 Directing Appellant to Pay the Filing Fees	1
03/05/2018	Order from DCA 18-804 Directing Appellant to File an Amended Certificate of Service	1
03/05/2018	Order from DCA 18-804 Appellant has 15 Days to Show Cause Why Appeal Should Not be Dismissed	1
03/05/2018	Motion to Dismiss	2
03/05/2018	Motion to Dismiss	2
03/06/2018	Motion to Dismiss	7
03/06/2018	Motion to Forbid Final Judgment	2
03/07/2018	Notice of Appeal Sent to 2nd DCA The Supplemental Notice of Appeals FIled 2-23-18 and 2-27-18 Under Appeal 18-804	0
03/07/2018	Notice of Appeal Sent to 2nd DCA New Notice of Appeal FIled 2-26-18 Filed Under 2D18-804	0
03/07/2018	Notice of Assertion of Right to Remain Silent at Trial	2
03/08/2018	Objection	2

Date	Description	Pages
03/08/2018	Notice of Appeal Filing Number 68966028 to the Supreme Court Copies Provided to the MM Judge and CA Judge, Sent to the Supreme Court	32
03/09/2018	Motion to Dismiss	2
03/09/2018	Motion for Sentencing	5
03/09/2018	Notice of Appeal Filing Number 69057701 To The Supreme Court Copy Provided to the MM Judge and the CA Judge	33
03/09/2018	Notice of Appeal (Amended) Filing Number 69059249 To the Supreme Court Copy Provided to the MM Judge and the CA Judge	2
03/09/2018	Motion to Consolidate	2
03/09/2018	Motion to Stay	2
03/10/2018	Motion to Stay	2
03/12/2018	Order from DCA 18-804 the Supplemental Notice of Appeal and Clarified Notice of Appeal do Not Satisfy the Order to Show Cause	1
03/13/2018	Certified Copy of Notice of Appeal and Supplemental Notice of Appeal Sent to the Supreme Court	0
03/13/2018	Notice of Appeal (Amended) to the Supreme Court Copy Provided to the Judge	3
03/15/2018	Acknowledgment of New Case With the Supreme Court SC18-403 Treat as a Writ of Prohibition	1
03/15/2018	Order from DCA 18-804 denying appellants motion to stay without prejudice to resubmit following satisfaction of fee order dated 03/05/18	1
03/16/2018	Acknowledgment from DCA 2D18-1009 prohibition	1
03/16/2018	Order from DCA 18-1009 the petitioner is insolvent for this petition	1
03/16/2018	Order from DCA 18-1009 directing petitioner to serve certificate certifying service within 15 days	1
03/18/2018	Motion for Rehearing Copy Provided to the Supreme Court	2
03/19/2018	Order Supreme Court Order Motion for Rehearing is Denied	1
03/20/2018	Notice of Appeal Supplemental Only the MM and 2DCA Case Numbers listed	2
03/21/2018	Order of Dismissal of Appeal	1
03/22/2018	Order from DCA 18-1009 denying petition for writ of prohibition; denying motion to vacate final judgment in court and to stay that matter; denying motion to vacate county court proceedings and to stay that matter; denying motion to correct/clarify filings; denying motion to appoint counsel in this proceeding	1
04/06/2018	Order from DCA Petitioners Motion for Clarification, Transfer and Emergency Motion to Stay are All Denied	1
04/06/2018	Notice of Appeal (Amended) 2DCA Treated as a New Appeal 2D18-1512 Notice of Supplemental Appeal filing number 70383485 Copy Provided to the CA Judge and the MM Judge	2

Date	Description	Pages
04/06/2018	Notice of Supplemental Notice of Appeal filing number 70382931 Copy Provided to the CA Judge and the MM Judge-2DCA Treated as a New Appeal 2D18-1512	2
04/11/2018	Notice of Appeal Sent to 2nd DCA the Two Supplemental Notice of Appeals Filed 4-6-18	0
04/17/2018	Order from DCA 18-804 Order is Now Final	1
04/19/2018	Order from DCA 18-1512 Directing Appellant to Pay the Filing Fees	1
04/19/2018	Acknowledgment from DCA Amended 2D18-1512 Indirect Criminal Contempt	1
04/19/2018	Order from DCA 18-1512 Directing Appellant to File an Amended Notice of Appeal Within 15 Days	1
04/19/2018	Acknowledgment from DCA 2D18-1512 Indirect Criminal Contempt	1
04/19/2018	Notice of Appeal (Amended) for Appeal 2D18-1512 Copy Provided to the MM Judge and CA Judge	3
04/19/2018	Notice of Appeal (Amended) Corrected for Appeal 2D18-1512 Copy Provided to the MM Judge and CA Judge	3
04/20/2018	Order from DCA 18-1512 Appellant Has 10 Days to Submit a Copy of the Order under Appeal	1
04/20/2018	Order from DCA 18-1512 Appellants Motion to Correct Caption and to Docket Filings in this Appeal is Granted	1
04/20/2018	Order from DCA 18-1512 Appellants Motion to Assign Docket Number to This Appeal from Conviction and Sentencing is Denied	1
04/23/2018	Order from DCA order dated 03/22/18 now final	1
04/23/2018	Order from DCA order dated 03/22/18 now final	1
04/23/2018	Order from DCA 18-1512 Appellant has 15 Days to Show Cause Why Appeal Should not Be Transferred	1
04/24/2018	Notice of Appeal Sent to 2nd DCA Amended and Corrected Amended for Appeal 2D18-1512 Filed 4-19-18	0
04/24/2018	Order from DCA 18-1512 Appellant Has Filed Amended Notice of Appeal and a New Proceeding is not Initiated	1
04/27/2018	Order from DCA Transferring case 2D18-1512 to Lee County Appellate Division see 18-AP-9	1
05/04/2018	Order from DCA 18-1512 Motion for Rehearing is Denied	1
05/15/2018	Order from DCA denying appellants motion to transmit order of transfer	1
05/21/2018	Referred to Collections Scott Huminski referred to Collections Agency through automated process	0
06/15/2018	Check Mailed from Civil mailed from Clerk Ops	0
07/03/2018	Order from DCA striking appellants motion to vacate order transferring case as unauthorized	1

Hearings

Date	Hearing	Time	Location	Pages
02/13/2018	Circuit Civil Court - McHugh, Michael T	2:30 PM	Courtroom 4-R	0
12/12/2017	Circuit Civil Court - McHugh, Michael T	2:30 PM	Courtroom 4-R	0
08/15/2017	CANCELED-Other Circuit Civil Court - Gentile, Geoffrey Henry	1:00 PM	Courtroom 4-H	0
07/31/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM	Courtroom 4-H	0
06/29/2017	Circuit Civil Court - Gentile, Geoffrey Henry	1:30 PM	Courtroom 4-H	0
05/25/2017	Circuit Civil Court - Gentile, Geoffrey Henry	8:30 AM	Courtroom 4-H	0
04/18/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:15 AM	Courtroom 4-H	0
04/18/2017	Circuit Civil Court - Gentile, Geoffrey Henry	10:30 AM	Courtroom 4-H	0
04/17/2017	Circuit Civil Court - Gentile, Geoffrey Henry	9:00 AM	Courtroom 4-H	0

Financial

Date	Description	Payer	Amount
02/07/2017	Charge	Scott Huminski	496.50
02/07/2017	Payment	Scott Huminski	496.50
02/09/2017	Charge	Scott Huminski	10.00
02/09/2017	Payment	Scott Huminski	10.00
03/24/2017	Charge	Scott Huminski	10.00
03/24/2017	Payment	Scott Huminski	10.00
04/09/2017	Charge	Scott Huminski	10.00
04/09/2017	Payment	Scott Huminski	10.00
02/18/2018	Charge	Scott Huminski	204.00
02/26/2018	Charge	Scott Huminski	204.00
02/27/2018	Charge	Scott Huminski	203.00
03/06/2018	Adjustment	Scott Huminski	-203.00
03/09/2018	Charge	Scott Huminski	235.00
03/09/2018	Payment	Scott Huminski	235.00
03/13/2018	Adjustment	Scott Huminski	0.00
04/20/2018	Adjustment	Scott Huminski	-100.00
04/20/2018	Adjustment	Scott Huminski	-204.00
04/20/2018	Charge	Scott Huminski	204.00
05/21/2018	Charge	Scott Huminski	26.00
05/31/2018	Charge	Scott Huminski	100.00
05/31/2018	Adjustment	Scott Huminski	-100.00
05/31/2018	Adjustment	Scott Huminski	0.00
07/23/2018	Charge	Scott Huminski	51.00
		Balance Due:	385.00

Bonds

Description	Status Date	Bond Status	Amount

Warrants

Number	Status Description	Issue Date	Service Date	Recall Date	Expiration Date	Warrant Type

Lee County Clerk - Court Records Search

17-MM-000815 : State of Florida vs Huminski, Scott A

Case Type:	Misdemeanor	Date Filed:	06/30/2017
Location:	County Criminal	UCN:	362017MM000815000ACH
Judge:	James R Adams	Status:	Closed
Citation Number:	Misdemeanor	Appear By Date:	

Parties

Name	DOB	Type	Attorney	Atty Phone
State of Florida		Plaintiff	Anthony Kunasek	239-533-1000
Scott Huminski	12/01/1959	Defendant		

Charge Details

Offense Date	Charge	Plea	Arrest	Disposition	Sentence
06/05/2017	1. CONTEMPT OF COURT CIRCUIT OR COUNTY Statute: 900.04 No Charge - No Level	3/16/2018 Pled Not Guilty		3/16/2018 Non Jury Trial - Adjudicated Guilty	

Docket Events

Date	Description	Pages
06/05/2017	Order to Show Cause Filed	3
06/29/2017	Court Minutes Filed	2
06/29/2017	Pretrial Order	0
07/10/2017	Order Filed Order on Arraignment	2
07/31/2017	Other Document Filed Notice of taking Deposition for US Bankruptcy	2
07/31/2017	Other Document Filed	7
07/31/2017	Other Document Filed	1
07/31/2017	Other Document Filed	3
07/31/2017	Correspondence Filed	2
08/01/2017	Other Document Filed	2
08/11/2017	Other Document Filed	1
08/11/2017	Other Document Filed	1
08/11/2017	Other Document Filed	1
08/11/2017	Motion Filed	2

Date	Description	Pages
08/11/2017	Correspondence Filed	2
08/11/2017	Other Document Filed	2
08/12/2017	Motion to Dismiss Filed	2
08/12/2017	Notice Filed	2
08/12/2017	Motion Filed	1
08/13/2017	Other Document Filed	3
08/13/2017	Motion Filed	5
08/13/2017	Notice Filed	2
08/14/2017	Correspondence Filed	1
08/14/2017	Notice Filed	2
08/14/2017	Motion Filed	1
08/14/2017	Order Filed of Disqualification	1
08/15/2017	Present With Attorney	0
08/15/2017	Public Defender to Evaluate	0
08/15/2017	Speedy Trial Waived	0
08/15/2017	Commitment Form Filed	2
08/15/2017	Order of Reassignment Filed	1
08/16/2017	Notice Filed	2
08/16/2017	Motion Filed	11
08/16/2017	Motion Filed	2
08/16/2017	Motion Filed	1
08/16/2017	Motion Filed	1
08/16/2017	Motion Filed	1
08/17/2017	Motion to Dismiss Filed	1
08/17/2017	Motion to Dismiss Filed	1
08/17/2017	Motion to Dismiss Filed	1
08/18/2017	Order Appointing Public Defender Filed	1
08/18/2017	Notice Filed	3
08/21/2017	Motion Filed	1
08/22/2017	Order Striking Motion Filed	1
08/22/2017	Notice Filed	2
08/22/2017	Motion Filed	2
08/22/2017	Notice Filed	3
08/23/2017	Correspondence Filed	1
08/23/2017	Notice Filed	3
08/23/2017	Motion to Strike Filed	2
08/23/2017	Notice of Hearing Filed	1
08/25/2017	Amended Notice of Hearing Filed	1
08/25/2017	Notice Filed	3
08/25/2017	Notice Filed	2
08/27/2017	Notice Filed	10
08/30/2017	Notice Filed	3
09/01/2017	Application for Indigent Status Filed	1
09/01/2017	Present With Attorney	0
09/01/2017	Public Defender to Evaluate	0
09/01/2017	Commitment Form Filed	2
09/04/2017	Motion to Strike Filed	12
09/04/2017	Notice Filed	2

Date	Description	Pages
09/06/2017	Notice of Hearing Filed	1
09/06/2017	Notice Filed	2
09/14/2017	Correspondence Filed	3
09/15/2017	Notice Filed	3
09/15/2017	Notice Filed	2
09/16/2017	Correspondence Filed	1
09/16/2017	Affidavit Filed	5
09/17/2017	Notice Filed	9
09/18/2017	Correspondence Filed	1
09/18/2017	Present With Attorney	0
09/18/2017	Motion Hearing Withdrawn- Moot	0
09/18/2017	Commitment Form Filed	2
09/20/2017	Not of Appearance/Wvr of Arrgn/Wrttn Plea NG/Dmd Disc Filed	1
09/20/2017	Motion Filed	2
09/20/2017	Notice Filed	2
09/20/2017	Correspondence Filed	4
09/21/2017	Motion Filed	2
09/21/2017	Motion Filed	2
09/21/2017	Motion Filed	2
09/21/2017	Notice Filed	2
09/21/2017	Notice Filed	1
09/22/2017	Present With Attorney	0
09/22/2017	Speedy Trial Waived	0
09/22/2017	Commitment Form Filed	1
09/22/2017	Notice Filed	1
09/22/2017	Motion Filed	1
09/22/2017	Notice of Appearance of Counsel Filed	1
09/22/2017	Motion Filed	2
09/22/2017	Stipulation and Order Filed Modify Conditions of Pretrial Release	2
09/23/2017	Motion Filed	2
09/23/2017	Motion Filed	1
09/23/2017	Motion Filed	2
09/23/2017	Motion Filed	2
09/23/2017	Motion Filed	2
09/25/2017	Motion Filed	2
09/25/2017	Motion Filed	1
09/25/2017	Other Document Filed	2
09/26/2017	Motion Filed	2
09/27/2017	Certification of Conflict of Interest Filed	1
09/27/2017	Motion Filed	1
09/27/2017	Motion Filed	2
09/29/2017	Order Allowing Withdrawal & Appoint Regional Counsel Filed	1
10/02/2017	Motion Filed	2
10/03/2017	Not of Appearance/Wvr of Arrgn/Wrttn Plea NG/Dmd Disc Filed	1
10/03/2017	Notice Filed	1
10/03/2017	Correspondence Filed	2
10/03/2017	Motion Filed	4
10/04/2017	Correspondence Filed	1
10/05/2017	Correspondence Filed	2
10/05/2017	Notice Filed	1

Date	Description	Pages
10/06/2017	Motion Filed	1
10/06/2017	Motion Filed	2
10/09/2017	Not of Appearance/Wvr of Arrgn/Wrttn Plea NG/Dmd Disc Filed	1
10/09/2017	Notice Filed	2
10/14/2017	Motion Filed	15
	To Dismiss for Want of Procedural and Substantive Due Process	
10/18/2017	Motion Filed	2
	To Disqualify Z. Miller, Esq	
10/18/2017	Correspondence Filed	5
10/19/2017	Order Filed	1
	Striking Pro Se Pleadings	
10/20/2017	Motion Filed	12
	To Vacate Pre-Trial and Protective Orders	
10/23/2017	Correspondence Filed	1
10/27/2017	Present With Attorney	0
10/27/2017	Speedy Trial Waived	0
10/27/2017	Commitment Form Filed	1
10/28/2017	Notice Filed	2
10/29/2017	Notice Filed	1
10/30/2017	Motion to Withdraw as Counsel Filed	1
11/02/2017	Notice Filed	1
11/03/2017	Notice of Hearing Filed	1
11/07/2017	Notice of Hearing Filed	1
11/13/2017	Present With Attorney	0
11/13/2017	Motion Hearing to Withdraw as Counsel- Denied	0
11/14/2017	Commitment Form Filed	2
11/15/2017	Motion to Dismiss Filed	3
	& Disqualify Counsel	
11/17/2017	Commitment Form Filed	1
11/17/2017	Speedy Trial Waived	0
11/17/2017	Present By Attorney	0
11/17/2017	Correspondence Filed	12
11/21/2017	Correspondence Filed	3
12/02/2017	Notice Filed	17
12/02/2017	Motion Filed	2
12/02/2017	Motion Filed	3
12/02/2017	Motion Filed	4
12/07/2017	Notice Filed	2
12/14/2017	Correspondence Filed	35
12/16/2017	Other Document Filed	5
12/16/2017	Other Document Filed	130
12/20/2017	Other Document Filed	2
12/20/2017	Motion to Withdraw as Counsel Filed	1
12/21/2017	Present With Attorney	0
12/21/2017	Commitment Form Filed	1
12/22/2017	Notice of Appearance of Counsel Filed	1
12/22/2017	Motion Filed	1
12/22/2017	Notice Filed	1
12/22/2017	Correspondence Filed	4

Date	Description	Pages
12/22/2017	Motion Filed	3
12/22/2017	Motion Filed	19
12/22/2017	Motion Filed	1
12/22/2017	Notice Filed	1
12/22/2017	Waiver of Arraignment	1
	Withdrawal of Waivers of Arraignment	
12/26/2017	Motion Filed	1
12/27/2017	Correspondence Filed	7
12/27/2017	Correspondence Filed	7
12/27/2017	Order Filed	2
12/28/2017	Motion Filed	1
12/28/2017	Notice Filed	1
12/28/2017	Motion Filed	3
12/29/2017	Motion Filed	2
12/29/2017	Motion Filed	1
12/29/2017	Motion Filed	6
12/29/2017	Motion Filed	5
12/29/2017	Motion Filed	2
12/29/2017	Motion Filed	2
01/01/2018	Motion to Withdraw as Counsel Filed	1
01/01/2018	Motion Filed	8
01/03/2018	Notice of Hearing Filed	1
01/03/2018	Motion Filed	3
01/04/2018	Motion to Withdraw as Counsel Filed	2
01/04/2018	Motion Filed	1
01/04/2018	Motion Filed	2
01/04/2018	Motion Filed	2
01/04/2018	Motion Filed	5
01/05/2018	Motion Filed	3
01/05/2018	Motion Filed	1
01/08/2018	Not of Appearance/Wvr of Arrgn/Wrttn Plea NG/Dmd Disc Filed	1
01/08/2018	Present With Attorney	0
01/08/2018	Commitment Form Filed	2
01/09/2018	Motion Filed	104
01/09/2018	Motion Filed	2
01/09/2018	Motion Filed	1
01/09/2018	Motion Filed	1
01/09/2018	Motion Filed	1
01/09/2018	Motion Filed	1
01/09/2018	Motion Filed	2
01/09/2018	Motion to Recuse Judge Filed	2
01/09/2018	Notice Filed	1
01/10/2018	Motion Filed	1
01/10/2018	Memorandum	1
	MEMORANDUM IN SUPPORT OF MOTION FOR SUBPOENA	
01/11/2018	Order Allowing Withdrawal Of Counsel Filed	1
	Regional Counsel	
01/12/2018	Motion Filed	1
01/12/2018	Motion Filed	1
01/12/2018	Motion Filed	1

Date	Description	Pages
01/12/2018	Motion Filed	5
01/12/2018	Motion Filed	19
01/12/2018	Motion Filed	1
01/17/2018	Motion Filed	2
01/18/2018	Order Filed Striking Notice of Appearance And Denying Requests For Appointment of Counsel	3
01/18/2018	Order Filed Dismissing Pleadings Regarding Counsel	2
01/18/2018	Order Filed Dismissing Pleadings Regarding Charging Documents And Arraignment	2
01/18/2018	Order Denying Motion Filed to Disqualify Judge	1
01/18/2018	Order Striking Motion Filed For Hearing	2
01/18/2018	Order Filed Denying in Part Motion For Records	2
01/18/2018	Order Denying Motion Filed to Disqualify Judge	1
01/18/2018	Motion Filed	1
01/18/2018	Motion Filed	2
01/18/2018	Motion Filed	1
01/18/2018	Motion Filed	1
01/18/2018	Notice Filed	1
01/19/2018	Motion Filed	39
01/19/2018	Motion Filed	2
01/19/2018	Motion Filed	2
01/19/2018	Motion Filed	1
01/19/2018	Motion Filed	1
01/19/2018	Order Denying Motion Filed to Certify Questions	1
01/19/2018	Order Filed Striking Pleadings Regarding Bankruptcy	2
01/19/2018	Motion Filed	2
01/19/2018	Notice Filed	2
01/19/2018	Notice Filed	1
01/19/2018	Motion Filed	2
01/19/2018	Motion to Dismiss Filed	2
01/19/2018	Motion Filed	2
01/19/2018	Motion Filed	2
01/19/2018	Motion Filed	1
01/19/2018	Motion Filed	1
01/19/2018	Motion Filed	2
01/19/2018	Motion Filed	42
01/19/2018	Motion Filed	2
01/21/2018	Motion Filed	2
01/21/2018	Motion Filed	2
01/21/2018	Motion Filed	2
01/21/2018	Motion Filed	2

Date	Description	Pages
01/21/2018	Motion Filed	20
01/21/2018	Notice Filed	3
01/21/2018	Motion Filed	2
01/21/2018	Motion Filed	2
01/21/2018	Motion Filed	2
01/21/2018	Motion Filed	2
01/21/2018	Notice Filed	21
01/22/2018	Motion Filed	2
01/22/2018	Motion Filed	1
01/23/2018	Motion Filed	1
01/23/2018	Motion Filed	2
01/23/2018	Motion Filed	2
01/23/2018	Motion Filed	2
01/23/2018	Motion Filed	1
01/23/2018	Motion Filed	1
01/23/2018	Motion Filed	3
01/24/2018	Motion Filed	2
01/24/2018	Motion Filed	2
01/25/2018	Order Striking Motion Filed Order Striking Motions For Subpoenas.	2
01/25/2018	Order Denying Motion Filed For Change of Venue	2
01/25/2018	Order Filed Order Striking Pleadings To Withdraw Plea And Arraignment.	2
01/25/2018	Order Denying Motion Filed For ADA Accommodations.	3
01/25/2018	Motion Filed	1
01/26/2018	Motion Filed	3
01/26/2018	Motion Filed	5
01/26/2018	Motion to Disqualify or Recuse Filed	2
01/26/2018	Motion Filed	2
01/26/2018	Motion to Disqualify or Recuse Filed	2
01/26/2018	Motion Filed	2
01/27/2018	Motion Filed	2
01/27/2018	Motion Filed	2
01/27/2018	Motion Filed	2
01/27/2018	Motion Filed	2
01/27/2018	Motion Filed	2
01/27/2018	Motion Filed	2
01/28/2018	Motion Filed	2
01/28/2018	Motion Filed	2
01/28/2018	Motion Filed	2
01/28/2018	Motion Filed	2
01/28/2018	Motion Filed	2
01/28/2018	Motion Filed	2
01/28/2018	Motion Filed	1
01/28/2018	Motion Filed	39
01/28/2018	Motion Filed	19
01/28/2018	Motion Filed	2

Date	Description	Pages
01/28/2018	Motion Filed	2
01/28/2018	Motion Filed	2
01/28/2018	Motion Filed	2
01/28/2018	Motion Filed	9
01/29/2018	Motion Filed	2
01/29/2018	Motion Filed	2
01/29/2018	Motion Filed	2
01/29/2018	Motion Filed	1
01/29/2018	Motion Filed	2
01/29/2018	Motion Filed	2
01/29/2018	Motion Filed	2
01/29/2018	Motion Filed	2
01/29/2018	Motion Filed	2
01/29/2018	Motion Filed	2
01/29/2018	Motion Filed	2
01/29/2018	Motion Filed	1
01/30/2018	Order Denying Motion for Continuance Filed	2
01/30/2018	Order Striking Motion Filed Striking Motions - To appoint counsel, Right To Counsel, For Rehearing.	2
01/30/2018	Order Denying Motion Filed To Disqualify State Attorney.	2
01/30/2018	Order Denying Motion Filed For Bill Of Particulars.	2
01/30/2018	Order Filed Order Striking Notices.	2
01/30/2018	Order Denying Motion Filed Order Denying Successive Motions.	2
01/30/2018	Order Denying Motion Filed Order Denying Motions Regarding Service And Filing.	2
01/30/2018	Order Denying Motion Filed Multiple Motions.	3
01/30/2018	Order Denying Motion Filed To Disqualify Judge.	1
01/30/2018	Order Denying Motion Filed To Stay Proceedings.	1
01/30/2018	Order Dismissing Motion Filed For Case Files.	1
01/30/2018	Order Denying Motion Filed To Disqualify Judge.	1
01/30/2018	Order Denying Motion Filed To Adopt Authority.	1
01/30/2018	Order Denying Motion Filed For Transcript Of Bankruptcy Hearing.	1
01/30/2018	Order Denying Motion Filed For Subpoena.	1

Date	Description	Pages
01/30/2018	Order Denying Motion Filed To Vacate.	1
01/30/2018	Order Denying Motion to Compel Filed	1
01/30/2018	Motion Filed	2
01/30/2018	Motion Filed	3
01/30/2018	Notice Filed	2
01/30/2018	Motion Filed	2
01/30/2018	Motion Filed	1
01/31/2018	Order Denying Motion Filed	1
02/01/2018	Order Denying Motion Filed For Hearing On Federal Removal	1
02/01/2018	Order Denying Motion Filed To Disqualify Judge.	1
02/01/2018	Order Denying Motion Filed For ADA Advocate.	1
02/01/2018	Order Denying Motion Filed To Vacate Orders And Motion To Allow State Attorney Participation.	1
02/01/2018	Motion Filed	2
02/01/2018	Motion Filed	2
02/01/2018	Motion Filed	1
02/01/2018	Motion Filed	1
02/01/2018	Notice Filed	2
02/02/2018	Order Denying Motion Filed To Disqualify Judge.	2
02/02/2018	Order Denying Motion Filed For Subpoena	1
02/02/2018	Order Filed Striking Notice Of Settlement Demand	1
02/02/2018	Motion Filed	2
02/02/2018	Notice Filed	2
02/02/2018	Motion to Dismiss Filed	2
02/02/2018	Motion Filed	1
02/02/2018	Motion to Dismiss Filed	2
02/03/2018	Motion to Dismiss Filed	3
02/03/2018	Motion to Dismiss Filed	2
02/03/2018	Petition for Writ of Mandamus Filed Copy	1
02/05/2018	Answer to Demand for Discovery Filed	3
02/06/2018	Notice Filed	2
02/06/2018	Notice Filed	2
02/06/2018	Motion Filed	2
02/06/2018	Motion Filed	2
02/06/2018	Motion Filed	1
02/06/2018	Motion Filed	1
02/06/2018	Motion Filed	2
02/06/2018	Correspondence Filed	1
02/06/2018	Confidential Documents Filed	2
02/06/2018	Motion Filed	1

Date	Description	Pages
02/07/2018	Motion Filed	1
02/07/2018	Notice Filed	3
02/07/2018	Motion Filed	2
02/07/2018	Motion Filed	2
02/09/2018	Motion Filed	2
02/09/2018	Motion Filed	4
02/09/2018	Motion Filed	1
02/09/2018	Motion Filed	3
02/10/2018	Motion Filed	3
02/11/2018	Motion Filed	10
02/11/2018	Motion Filed	15
02/11/2018	Motion Filed	2
02/11/2018	Motion Filed	12
02/11/2018	Motion Filed	82
02/12/2018	Motion Filed	9
02/12/2018	Notice Filed	16
02/12/2018	Motion Filed	2
02/12/2018	Motion Filed	2
02/12/2018	Motion Filed	2
02/12/2018	Motion Filed	2
02/13/2018	Motion Filed	9
02/13/2018	Memorandum	20
02/13/2018	Motion Filed	5
02/13/2018	Order Denying Motion to Dismiss Filed	1
02/13/2018	Order Denying Motion Filed For Sanctions	1
02/13/2018	Order Denying Motion Filed For Subpoena	1
02/13/2018	Order Denying Motion Filed Regarding Circuit Court Case	1
02/13/2018	Order Filed Denying Successive Motions	1
02/13/2018	Order Denying Motion Filed to Disqualify Judge	1
02/13/2018	Order Denying Motion Filed For Subpoena	1
02/13/2018	Order Denying Motion to Dismiss Filed Regarding Jury Trial	1
02/13/2018	Order Denying Motion to Dismiss Filed Regarding Protective Orders	1
02/13/2018	Order Denying Motion Filed Successive Motions to Appoint Counsel	1
02/13/2018	Order Denying Motion Filed Various Listed Motions	1
02/13/2018	Order Denying Motion Filed For Subpoena	1

Date	Description	Pages
02/13/2018	Order Denying Motion Filed Various Listed Motions	2
02/13/2018	Order Denying Motion Filed For Subpoena	2
02/13/2018	Order Denying Motion Filed Successive Motions- All Listed	2
02/13/2018	Order Denying Motion Filed For ADA Accommodations	2
02/13/2018	Speedy Trial Waived	0
02/13/2018	Present Without an Attorney	0
02/13/2018	Commitment Form Filed	1
02/14/2018	Motion Filed	3
02/14/2018	Motion to Dismiss Filed	1
02/14/2018	Motion Filed	3
02/14/2018	Motion Filed	2
02/15/2018	Motion Filed	1
02/15/2018	Motion Filed	2
02/15/2018	Answer to Demand for Discovery (Amended) Filed	1
02/16/2018	Motion Filed	2
02/16/2018	Motion Filed	9
02/16/2018	Motion Filed	2
02/16/2018	Motion Filed	2
02/16/2018	Motion Filed	2
02/16/2018	Motion Filed	2
02/16/2018	Motion Filed	2
02/18/2018	Notice of Appeal Filed Set Up as a Non Final Appeal Filing Number 68113613 Copy Provided to the MM Judge and CA Judge	2
02/18/2018	Notice Filed	2
02/18/2018	Notice of Appeal Filed Set Up as a Non Final Appeal Filing Number 68113596 Copy Provided to the MM Judge and CA Judge	2
02/18/2018	Notice of Filing Filed Attached Application for Criminal Indigent Status	3
02/19/2018	Notice of Appeal Filed Set Up as a Non Final Appeal Amended Filing Number 68114660 Copy Provided to the MM Judge and CA Judge	3
02/19/2018	Memorandum	8
02/19/2018	Motion Filed	2
02/19/2018	Motion Filed	57
02/20/2018	Motion Filed	2
02/20/2018	Affidavit Filed	55
02/21/2018	Motion Filed	2
02/21/2018	Notice Filed	3
02/21/2018	Other Document Filed	1
02/22/2018	Notice of Clerk's Review	1
02/22/2018	Notice of Clerk's Review	0
02/22/2018	Order Denying Motion Filed Successive Motions to Appoint Counsel	1

Date	Description	Pages
02/22/2018	Order Denying Motion Filed Regarding Circuit Court Case	1
02/22/2018	Order Denying Motion Filed Regarding Service And Filing	1
02/22/2018	Order Denying Motion Filed to Sanction Sheriff Scott	1
02/22/2018	Order Denying Motion Filed to Strike	1
02/22/2018	Motion Filed	2
02/22/2018	Notice Filed	1
02/23/2018	Notice Filed	5
02/23/2018	Other Document Filed	5
02/23/2018	Notice Filed	3
02/23/2018	Notice Filed	2
02/26/2018	Unable to Process Application is Incomplete	0
02/26/2018	Notice Filed	1
02/27/2018	Motion Filed	2
02/27/2018	Motion Filed	2
02/27/2018	Motion Filed	6
02/27/2018	Motion Filed	11
02/27/2018	Motion Filed	7
02/27/2018	Motion Filed	7
02/27/2018	Motion Filed	2
02/27/2018	Motion Filed	3
02/28/2018	Motion Filed	1
03/01/2018	Order Denying Motion Filed For Competency Examination	1
03/01/2018	Order Denying Motion Filed to Stay Proceedings	1
03/01/2018	Order Denying Motion Filed Denying Successive Motions	1
03/01/2018	Order Denying Motion Filed to Issue Bench Warrants	1
03/01/2018	Application for Indigent Status Filed	1
03/01/2018	Motion Filed	8
03/01/2018	Motion Filed	6
03/01/2018	Memorandum	9
03/01/2018	Motion Filed	20
03/02/2018	Motion Filed	1
03/03/2018	Motion Filed	2
03/05/2018	Order Filed directing appellant to file amended notice of appeal and amended affidavit of indigency within ten (10) days	3
03/05/2018	Motion Filed	20
03/05/2018	Certification of Conflict of Interest Filed	1
03/05/2018	Order Filed Striking Successive Motions	1

Date	Description	Pages
03/05/2018	Order Striking Motion Filed For State Discolsure	1
03/05/2018	Order Filed Striking Appointment of Public Defender	1
03/05/2018	Order Filed on Notices of Orders Entered After Appeal	2
03/05/2018	Motion Filed	2
03/05/2018	Motion Filed	2
03/06/2018	Present Without an Attorney	0
03/06/2018	Commitment Form Filed	1
03/06/2018	Motion Filed	2
03/06/2018	Motion Filed	7
03/06/2018	Notice of Appeal Filed Supplemental Copy Provided to the Judge and Staff Attorney	2
03/07/2018	Notice Filed	2
03/08/2018	Order from the 20th Judicial Circuit Filed 18-AP-3 Dismissing Public Defender's Emergency Motion to Strike Application and/or Motion to Withdraw as Moot	3
03/08/2018	Motion Filed	2
03/08/2018	Notice of Appeal to Supreme Court Filed Filing Number 68966028 Copy Provided to the MM Judge and CA Judge Sent to the Supreme Court	32
03/08/2018	Certificate Filed of Service Re: Notice of Appeal	1
03/09/2018	Order from the 20th Judicial Circuit Filed Declaring Defendant Indigent and Appointing Private Registry Attorney for Appeal	2
03/09/2018	Motion Filed	2
03/09/2018	Motion Filed	5
03/09/2018	Motion Filed	2
03/09/2018	Notice of Appeal to Supreme Court Filed Filing Number 69057701 Notice of Appeal To The Supreme Court Copy Provided to the MM Judge and the CA Judge	33
03/09/2018	Notice of Appeal to Supreme Court Filed Filing Number 69059249 Amended Notice of Appeal to the Supreme Court Copy Provided to the MM Judge and the CA Judge	2
03/09/2018	Motion to/for Stay Filed	2
03/10/2018	Motion Filed	2
03/12/2018	Order Striking Motion Filed Successive Motions	1
03/12/2018	Notice Filed	6
03/13/2018	Notice of Appeal to Supreme Court Filed Filing Number 69184535 Supplemental Copy Provided to the Judge	3
03/13/2018	Notice of Appeal to Supreme Court Filed Filing Number 69184328 Supplemental Copy Provided to the Judge	3
03/13/2018	Motion to/for Stay Filed Pending Appeal Disposition in the Florida Supreme Court	2
03/13/2018	Notice Filed	7
03/14/2018	Motion to Withdraw as Counsel Filed for 18-AP-3 Only	2

Date	Description	Pages
03/14/2018	Notice Filed	2
03/15/2018	Acknowledgement Filed of New Case With the Supreme Court SC18-403 Treat as a Writ of Prohibition	1
03/15/2018	Motion Filed	2
03/15/2018	Notice Filed	2
03/15/2018	Motion Filed	3
03/16/2018	Order Filed Striking Successive Motions	1
03/16/2018	Record of Exhibits Filed	2
03/16/2018	Final Disposition Filed	2
03/16/2018	Present Without an Attorney	0
03/16/2018	Motion Hearing Motion For Mistrial - Denied. Motion To Dismiss - Denied. Any Future Filings Are To Be Under The Signature Of A Licensed Attorney; No Communication With The Parties In The Civil Or Criminal Case.	0
03/16/2018	Acknowledgment of New Case - Appeal Filed 2D18-1009 prohibition civil	1
03/16/2018	Order from 2nd DCA Filed 18-1009 petitioner is insolvent for this petition	1
03/16/2018	Order from 2nd DCA Filed 18-1009 directing petitioner to serve certificate certifying service within 15 days	1
03/16/2018	Court Minutes Filed	1
03/18/2018	Motion for Rehearing Filed Copy Provided to the Supreme Court	2
03/19/2018	Order Filed Striking Notice of Proposed Settlement	1
03/19/2018	Order Denying Motion Filed to Stay Proceedings	1
03/19/2018	Order Filed On Defendant's Notice of State to 4th Amendment Appointment- Denied	1
03/19/2018	Order Denying Motion Filed to Disqualify as Legally Insufficient	1
03/19/2018	Supreme Court Order Filed Motion for Rehearing is Denied	1
03/20/2018	Order Granting Motion to Withdraw Appointing Counsel Filed Anthony M. Candela is appointed as appellant counsel	2
03/20/2018	Other Filing Number 69526746 Notice of Supplemental Notice of Appeal to the 2DCA 2D18-1009	2
03/20/2018	Notice Filed Filing Number 69526592 Notice of Appeal Supplemental Filed with the 2DCA 2D18-1009	2
03/22/2018	Order from 2nd DCA Filed 18-1009 denying petition for writ of prohibition; denying motion to vacate final judgment in court and to stay that matter; denying motion to vacate county court proceedings and to stay that matter; denying motion to correct/clarify filings; denying motions to appoint counsel in this proceeding	1
03/22/2018	Notice of Appeal Sent to 2nd DCA the Notice of Appeal Supplemental Filed 3-20-18	0
03/24/2018	Notice Filed Filing Number 69760135 Notice of Appeal Supplemental Clarified Copy Provided to the Judge	2
03/29/2018	Notice of Appeal Sent to 2nd DCA the Notice of Appeal Supplemental Clarifed Filed 3-24-18	0

Date	Description	Pages
04/05/2018	Order of Probation Filed	3
04/06/2018	Order from 2nd DCA Filed Petitioners Motion for Clarification, Transfer and Emergency Motion to Stay are All Denied	1
04/06/2018	Notice Filed Supplemental Notice of Appeal filing number 70382931 Copy Provided to the CA Judge and the MM Judge	2
04/06/2018	Notice Filed Supplemental Notice of Appeal filing number 70383485 Copy Provided to the CA Judge and the MM Judge	2
04/13/2018	Order of Probation Filed corrected	3
04/19/2018	Notice Filed Amended Notice of Appeal for Appeal 18-1512	3
04/19/2018	Notice Filed Corrected Amended Notice of Appeal for Appeal 18-1512	3
04/23/2018	Order from 2nd DCA Filed order dated 03/22/18 now final	1
04/23/2018	Order from 2nd DCA Filed order dated 03/22/18 now final	1
04/27/2018	Order from 2nd DCA Filed Transferring case 2D18-1512 to Lee County Appellate Division see 18-AP-9	1
05/04/2018	Order from 2nd DCA Filed 18-1512 Motion for Rehearing is Denied	1
05/15/2018	Order from 2nd DCA Filed 18-1512 denying appellants motion to transmit order of transfer	1
05/21/2018	Order Appointing Counsel for Appeal 18-AP-9	3
07/03/2018	Order from 2nd DCA Filed striking appellants motion to vacate order transferring case as unauthorized	1
07/26/2018	Order from the 20th Judicial Circuit Filed granting motion to consolidate; directing clerk to transfer contents from 18-AP-9 into 18-AP-3; granting leave to file directions and designations, striking pro se motions at request of appointed counsel and dismissing motion to transfer to second district court of appeal without prejudice	4
08/07/2018	Motion to Withdraw as Counsel Filed for Appeal 18-AP-3	3
08/22/2018	Order Dismissing Motion Filed to Withdraw and Directing Appellant to File Initial Brief Within Twenty Days	2

Hearings

Date	Hearing	Time	Location	Pages
04/04/2018	Supervision Instructions - Judge, Not Assigned	1:30 PM	Courtroom 5-G	0
03/16/2018	Trial - Adams, James R	8:45 AM	Courtroom 2-A	0
03/06/2018	Trial - Adams, James R	8:30 AM	Courtroom 2-A	0
02/13/2018	Trial - Adams, James R	1:00 PM	Courtroom 1-A	0
01/08/2018	Trial - Adams, James R	8:30 AM	Courtroom 2-A	0
12/21/2017	Docket Sounding - Adams, James R	8:30 AM	Courtroom 1-A	0
11/17/2017	Docket Sounding - Adams, James R	8:30 AM	Courtroom 2-A	0

Date	Hearing	Time	Location	Pages
11/13/2017	Motions - Adams, James R	2:00 PM	Courtroom 2-A	0
11/06/2017	CANCELED-Per Judge's Office Motions - Adams, James R	2:00 PM	Courtroom 3-B	0
10/27/2017	Docket Sounding - Adams, James R	8:30 AM	Courtroom 1-A	0
09/22/2017	Docket Sounding - Adams, James R	8:30 AM	Courtroom 2-A	0
09/18/2017	Motions - Adams, James R	2:00 PM	Courtroom 2-A	0
09/11/2017	CANCELED-Per Judge's Office Motions - Adams, James R	2:00 PM	Courtroom 3-B	0
09/01/2017	Docket Sounding - Adams, James R	8:30 AM	Courtroom 1-A	0
08/15/2017	Case Management Conference - Krier, Elizabeth V	1:00 PM	Courtroom 4-H	0

Financial

Date	Description	Payer	Amount
06/14/2017	Charge	Scott A Huminski	50.00
03/01/2018	Charge	Scott A Huminski	50.00
03/16/2018	Credit	Scott A Huminski	0.00
03/16/2018	Charge	Scott A Huminski	795.00
03/22/2018	Charge	Scott A Huminski	300.00
04/04/2018	Payment	Scott A Huminski	160.00
06/04/2018	Payment	Scott A Huminski	100.00
	Balance Due:		835.00

Bonds

Description	Status Date	Bond Status	Amount

Warrants

Number	Status Description	Issue Date	Service Date	Recall Date	Expiration Date	Warrant Type

Select Year: 2018 Go

The 2018 Florida Statutes

Title V JUDICIAL BRANCH | Chapter 27 STATE ATTORNEYS; PUBLIC DEFENDERS; RELATED OFFICES | View Entire Chapter

27.5304 Private court-appointed counsel; compensation; notice.—

(1) Private court-appointed counsel shall be compensated by the Justice Administrative Commission as provided in this section and the General Appropriations Act. The flat fees prescribed in this section are limitations on compensation. The specific flat fee amounts for compensation shall be established annually in the General Appropriations Act. The attorney also shall be reimbursed for reasonable and necessary expenses in accordance with s. 29.007. If the attorney is representing a defendant charged with more than one offense in the same case, the attorney shall be compensated at the rate provided for the most serious offense for which he or she represented the defendant. This section does not allow stacking of the fee limits established by this section.

(2) The Justice Administrative Commission shall review an intended billing by private court-appointed counsel for attorney fees based on a flat fee per case for completeness and compliance with contractual and statutory requirements. The commission may approve the intended bill for a flat fee per case for payment without approval by the court if the intended billing is correct. An intended billing that seeks compensation for any amount exceeding the flat fee established for a particular type of representation, as prescribed in the General Appropriations Act, shall comply with subsections (11) and (12).

(3) The court retains primary authority and responsibility for determining the reasonableness of all billings for attorney fees, costs, and related expenses, subject to statutory limitations. Private court-appointed counsel is entitled to compensation upon final disposition of a case.

(4)(a) The attorney shall submit a bill for attorney fees, costs, and related expenses within 90 days after the disposition of the case at the lower court level, notwithstanding any appeals. The Justice Administrative Commission shall provide by contract with the attorney for imposition of a penalty of:

1. Fifteen percent of the allowable attorney fees, costs, and related expenses for a bill that is submitted more than 90 days after the disposition of the case at the lower court level, notwithstanding any appeals;

2. For cases for which disposition occurs on or after July 1, 2010, 50 percent of the allowable attorney fees, costs, and related expenses for a bill that is submitted more than 1 year after the disposition of the case at the lower court level, notwithstanding any appeals; or

3. For cases for which disposition occurs on or after July 1, 2010, 75 percent of the allowable attorney fees, costs, and related expenses for a bill that is submitted more than 2 years after the disposition of the case at the lower court level, notwithstanding any appeals.

(b) For purposes of this subsection, the term "disposition" means:

1. At the trial court level, that the court has entered a final appealable judgment, unless rendition of judgment is stayed by the filing of a timely motion for rehearing. The filing of a notice of appeal does not stay the time for submission of an intended billing; and

2. At the appellate court level, that the court has issued its mandate.

(5) The compensation for representation in a criminal proceeding shall not exceed the following:

(a) For misdemeanors and juveniles represented at the trial level: $1,000.

(b) For noncapital, nonlife felonies represented at the trial level: $6,000.

(c) For life felonies represented at the trial level: $9,000.

(d) For capital cases represented at the trial level: $25,000. For purposes of this paragraph, a "capital case" is any offense for which the potential sentence is death and the state has not waived seeking the death penalty.

(e) For representation on appeal: $9,000.

(6) For compensation for representation pursuant to a court appointment in a proceeding under chapter 39:

(a) At the trial level, compensation for representation for dependency proceedings shall not exceed $1,000 for the first year following the date of appointment and shall not exceed $200 each year thereafter. Compensation shall be paid based upon representation of a parent irrespective of the number of case numbers that may be assigned or the number of children involved, including any children born during the pendency of the proceeding. Any appeal, except for an appeal from an adjudication of dependency, shall be completed by the trial attorney and is considered compensated by the flat fee for dependency proceedings.

1. Counsel may bill the flat fee not exceeding $1,000 following disposition or upon dismissal of the petition.

2. Counsel may bill the annual flat fee not exceeding $200 following the first judicial review in the second year following the date of appointment and each year thereafter as long as the case remains under protective supervision.

3. If the court grants a motion to reactivate protective supervision, the attorney shall receive the annual flat fee not exceeding $200 following the first judicial review and up to an additional $200 each year thereafter.

4. If, during the course of dependency proceedings, a proceeding to terminate parental rights is initiated, compensation shall be as set forth in paragraph (b). If counsel handling the dependency proceeding is not authorized to handle proceedings to terminate parental rights, the counsel must withdraw and new counsel must be appointed.

(b) At the trial level, compensation for representation in termination of parental rights proceedings shall not exceed $1,000 for the first year following the date of appointment and shall not exceed $200 each year thereafter. Compensation shall be paid based upon representation of a parent irrespective of the number of case numbers that may be assigned or the number of children involved, including any children born during the pendency of the proceeding. Any appeal, except for an appeal from an order granting or denying termination of parental rights, shall be completed by trial counsel and is considered compensated by the flat fee for termination of parental rights proceedings. If the individual has dependency proceedings ongoing as to other children, those proceedings are considered part of the termination of parental rights proceedings as long as that termination of parental rights proceeding is ongoing.

1. Counsel may bill the flat fee not exceeding $1,000 30 days after rendition of the final order. Each request for payment submitted to the Justice Administrative Commission must include the trial counsel's certification that:

a. Counsel discussed grounds for appeal with the parent or that counsel attempted and was unable to contact the parent; and

b. No appeal will be filed or that a notice of appeal and a motion for appointment of appellate counsel, containing the signature of the parent, have been filed.

2. Counsel may bill the annual flat fee not exceeding $200 following the first judicial review in the second year after the date of appointment and each year thereafter as long as the termination of parental rights proceedings are still ongoing.

(c) For appeals from an adjudication of dependency, compensation may not exceed $1,000.

1. Counsel may bill a flat fee not exceeding $750 upon filing the initial brief or the granting of a motion to withdraw.

2. If a brief is filed, counsel may bill an additional flat fee not exceeding $250 upon rendition of the mandate.

(d) For an appeal from an adjudication of termination of parental rights, compensation may not exceed $2,000.

1. Counsel may bill a flat fee not exceeding $1,000 upon filing the initial brief or the granting of a motion to withdraw.

2. If a brief is filed, counsel may bill an additional flat fee not exceeding $1,000 upon rendition of the mandate.

(7) Counsel entitled to receive compensation from the state for representation pursuant to court appointment in a proceeding under chapter 384, chapter 390, chapter 392, chapter 393, chapter 394, chapter 397, chapter 415,

chapter 743, chapter 744, or chapter 984 shall receive compensation not to exceed the limits prescribed in the General Appropriations Act.

(8) A private attorney appointed in lieu of the public defender or the criminal conflict and civil regional counsel to represent an indigent defendant may not reassign or subcontract the case to another attorney or allow another attorney to appear at a critical stage of a case who is not on the registry developed under s. 27.40.

(9) Private court-appointed counsel representing an individual in an appeal to a district court of appeal or the Supreme Court may submit a request for payment to the Justice Administrative Commission at the following intervals:

(a) Upon the filing of an appellate brief, including, but not limited to, a reply brief.

(b) When the opinion of the appellate court is finalized.

(10) Private court-appointed counsel may not bill for preparation of invoices.

(11) It is the intent of the Legislature that the flat fees prescribed under this section and the General Appropriations Act comprise the full and complete compensation for private court-appointed counsel. It is further the intent of the Legislature that the fees in this section are prescribed for the purpose of providing counsel with notice of the limit on the amount of compensation for representation in particular proceedings.

(a) If court-appointed counsel moves to withdraw prior to the full performance of his or her duties through the completion of the case, the court shall presume that the attorney is not entitled to the payment of the full flat fee established under this section and the General Appropriations Act.

(b) If court-appointed counsel is allowed to withdraw from representation prior to the full performance of his or her duties through the completion of the case and the court appoints a subsequent attorney, the total compensation for the initial and any and all subsequent attorneys may not exceed the flat fee established under this section and the General Appropriations Act, except as provided in subsection (12).

This subsection constitutes notice to any subsequently appointed attorney that he or she will not be compensated the full flat fee.

(12) The Legislature recognizes that on rare occasions an attorney may receive a case that requires extraordinary and unusual effort.

(a) If counsel seeks compensation that exceeds the limits prescribed by law, he or she must file a motion with the chief judge for an order approving payment of attorney fees in excess of these limits.

1. Before filing the motion, the counsel shall deliver a copy of the intended billing, together with supporting affidavits and all other necessary documentation, to the Justice Administrative Commission.

2. The Justice Administrative Commission shall review the billings, affidavit, and documentation for completeness and compliance with contractual and statutory requirements. If the Justice Administrative Commission objects to any portion of the proposed billing, the objection and supporting reasons must be communicated in writing to the private court-appointed counsel. The counsel may thereafter file his or her motion, which must specify whether the commission objects to any portion of the billing or the sufficiency of documentation, and shall attach the commission's letter stating its objection.

(b) Following receipt of the motion to exceed the fee limits, the chief judge or a single designee shall hold an evidentiary hearing. The chief judge may select only one judge per circuit to hear and determine motions pursuant to this subsection, except multicounty circuits and the eleventh circuit may have up to two designees.

1. At the hearing, the attorney seeking compensation must prove by competent and substantial evidence that the case required extraordinary and unusual efforts. The chief judge or single designee shall consider criteria such as the number of witnesses, the complexity of the factual and legal issues, and the length of trial. The fact that a trial was conducted in a case does not, by itself, constitute competent substantial evidence of an extraordinary and unusual effort. In a criminal case, relief under this section may not be granted if the number of work hours does not exceed 75 or the number of the state's witnesses deposed does not exceed 20.

2. The chief judge or single designee shall enter a written order detailing his or her findings and identifying the extraordinary nature of the time and efforts of the attorney in the case which warrant exceeding the flat fee established by this section and the General Appropriations Act.

(c) A copy of the motion and attachments shall be served on the Justice Administrative Commission at least 5 business days before the date of a hearing. The Justice Administrative Commission has standing to appear before the court, including at the hearing under paragraph (b), to contest any motion for an order approving payment of attorney fees, costs, or related expenses and may participate in a hearing on the motion by use of telephonic or other communication equipment. The Justice Administrative Commission may contract with other public or private entities or individuals to appear before the court for the purpose of contesting any motion for an order approving payment of attorney fees, costs, or related expenses. The fact that the Justice Administrative Commission has not objected to any portion of the billing or to the sufficiency of the documentation is not binding on the court.

(d) If the chief judge or a single designee finds that counsel has proved by competent and substantial evidence that the case required extraordinary and unusual efforts, the chief judge or single designee shall order the compensation to be paid to the attorney at a percentage above the flat fee rate, depending on the extent of the unusual and extraordinary effort required. The percentage must be only the rate necessary to ensure that the fees paid are not confiscatory under common law. The percentage may not exceed 200 percent of the established flat fee, absent a specific finding that 200 percent of the flat fee in the case would be confiscatory. If the chief judge or single designee determines that 200 percent of the flat fee would be confiscatory, he or she shall order the amount of compensation using an hourly rate not to exceed $75 per hour for a noncapital case and $100 per hour for a capital case. However, the compensation calculated by using the hourly rate shall be only that amount necessary to ensure that the total fees paid are not confiscatory.

(e) Any order granting relief under this subsection must be attached to the final request for a payment submitted to the Justice Administrative Commission.

(f) For criminal cases only, if the court orders payment in excess of the flat fee established by law, fees shall be paid as follows:

1. The flat fee shall be paid from funds appropriated to the Justice Administrative Commission in the General Appropriations Act.

2. The amount ordered by the court in excess of the flat fee shall be paid by the Justice Administrative Commission in a special category designated for that purpose in the General Appropriations Act.

3. If, during the fiscal year, all funds designated in the special category for payment under subparagraph 2. of the amount ordered by the court in excess of the flat fee are spent, the amount of payments in excess of the flat fee shall be made from the due process contingency funds, or other funds as necessary, appropriated to the Justice Administrative Commission in the General Appropriations Act.

(g) The Justice Administrative Commission shall provide monthly to the Office of the State Courts Administrator data concerning the number of cases approved for compensation in excess of the flat fee and the amount of these awards by circuit and by judge. The Justice Administrative Commission shall report the data quarterly in an electronic format to the chairs of the legislative appropriations committees and the Office of the State Courts Administrator.

[1](13) Notwithstanding the limitation set forth in subsection (5) and for the 2018-2019 fiscal year only, the compensation for representation in a criminal proceeding may not exceed the following:

(a) For misdemeanors and juveniles represented at the trial level: $1,000.

(b) For noncapital, nonlife felonies represented at the trial level: $15,000.

(c) For life felonies represented at the trial level: $15,000.

(d) For capital cases represented at the trial level: $25,000. For purposes of this paragraph, a "capital case" is any offense for which the potential sentence is death and the state has not waived seeking the death penalty.

(e) For representation on appeal: $9,000.

(f) This subsection expires July 1, 2019.

History.—s. 20, ch. 2003-402; s. 11, ch. 2004-265; s. 4, ch. 2005-236; s. 11, ch. 2007-62; s. 9, ch. 2010-162; s. 4, ch. 2012-123; s. 2, ch. 2013-216; s. 3, ch. 2014-49; s. 4, ch. 2014-59; ss. 63, 64, ch. 2016-62; s. 23, ch. 2017-71; s. 37, ch. 2018-10.

[1]**Note.**—Section 37, ch. 2018-10, amended subsection (13) "[i]n order to implement Specific Appropriation 772 of the 2018-2019 General Appropriations Act."

COURT-APPOINTED ATTORNEY FLAT RATES BY CASE TYPE*
APPOINTMENT DATE JULY 1, 2016 THROUGH JUNE 30, 2018

REGISTRY CATEGORY	CASES INCLUDED IN CATEGORY	FLAT FEE
CAPITAL	1ST Degree Murder (Lead Counsel)	$25,000
	1ST Degree Murder (Co- Counsel)	$25,000
	Capital Sexual Battery	$4,000
	Capital (Non-Death other than Capital Sexual Battery)	$15,000
CRIMINAL-RICO	Felony – Life (RICO)	$9,000
	Felony – Punishable by Life (RICO	$6,000
	Felony 1st Degree (RICO)	$5,000
CRIMINAL	Felony – Noncapital Murder	$15,000
	Felony – Life	$5,000
	Felony – Punishable by Life	$2,500
	Felony – 1st Degree	$1,875
	Felony – 2nd Degree	$1,250
	Felony – 3rd Degree	$935
	Violation of Probation – Felony (include VOCC)	$625
	Misdemeanor	$500
	Criminal Traffic	$500
	Felony or Misdemeanor (No Information filed)	$500
	Violation of Probation – Misdemeanor (includes VOCC)	$375
	Contempt Proceedings	$500
	Extradition	$625
DELINQUENCY	Juvenile Delinquency – Felony Life	$875
	Juvenile Delinquency – 1st Degree Felony	$750
	Juvenile Delinquency – 2nd Degree Felony	$500
	Juvenile Delinquency – 3rd Degree Felony	$375
	Juvenile Delinquency – Misdemeanor	$375
	Juvenile Delinquency – (Direct File or No Information Filed)	$375
	Violation of Probation– Juvenile Delinquency (includes VOCC)	$375
POST-CONVICTION	Rules 3.850 and 3.800 at trial and appellate level (also includes postconviction petitions for habeas corpus and petitions for belated appeal)	$1,250
CAPITAL APPEALS	Capital Appeals	$9,000
CRIMINAL APPEALS	Felony Appeals	$1,875
	Juvenile Delinquency Appeals	$1,250
	Misdemeanor Appeals	$935
DEPENDENCY & TPR	Dependency – Up to 1 Year	$800
	Dependency – Each year after 1st year	$200
	Dependency – Reactivation of Protection Supervision – Up to 1 Year	$200
	Dependency – No Petition Filed or Dismissed at Shelter	$200
	Termination of Parental Rights – Ch. 39, F.S., Up to 1 year	$1,000
	Termination of Parental Rights– Ch. 39, F.S., Each year after 1st	$200

DEPENDENCY & TPR	Termination of Parental Rights – Ch. 63, F.S., Up to 1 year	$1,000
	Termination of Parental Rights – Ch. 63, F.S., Each year after 1st	$200
	Dependency – Children with Certain Special Needs – Up to 1 Year	$1,000
	Dependency – Children with Certain Special Needs – Each Year After 1st Year	$1,000
DEPENDENCY & TPR APPEALS	Dependency Appeals	$1,000
	Dependency Appeals – No brief filed due to lack of issues that could be raised on appeal (withdrawal granted)	$750
	TPR Appeals	$2,000
	TPR Appeals – No brief filed due to lack of issues that could be raised on appeal (withdrawal granted)	$1,000
GUARDIANSHIP	Guardianship – Ch. 744, F.S.	$400
	Guardianship – Emergency Ch. 744, F.S.	$400
BAKER/MARCHMAN ACT	Baker/Mental Health – Ch. 394, F.S.	$400
	Marchman Act/Substance Abuse – Ch. 397, F.S.	$300
OTHER CHILDREN'S CIVIL	CINS/FINS – Ch. 984, F.S.	$750
	Emancipation – Section 743.015, F.S.	$400
	Parental Notification of Abortion Act	$400
OTHER ADULT CIVIL	Adult Protective Services – Ch 415, F.S.	$500
	Developmentally Disabled Adult – Ch 393, F.S.	$400
OTHER CIVIL HEALTH	Admission of Inmate to Mental Health Facility	$300
	Medical Procedures – Section 394.459(3), F.S.	$400
	Tuberculosis – Ch. 392, F.S.	$300
CIVIL APPEALS	Civil Appeals	$400

*The flat rates for appointments on or after July 1, 2007 are set forth in the General Appropriations Act (GAA) for each fiscal year. The state's fiscal year commences on July 1st and concludes on June 30th. The GAA for each fiscal year is available on the Department of State's website at http://laws.flrules.org/. The applicable flat fee is determined by the flat fee in effect on the date of appointment.

History.— lines 776 & 780, ch. 2016-66, L.O.F.

109 So.2d 39
District Court of Appeal of Florida, Second District.

Sam PULEO, Petitioner,
v.
STATE of Florida, Respondent.

No. 901.
|
Feb. 6, 1959.
|
Rehearing Denied March 5, 1959.

Synopsis

Contempt proceedings in which party was adjudged in contempt of court by the Criminal Court of Record of Hillsborough County, and an appeal was taken to the Circuit Court of Hillsborough County, L. L. Parks, J., where appeal was dismisses on jurisdictional grounds and petition for certiorari was filed. The District Court of Appeal, Allen, J., held that an appeal from ouder adjudging petitioner guilty of contempt of court should have been taken to the second District Court of Appeal and not to the Circuit Court.

Petition denied.

West Headnotes (1)

[1] **Contempt**
Nature and form of remedy and jurisdiction
Contempt
Right of review and parties

93Contempt
93IIPower to Punish, and Proceedings Therefor
93k66Appeal or Error
93k66(1)Nature and form of remedy and jurisdiction
93Contempt
93IIPower to Punish, and Proceedings Therefor
93k66Appeal or Error
93k66(4)Right of review and parties

Where party was adjudged guilty of contempt by the Criminal Court of Record of Hillsborough County he could appeal from such order, but appeal should have been to the second District Court of Appeal and not to the Circuit Court.

F.S.A.Const. art. 5, §§ 4(b), 5(c) as amended in 1956; F.S.A. § 775.07.

2 Cases that cite this headnote

Attorneys and Law Firms

***40** John B. Minardi, Fred C. Barksdale, Tampa, for petitioner.

Richard W. Ervin, Atty. Gen., Reeves Bowen, Asst. Atty. Gen., and James M. McEwen, State's Atty., Tampa, for respondent.

Opinion

ALLEN, Judge.

Sam Puleo was adjudged in contempt of court by the Judge of the Criminal Court of Record of Hillsborough County and was ordered to serve six months in the county jail of Hillsborough County, Florida. An appeal was taken to the Circuit Court of the 13th Judicial Circuit of the State of Florida, in and for Hillsborough County, Florida. The circuit court entered an order on the 6th day of August, 1958, dismissing the appeal on jurisdictional grounds, and from this order, a petition for certiorari was filed in this court.

The petitioner states the point involved as follows:
'Does the Circuit Court, in and for Hillsborough County, Florida, have appellate jurisdiction to consider an appeal form the Criminal Court of Hillsborough County, Florida, from a conviction of contempt of court?'

Section 38.22, Florida Statutes, F.S.A., authorizes every court to punish contempts against it, whether such contempts be direct, indirect, or constructive, and in any such proceeding the court is authorized to proceed to hear and edtermine all questions of law and fact. The punishment imposed by a justice of the peace is limited to a fine of $20 or imprisonment of twenty-four hours, but no limitation appears upon the extent of punishment in other courts.

Chapter 932, Section 3, Florida Statutes, F.S.A., provides:
'Said counts, in the exercise of their criminal jurisdiction

may punish for contempts as in the exercise of their civil jurisdiction, and the criminal courts of record shall possess, in this respect, the same powers as the circuit courts.'

The theory of the petitioner in this case is that since the judge of the criminal court of record limited the sentence to six months in jail, a sentence comparable to that often given for conviction of a misdemeanor, the circuit court would have jurisdiction on the appeal. This contention would be more logical if the court had had jurisdiction to mete out punishment for contempt not exceeding the punishment under our statute for misdemeanors, but such is not the case in this State. Many of our criminal statutes authorize the court, in felony cases, to sentence one convicted thereunder either to jail, to the state penitentiary, or to pay a fine. Among such statutes are F.S.A. § 799.01, relating to bigamy, and F.S.A. § 798.01 and § 798.02, relating to adultery and to lewd and lascivious conduct.

Justification for the petitioner's position can be found in various cases outside of the State of Florida, but in such cases studied by this court, either the State Constitution or state statutory law provides the menthod for appeal. For insance, in the case of Cannon v. State, 1936, 58 Okl.Cr. 451, 55 P.2d 135, 138, the Court said:
'Section 25 of the Bill of Rights (article 2) abrogates the doctrine that proceedings to punish for contempts are sui generis. There is perhaps no other state with a Constitution containing a provision similar to this provision. So it may be said that this contitutional provision is sui generis.'

In the case of Holt v. McLaughlin, 1948, 357 Mo. 844, 210 S.W.2d 1006, 1007, it was held that there could be no appeal from a ***41** judgment rendered on a finding of guilty of contempt in a proceeding for criminal contempt. The Court, in its opinion, said:
'And contempts may partake of both civil and criminal nature. Carder v. Carder, supra [Mo.App., 61 S.W.2d 388]. The contempt involved in the case of State ex rel. Chicago, B. & Q. R. Co. v. Bland, supra [189 Mo. 197, 88 S.W.2d 28], is an example. In that case one Gildersleeve had been adjudged guilty of contempt in the circuit court for violating an order enjoining him from engaging in a particular business. The injunction order had been entered by the circuit court for the protection of the rights of relator who was plaintiff in the circuit court injunction proceeding. The contempt judgment was remedial and primarily for the benefit of relator with the purpose of preventing defendant's future encroachments upon the rights of relator as protected by the injunction order. So the contempt was primarily civil in nature and, although the judgment in the contempt proceeding also involved the dignity of the court below and was in that respect criminal, the contempt judgment was held appealable.'

The Court further stated that since no provision was made for an appeal by statute for a criminal contempt, a full review of such proceedings would be afforded by habeas corpus.

In Florida Cent. & P. R. Co. v. Williams, 1903, 45 Fla. 205, 33 So. 991, 992, the supreme Court held that an appeal would not lie from an order of the circuit court merely imposing fine for contempt for the violation of an injunction granted in a chancery cause. The Court, in its opinion, said:
'In Caro v. Maxwell, 20 Fla. 17, it was held that an appeal does not lie from an order of the circuit court imposing a fine for a contempt in violating an injunction. The question was directly involved in the case, and many authorities are cited to sustain the proposition. In Palmer v. Palmer, 28 Fla. 295, text 300, 9 So. 657, 658, the court refers to the rule announced in Caro v. Maxwell, and says: 'We may remark that, where the judgment is void as for want of jurisdiction of the court, the remedy is by habeas corpus, and where it is merely irregular or erroneous there is no appeal or other right of review. Church on Habeas Corpus, c. 23. Judgments for contempt cannot be reviewed by appeal or writ of error for mere irregularity or error. They can be assailed only for illegality, and this, it seems, must be by habeas corpus. In Ex parte Senior, 37 Fla. 1, 19 So. 652, 32 L.R.A. 133, it was held that habeas corpus is an appropriate remedy for testing the question of the jurisdiction of a circuit court to punish a witness for contempt in refusing to answer questions. There the case of Caro v. Maxwell is again referred to as holding that a contempt order will not be reviewed on appeal or writ of error. See, also, Ex parte Edwards, 11 Fla. 174. The clear effect of these decisions is to hold that an order adjudging a party guilty of contempt cannot be reviewed by any other court for mere errors or irregularities, that generaly no appeal lies form such an order, but that the question of jurisdiction to make it can be inquired into by writ of habeas corpus; and our habeas corpus statute (section 1775, Rev.St.1892 [F.S.A. § 79.06]) seems to recognize habeas corpus as an appropriate remedy, by declaring the extent of the relief to be granted where the party is imprisoned for contempt. There has been no statutory extension of the right of appeal since these decisions were rendered, and we must hold that the appeal here taken comes within the rule annouced in ***42** Caro v. Maxwell, and must therefore be dismissed.

'There are cases which hold that where contempt

proceedings are resorted to in the ordinary course of chancery practice as a means of enforcing the payment of money decreed to a complainant, or to compel the performance of some act required by a decree to be done for his benefit, an appeal will lie from the decree made therein. To this class of cases Sanchez v. Sanches, 21 Fla. 346, may be assigned. * * *'

In McCall v. Lee, 1913, 66 Fla. 14, 62 So. 902, the Court held that an appeal would not lie from an order punishing a party for contempt for a violation of an injunction granted in a chancery case, and the remedy, if any, would be habeas corpus for an illegal imprisonment.

The State forcibly argues that contempt is not a crime even though certain contempts are designated by the courts as criminal in nature. It states:
'* * * Instead of being a crime, contempt is 'sui generis' and it is not strictly either civil or criminal even though courts have classified them as 'civil' and 'criminal.' We quote from Dangel on Contempt, page 5, Section 12 (a text cited with approval by the Supreme Court of Florida in Lewis v. Lewis, 78 So.2d 711, 712):

"Proceedings for contempt are *sui generis* (of their own class) in their nature and *not strictly* either civil or criminal, as those terms are commonly used. But courts have classified and termed them, 'civil' and 'criminal.'"

The proper forum for review of contempt orders in Florida and elsewhere has been a matter of deep concern, as will be seen from the following citation: 12 Am.Jur., Contempt, § 80, page 445, which is as follows:
'The general rule at common law does not permit a proceeding for contempt to be revised by a higher court upon an appeal or writ of error. The right of review in this country, however, has gradually been extended by either statute or judicial decision until now generally a judgment in contempt can be appealed from by appeal or error proceedings, habeas corpus, or prohibition. * * *'

See also 6 Fla.Jur., Contempt, § 58, page 616; 4 F.L.P., Contempt § 27, page 623; and also an excellent article on 'Contempt of Court in Florida,' 9 Miami L.Q. page 281, et seq.

In Miller v. Miller, 1926, 91 Fla. 82, 107 .so. 251, the Supreme Court of Florida held that an appeal would not lie from a commitment or fine for violation, or for refusal to comply with, an order of the court made in due course and within the jurisdiction of the court. In Jones v. King , 1935, 120 Fla. 87, 162 So. 353, it was held that habeas corpus proceedings afforded the only proper remedy.

In Seaboard Air Line Ry. v. Tampa Southern Ry., 1931, 101 Fla. 468, 134 So. 529, the apparent holding was to the effect that civil contempt actions were reviewable, but provably not so in criminal contempt actions.

In Pennekamp v. Circuit Court, etc., 1945, 155 Fla. 589, 21 So.2d 41, the Court held that a contempt proceeding was criminal in nature and that appeal, not certiorari, would be the proper method to review a contempt judgment imposing only a fine as punishment since habeas corpus was not an applicable remedy where the judgment did not detain the contemnors. In this case, John D. Pennekamp and the Miami Herald Publishing Company were found in contempt of court, and doubting the proper method to obtain review, they entered an appeal and also applied for a writ of certiorari. In its decision, the Court said:
***43** 'We are without precedent in Florida on this question, inasmuch as we have reviewed no judgment in contempt like this. The rule is, that ordinarily certiorari will not lie where there is another adequate remedy. Kilgore v. Bird, 149 Fla. 570, 6 So.2d 541.

'Heretofore we have reviewed judgments in contempt by habeas corpus. Such remedy is not applicable to this case inasmuch as the judgment does not detain the appellants. Contempt proceedings are criminal in nature. Rule 37 of this Court provides that appeals shall be taken in criminal cases in conformity to Section 290, Florida Criminal Procedure Act, F.S.A. § 924.11.

'We hold that appeal is the proper method to review the judgment. The motion to dismiss the appeal is denied.'

In the case of South Dade Farms v. Peters, Fla.1956, 88 So.2d 891, 899, a petition for certiorari was filed in the Supreme Court seeking reversal of a contempt decree in a proceeding in the Circuit Court of Dade County where the petitioners were adjudged in contempt of court. In its opinion, the Supreme Court said:
'This leads us then to a consideration of the classes of contempt and some of the distinctions between the recognized classes. We take note of the fact that at the initial hearing on the response to the rule to show cause in the case before us, it was ruled by the trial judge that this was a civil contempt proceeding. The matter was tried on that basis. The distinction between civil and criminal contempt is of some consequence. The differences are clearly delineated by the Supreme Court of the United States in Gompers v. Buck's Stove & Range Co., supra [221 U.S. 418, 31 S.Ct. 492, 55 L.Ed. 797], and are recognized by this court in Seaboard Air Line R. Co. v.

Tampa Southern R. Co., supra. Fundamentally, a criminal contempt proceeding is between the public and the defendant. It is not directly a part of the original cause. It involves punishment for an offense against the court itself as distinguished from the commission of an act in derogation of the rights of a party to the cause. A civil contempt proceeding naturally involves in some measure a transgression against the dignity of the court and the prestige of its order, however, it is in actuality a proceeding between the parties to the cause and is instituted and tried as a part of the main case. It should be considered more nearly in the nature of a civil proceeding between the parties, and to the extent appropriate rules governing civil causes should apply. When a judgment or decree in favor of one party is disregarded or violated by another party to the injury of the former, it is then appropriate for the injured party to call upon the court to exercise its contempt powers in the enforcement of its decrees for the benefit of the party in whose favor the decree has been entered.

'This court very early in its history in some measure recognized the inherent power of a court of equity to assess damages in favor of an injured party to be paid by a party violating a decree. Se Ex parte Edwards, 11 Fla. 174. We are of the view that in a proper case there is adequate precedent to support the imposition of a 'compensatory fine' in civil contempt proceedings.'

In the case of Alger v. Peters, Fla.1956, 88 So.2d 903, it was noted that the contempt decree imposing the 'compensatory fine' was interlocutory in nature, that the appropriate method of obtaining review thereof was by petition for writ of certiorari but that direct appeal from the decree would, under applicable statute, be regarded by the reviewing court as a petition for certiorari.

***44** The Pennekamp case, supra, held that in the case of a fine in criminal contempt, appeal was proper since habeas corpus would not lie. After the holding of the Supreme Court of Florida in the Pennekamp case, the apparent result was that in civil contempt, appeal would be available as an appellate remedy as it would also be in the case of fine for criminal contempt, since habeas corpus would not be available in the case of a fine as it was where confinement was the result of a contempt order.

In the case of State ex rel. Mitchell v. Kelly, Fla.1954, 71 So.2d 887, 897, the Supreme Court decided the validity of a contempt order where the petitioner was sentenced, in a habeas corpus proceedings. Judge Barns, in a special concurring decision, stated:
'This habeas corpus proceeding instituted in this court is a collateral attack on a judgment of criminal contempt. The judgment is final in its nature and the appropriate method of procuring review is by appeal. The necessity of resort to habeas corpus no longer exists.'

See Ex parte Senior, 1896, 37 Fla. 1, 19 So. 652, 32 L.R.A. 133; Pennekamp v. Circuit Court of Dade County, 1945, 155 Fla. 589, 21 So.2d 41.

In Clein v. State, Fla.1950, 52 So.2d 117, an appeal was taken by Clein, who had refused to reveal the sources to a grand jury of certain information he had printed, and he was held in contempt and ordered to confinement, from which he appealed. The record does not reveal whether any attack was made by the State on the procedure followed, so apparently, the appeal was acceptable.

From a review of the later cases decided by the Supreme Court of Florida, we reach the conclusion that appeal is proper in contempt cases.

We pass from the propriety of the use of appeal to a determination of the question of whether appeal should have been taken to the Second District Court of Appeal instead of the Circuit Court of Hillsborough County. We have heretofore stated that the appeal was taken in 1958, therefore subsequent to July 1, 1957, the effective date of Article V of the Constitution of the State of Florida, adopted November 6, 1956, F.S.A.

The appellate jurisdiction of the circuit court is found in Article V, Section 6(c), and is as follows:
'* * * They shall have final appellate jurisdiction in all civil and criminal cases arising in the county court, or before county judges' courts, of all misdemeanors tried in criminal courts of record, and of all cases arising in municipal courts, small claims courts, and courts of justices of the peace. The circuit courts and judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction.'

The jurisdiction of the district courts of appeal, as set forth in art. V, Section 5(c), is as follows:
'Appeals from trial courts in each appellate district, and from final orders or decrees of county judge's courts pertaining to probate matters or to estates and interests of minors and incompetents, may be taken to the court of appeal of such district, as a matter of right, from all final judgments or decrees except those from which appeals may be taken direct to the supreme court or to a circuit court.'

The jurisdiction of the Supreme Court set forth in art. V, Section 4(b), is as follows:
'Appeals from trial courts may be taken directly to the supreme court, as a matter of right, only from judgments ***45** imposing the death penalty, from final judgments or decrees directly passing upon the validity of a state statute or a federal statute or treaty, or construing a controlling provision of the Florida ro federal constitution, and from final judgments or decrees in proceedings for the validation of bonds and certificates of indebtedness. The supreme court may directly review by certiorari interlocutory orders or decress passing upon chancery matters which upon a final decree would be directly appealable to the supreme court. In all direct appeals and interlocutory reviews by certiorari, the supreme court shall have such jurisdiction as may be necessary to complete determination of the cause on review.'

It will be observed from the foregoing enumeration of appellate powers given to the Supreme Court, to the courts of appeal and to the circuit courts, that all appeals from trial courts must be taken to the courts of appeal unless, under the Constitution, such appeal may be taken direct to the Supreme Court or to a circuit court.

There is no question but that the Criminal Court of Record of Hillsborough County is a trial court. It is clear that the appeal could not be taken to the Supreme Court of the State. The appellate jurisdiction of the circuit court with reference to appeals from the criminal court of record is limited to 'all misdemeanors tried in criminal courts of record.'

We had before us in the case of State v. J. K., Fla.App.1958, 104 So.2d 113, the question of whether an appeal from the juvenile court should be taken to the circuit court or to the Second District Court of Appeal, and we held that, as we construed a juvenile court to be a trial court, under the applicable provisions of the Constitution, appeal would lie to the district court of appeal.

The State, in its reply brief in the instant case, cogently answers the contention of the petitioner that the trial of the petitioner before the Judge of the Criminal Court of Record of Hillsborough County was a trial of a misdemeanor. It states:
'The contempt charged against the petitioner in the Criminal Court of Record was that he attempted to influence a juror in that court. What if he had been convicted in the Circuit Court, of Hillsborough County for attempting to influence a juror in that court? Would the petitioner claim that he had been convicted of a misdemeanor despite said Circuit Court's lack of jurisdiction to try misdemeanors? The Circuit Court undoubtedly has the jurisdiction and authority to convict a person for such a contempt, but it has no jurisdiction over misdemeanors. It necessarily follows that contempt is not a misdemeanor. And what of a contempt committed against a District Court of Appeal or against the Supreme Court, each of which has the unquestionable power to convict for contempt but neither of which has trial jurisdiction over misdemeanors. The fact that the Circuit Court, a District Court of Appeal and the Supreme Court all have jurisdiction over contempts committed against them, coupled with the fact that neither of them has jurisdiction to try misdemeanors, is conclusive of the fact that contempt is not a misdemeanor.'

In the case of Ex parte Crews, 1937, 127 Fla. 381, 173 So. 275, the Supreme Court, in effect, held that F.S.A. § 775.07 is not applicable to contempts. In this case Crews was sentenced by the circuit court to serve 120 days in the county jail for contempt of that court. He contended that he could not be imprisoned for more than 90 days. The Supreme Court held that there was no such limitation on the time which a circuit court could sentence a party to jail for contempt.

In Demetree v. State, Fla.1956, 89 So.2d 498, 501, the Supreme Court stated that the courts are clothed with power to punish ***46** contempt without the necessity of referring the issues to another tribunal or to a jury in the same tribunal.

The Supreme Court of the United States, in Myers v. United States, 264 U.S. 95, 104, 105, 44 S.Ct. 272, 273, 68 L.Ed. 577, 580, said:
'While contempt may be an offense against the law and subject to appropriate punishment, certain it is that since the foundation of our government proceedings to punish such offenses have been regarded as sui generis and not 'criminal prosecutions' within the Sixth Amendment or common understanding.'

For the reasons above stated, we hold that the appeal should have been taken to the Second District Court of Appeal and not to the circuit court.

Petition for certiorari denied.

KANNER, C. J., and SHANNON, J., concur.

All Citations

109 So.2d 39

End of Document

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA Cases

Plaintiff, **17-MM-000815** 1 CONTEMPT OF COURT CIRCUIT OR COUNTY

-vs.-
Scott A Huminski
A.K.A.

Defendant.

WARRANT

In the name of the State of Florida, to ALL and Singular the Law Enforcement Officers of the State of Florida:

Whereas the Affiant/Probation Officer has this day made oath before the above Notary, State of Florida, in and for Lee County, Florida, the Defendant in aforementioned Affidavit has not properly conducted self but has violated the conditions of probation in a material respect as set forth in the attached Affidavit.

Therefore you are hereby commanded to arrest instanter the aforesaid Scott A Huminski Defendant, and bring Defendant before me to be dealt with according to law.

Given under my hand and seal this 29th day of AUGUST, A.D., 2018.

Adams, James R
County Court Judge

Maria E Wendel
Officer's signature

Officer's sentencing recommendation: Serve 45 day suspended sentence, credit 0 days; Revoke and Terminate Probation

☐ Notice to Appear
☐ ROR
☐ Pretrial Supervision
☐ Bond set at $ _____
☐ Custody status to be set by First Appearance Judge
☑ No bond
Extradition Instructions: Florida Only

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CRIMINAL ACTION
STATE OF FLORIDA

Plaintiff, 17-MM-000815

-vs.-
Scott A Huminski
A.K.A.

Defendant,

IDENTIFING DATA:

Original - Copy	Clerk's Office	Race:	White	Sex:	Male	SSN:	[redacted]	HT:	5 Ft. 10 In.	WT:	
	Probation Office	DOB:	12/01/1959	Eyes		Hair:					
		Employer:	Disabled								
		Home:	24544 Kingfish STREET Bonita Springs FL 34134								

DEFENDANT PHOTO:

RECEIVED:	EXECUTED:
Lee County Sheriff's Office warrants unit received on	Office of the Sheriff, Lee County executed this warrant on
_____, 20_____	_____, 20_____
_____ ☐ a.m. ☐ p.m.	By: _____ D.S. ID #: _____

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA **CRIMINAL ACTION**
STATE OF FLORIDA Cases

Plaintiff, **17-MM-000815** 1 CONTEMPT OF COURT CIRCUIT OR COUNTY

-vs.-

Scott A Huminski
A.K.A.

AFFIDAVIT

Before me, the Undersigned Notary, in and for Lee County, Florida, came the Undersigned Probation Officer who, being first duly sworn, says that above defendant appeared in aforesaid Court, which Court placed the Defendant on probation in accordance with the provisions of Florida State Law, said probation under supervision of the Lee County Probation Department, Affiant further states the aforesaid Defendant has not properly conducted self, but has violated the Court's Order of Probation in a material respect by violating the following conditions:

CONDITION 2, which states, "You will pay the Clerk of Court the amount of $50.00 per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes," in that, the Probationer was determined delinquent in Cost of Supervision in the amount of $40.00 as of 8-24-2018.

CONDITION 14, which states, "You will pay Fine and Court Costs totaling $745.00 within 5 months; or may convert Fine and Costs to community service at the rate of $10.00 per hour and perform 75 hours," in that, the Probationer failed to pay Fine and Costs by date ordered, balance owed $745.00, or failed to show proof of completion of community service hours, balance remaining 75 hours as of 8-24-2018.

CONDITION 15, which states, "You will pay a Cost of Prosecution totaling $50.00" in that, the Probationer failed to pay Cost of Prosecution, balance owed $50.00.

Sworn to and subscribed before me
This 27th day of August, 2018

Probation Officer
Maria E Wendel

(Signature of Notary Public – State of Florida)

PAMELA LIMES
Commission # FF 056243
Expires February 1, 2020
Bonded Thru Troy Fain Insurance 800-385-7019

(Print, Type or Stamp Commission name of Notary Public)
Personally Known {X } or Produced Identification { }

Type of Identification Produced:_____

IN THE CIRCUIT COURT
OF THE TWENTHIETH JUDICIAL
CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA

APPELLATE DIVISION

SCOTT HUMINSKI — CASE NO.: 18-AP-3 and 18-AP-9

v.

STATE OF FLORIDA — LOWER CASE: 17-MM-815

MOTION FOR EVIDENTIARY HEARING

COMES NOW, ANTHONY M. CANDELA, Esquire, and Candela Law Firm, PA, and hereby files this Motion for Evidentiary Hearing and states as follows: ***Incorporated by reference is the undersigned's 6 August 2018 response to order to show cause.**

1. The undersigned has been appointed[1] to prosecute the Appellant's appeal in 18-AP-3 and 18-AP-9.

[1] The undersigned does not have an appropriate JAC order appointing for 18-AP-9. The undersigned fears that he is being asked to represent the Appellant *pro bono* without proper JAC appointment and what is the classification for the appointment (felony appeal, misdemeanor appeal…etc.). The JAC has no category for an appeal for direct criminal appeal and may not compensate the undersigned for the appointment (which would confiscatory). The concern for the undersigned is that this matter may not be compensable under the JAC contract and/or §27.5304, Fla. Stat.

2. The undersigned moved to consolidate the matters based on the limited information that the undersigned has regarding the Appellant's actions.
3. This is an appeal of a conviction regarding indirect criminal contempt filed in 17-MM-815 based upon the Appellant's actions in 17-CA-412.
4. The contempt (which neither a felony nor a misdemeanor) stems apparently from the Appellant's behavior in 17-CA-421.
5. On 6 August 2018, the undersigned moved to withdraw.[2]
6. The court failed to conduct a Nelson[3] and/or a Faretta[4] hearing in open court to address the matter.
7. The Appellant is not required to file anything disputing the matter.[5]
8. In SC18-1282, the Appellant, *pro se*, filed Withdraw of Motion to Appoint Anthony Candela, Esq. and Motion to Appont (sic) Non-Conflicted Counsel on 6 August 2018.
9. The Appellant's *pro se* motion to the Florida Supreme Court alleges *inter*

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[2] The client has discharged the undersigned and, therefore, the undersigned must withdraw pursuant to the rules. *See* Rules Regulating the Florida Bar, Rule 4-1.16(a)(2).
[3] Nelson v. State, 274 So. 2d 256 (Fla. 4th DCA 1973)
[4] Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).
[5] Mr. Huminksi opened some type of action at the Florida Supreme Court, SC2018-1282 and has filed a half dozen nonsensical documents with that Court that are not part of this appeal.

alia that the undersigned is "hopelessly conflicted" and "endorses a manufactured show cause order" and that the undersigned "has supported this borderline criminal behavior and will engage on fraud upon the Court with regard to this very illegal document."

10. The Appellant is entitled to effective assistance of counsel in an appeal and therefore (by operation of law both Nelson and Faretta apply). *See* Baker v. State, 877 So. 2d 856 (Fla. 2d DCA 2004) (for the proposition that appellate counsel can be ineffective for falling short on his/her constitutional responsibilities to a client).

11. On 22 August 2018, this Honorable Court denied the request without prejudice, without an evidentiary hearing, and issued an order to show cause.

12. Putting aside the Nelson/Faretta issues, when the Appellant filed his notice of appeal, he failed to file the proper paper work with the clerk as there are no directions to the clerk and/or designations to the court reporter for transcripts filed as required by the rules of appellate procedure.

13. At this time, there is no record to review for error.

14. The Appellant filed thousands of pages of documents with the trial courts in 17-MM-815 and 17-CA-412.

15. The undersigned **was not** the attorney of record at the trial level in either

matter and has no first-hand knowledge regarding the original contempt.

16. Further, based on a visual review of the dockets, it is nearly impossible for the undersigned to narrow the field of relevant documents to review to assist in the creation of the record.[6]

17. As a result, the undersigned, if Ordered to remain on the appeal, will require the clerk to produce the record of all the hearings, pleadings, and ruling, in their entireties as well as any and all transcripts for the undersigned to complete this appeal.

18. The undersigned contacted the clerk's office in July to determine when the record would be created and was informed that the clerk's office did not automatically create a record for this matter based on the nature of the appeal (which the undersigned did not understand).

19. There are hundreds of entries between these dockets.

20. The undersigned has previously attached the dockets of these matters to this pleading to demonstrate and illustrate the amount of pleadings that must be reviewed to properly represent the Appellant.[7]

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[6] The undersigned as appointed counsel should not have to review the docket to decide the starting point for the appeal. It would be unacceptable for actual trial counsel to not designate hearings and file directions with the clerk to at least start the process.

[7] If there were a limited number of pleadings or court hearings, the undersigned

21. In Florida, an Appellant has a right to effective assistance of the counsel. *See* Baker, *supra*.

22. It is impossible for the undersigned to assess any issues in this case without a complete record for this appeal.[8]

23. The undersigned cannot even make a strategic decision as to which issues to raise, brief, and argue versus not brief and/or whether to file an Anders brief.

24. As of the filing of this motion, the undersigned has **no record** from any of the appealed cases to draft an initial brief on the merits.

25. Without a record, the undersigned cannot effective represent the Appellant.

26. These are extraordinary and usual matters outside the initial appointment created by the Appellant's action.

27. Further, the Second District in Puleo v. State, 109 So. 2d 39 (Fla. 2d DCA 1959), explained that the proper jurisdiction for an appeal from a conviction of criminal contempt is the district court and not the circuit court. The

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might be inclined to simply draft and file the declarations and the directions, but the Appellant filed so many documents, pleadings, and things that the undersigned has no idea what might be important or even tangently important to this appeal.

[8] Based on a cursory review of the docket, the following issues are potentially viable (but without a record) the undersigned has no idea. The potential issues are: waiver of jury trial, Sixth Amendment right to counsel, waiver of counsel, waiver of the Fifth Amendment, right to represent himself, right to have counsel appointed, and the agreement between the state and bench as to the punishment pre-trial as a way to manipulate the right to counsel and/or type of trial.

undersigned had planned, before moving to withdraw because the Appellant terminated[9] the undersigned's representation, to move jurisdiction to the Second District based upon Puleo. *See* attached case.

28. Puelo is controlling in this matter and proper jurisdiction should be the Second District for the direct appeal (unless Puelo is rescinded by the Second District).[10]

29. The undersigned is willing to appear at an evidentiary hearing to address the motion to withdraw, Nelson, Faretta, the need for a record, and any other matters before this Court.

30. Based on the confidential communications and threats of profession harassment, the undersigned believes that further representation would be a violation of the rules of professional ethics.

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[9] Without disclosing attorney-client privilege communications, the undersigned has confidential email communication with the client that where the Appellant terminates the undersigned's services. The undersigned would be inclined to present what is absolutely necessary of those documents to demonstrate and prove the matter up to the court and also protect the attorney-client privilege. The best course of action would to have an actual hearing where the Appellant can present the evidence. The undersigned is not without a sense of irony that the Appellant's pro se activities have gotten all of us into this situation, but he has a constitutional right to represent himself and refuse the appointment.

[10] Even if the matter is shipped to the Second District, that Court is going to want the lower court to address the withdraw, Nelson, and Faretta issues prior to shipping the case.

WHEREFORE, the undersigned and Candela Law Firm, PA, pray that this Honorable Court will enter an order granting any and all such other and further relief as the Court may deem proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response has been furnished to the Office of the State Attorney, Court Administration and Mr. Scott Huminski via the Court's e-filing system on this 11th day of September 2018.

Respectfully submitted,

CANDELA LAW FIRM, P.A.
Attorney for Defendant
10312 Bloomingdale Ave Ste 108-170
Riverview FL 33578
Office: (813) 417-3645
Facsimile: (813) 330-2400

ANTHONY M. CANDELA, Esquire
Board Certified Criminal Trial
Florida Bar No: 0332010
Primary E-mail: service@candelalawfirm.com
Secondary E-mail: tony@candelalawfirm.com

In The

Florida Supreme Court

IN RE:	)	
SCOTT HUMINSKI,	)	Number: SC18-1282
PETITIONER	)	
	)	Related 2 DCA case
	)	HUMINSKI V. STATE,
	)	2D18-1512

NOTICE OF RETENTION OF APPELLATE COUNSEL

NOW COMES, Scott Huminski ("Huminski"), and, notices of retention of Prestige Law Group for a limited appearance of all matters after disposition of the motions/issues already pled in the matter.

Prestige Law Group PLLC.

8290 Gate Parkway West 119

Jacksonville, FL 32216 United States (888) 277-8523

Dated at Bonita Springs, Florida this 14th day of September, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Services

Copies of this document and any attachment(s) was NOT served because contact with the litigants in Huminski's criminal case is barred via the sentence in the criminal matter. Huminski's sentencing order constitutes a prior restraint upon service of this document known as obstruction of justice in a criminal context, dated this 14th day of September, 2018.

-/s/- Scott Huminski

Scott Huminski

Supreme Court of Florida

WEDNESDAY, SEPTEMBER 26, 2018

CASE NO.: SC18-1282
Lower Tribunal No(s).:
2D18-1512;
362017CA000421A001CH;
362017MM000815000ACH

SCOTT HUMINSKI vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

Because petitioner has failed to show a clear legal right to the relief requested, he is not entitled to mandamus relief. Accordingly, the petition for writ of mandamus is hereby denied. *See Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000). Petitioner's "Emergency Motion to Stay 20th Circuit Appeals, 18-AP-3, 18-AP-9," "Emergency Motion to Expedite Rulings on Ex Parte Motions - Obstruction of Justice," "Emergency Motion for Order to Show Cause Why Requested Relief Should Not be Granted – Potential of Violence, Injury, or Death," and "Motion for Temporary Restraining Order/Stay Re: 20th Circuit Court, Lee County Court" are hereby denied. All other pending motions or requests for relief are denied without prejudice to petitioner seeking relief in the appropriate court. No rehearing will be entertained by this Court.

PARIENTE, QUINCE, POLSTON, LABARGA, and LAWSON, JJ., concur.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

db
Served:

C. SUZANNE BECHARD
SCOTT HUMINSKI
HON. MARY BETH KUENZEL, CLERK
HON. LINDA DOGGETT, CLERK

In The

Second District Court of Appeals

IN RE:	)	
SCOTT HUMINSKI,	)	Number: 2D18-3856
PETITIONER	)	
Trial Courts:	)	Related 2 DCA case
20TH CIR. 17-CA-421	)	HUMINSKI V. STATE,
LEE COUNTY 17-MM-815	)	2D18-1512

NOTICE OF PETITION IN 2 DCA and
NOTICE OF PAYMENT OF DCA FILING FEE VIA THE E-FILING PORTAL

NOW COMES, Scott Huminski ("Huminski"), and, notices as above.

Dated at Bonita Springs, Florida this 27th day of September, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Second District Court of Appeals

IN RE:	)	
SCOTT HUMINSKI,	)	Number:
PETITIONER	)	
Trial Courts:	)	Related 2 DCA case
20TH CIR. 17-CA-421	)	HUMINSKI V. STATE,
LEE COUNTY 17-MM-815	)	2D18-1512

MOTION FOR APPOINTMENT OF COUNSEL AND TO WAIVE FILING FEE – PETITIONER IS INDIGENT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because Huminski has appointed counsel in the appeal before the 20th Circuit related to these matters and in 2D18-1512, Huminski's indigence was found by this Court and Huminski's indigence was confirmed by the Florida Supreme Court in August of 2018 in 18SC-1282.

Dated at Bonita Springs, Florida this 27th day of September, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Second District Court of Appeals

IN RE:	)	
SCOTT HUMINSKI,	)	Number:
PETITIONER	)	
Trial Courts:	)	Related 2 DCA case
20TH CIR. 17-CA-421	)	HUMINSKI V. STATE,
LEE COUNTY 17-MM-815	)	2D18-1512

MOTION TO STAY ORDER OF CONVICTION

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because the order of conviction mandates that Huminski not communicate with parties involved in the criminal and civil cases prohibiting service in this matter. Bedrock First Amendment rights are violated by a wildly over-broad prior restraint such as this. Florida's Due Process rights are also implicated by this communication prohibition. See order attached preventing service in this matter,

"communication with parties in the civil or criminal cases.".

Dated at Bonita Springs, Florida this 27th day of September, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Second District Court of Appeals

IN RE:	)	
SCOTT HUMINSKI,	)	Number: 2D18-3856
PETITIONER	)	
Trial Courts:	)	Related 2 DCA case
20TH CIR. 17-CA-421	)	HUMINSKI V. STATE,
LEE COUNTY 17-MM-815	)	2D18-1512

NOTICE OF PETITION IN 2 DCA and
NOTICE OF PAYMENT OF DCA FILING FEE VIA THE E-FILING PORTAL

NOW COMES, Scott Huminski ("Huminski"), and, notices as above.

Dated at Bonita Springs, Florida this 27th day of September, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

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-/s/- Scott Huminski

Scott Huminski

In The

Second District Court of Appeals

IN RE:	)	
SCOTT HUMINSKI,	)	Number:
PETITIONER	)	
Trial Courts:	)	Related 2 DCA case
20TH CIR. 17-CA-421	)	HUMINSKI V. STATE,
LEE COUNTY 17-MM-815	)	2D18-1512

MOTION FOR APPOINTMENT OF COUNSEL AND TO WAIVE FILING FEE – PETITIONER IS INDIGENT

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because Huminski has appointed counsel in the appeal before the 20th Circuit related to these matters and in 2D18-1512, Huminski's indigence was found by this Court and Huminski's indigence was confirmed by the Florida Supreme Court in August of 2018 in 18SC-1282.

Dated at Bonita Springs, Florida this 27th day of September, 2018.

-/S/- Scott Huminski

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24544 Kingfish Street
Bonita Springs, FL 34134
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S_huminski@live.com

Certificate of Service

Copies of this document and any attachment(s) was NOT served because contact with the litigants in Huminski's criminal case is barred via the sentence in the criminal matter. Huminski's sentencing order constitutes a prior restraint upon service of this document known as obstruction of justice in a criminal context, dated this 27th day of September, 2018.
-/s/- Scott Huminski

Scott Huminski

In The

Second District Court of Appeals

IN RE:	)	
SCOTT HUMINSKI,	)	Number:
PETITIONER	)	
Trial Courts:	)	Related 2 DCA case
20TH CIR. 17-CA-421	)	HUMINSKI V. STATE,
LEE COUNTY 17-MM-815	)	2D18-1512

MOTION TO STAY ORDER OF CONVICTION

NOW COMES, Scott Huminski ("Huminski"), and, moves as above because the order of conviction mandates that Huminski not communicate with parties involved in the criminal and civil cases prohibiting service in this matter. Bedrock First Amendment rights are violated by a wildly over-broad prior restraint such as this. Florida's Due Process rights are also implicated by this communication prohibition. See order attached preventing service in this matter,

"communication with parties in the civil or criminal cases.".

Dated at Bonita Springs, Florida this 27th day of September, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
24544 Kingfish Street
Bonita Springs, FL 34134
(239) 300-6656
S_huminski@live.com

Certificate of Service

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-/s/- Scott Huminski

Scott Huminski

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 02, 2018

CASE NO.: 2D18-3856
L.T. No.: 17-CA-421,
17-MM-815

SCOTT HUMINSKI	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

As the fee was received today, Petitioner's motion to accept filing fee is denied as moot.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa Scott Huminski Linda Doggett, Clerk

ec

Mary Elizabeth Kuenzel
Clerk

In The

Second District Court of Appeals

IN RE:	)	
SCOTT HUMINSKI,	)	Number: 18-3856
PETITIONER	)	
Trial Courts:	)	Related 2 DCA case
20TH CIR. 17-CA-421	)	HUMINSKI V. STATE,
LEE COUNTY 17-MM-815	)	2D18-1512

NOTICE OF SUPPLEMENTAL AUTHORITES RE:1ST AMENDMENT RETALIATION & SERVICE OF PROCESS PROHIBITION

NOW COMES, Scott Huminski ("Huminski"), and, notices as above and attaches amicus briefs in NIEVES v. BARTLETT, U.S. Supreme Court, 17-1174, in support of Huminski's motion to stay the gag order preventing service in this matter. More generally, this matter involves charging Huminski with crimes for exercise of his First Amendment rights, a theme central to the attached briefs – *First Amendment retaliation*. Criminalizing core protected speech with lifetime prohibitions exceeds the alleged constitutional violations set forth in the attached briefs.

Neives has been described by media as a "contempt of cop" case and has a nexus to the legal theories involved in the indirect criminal contempt case below. Lifetime prohibition of speech with the State of Florida and local law enforcement is an unlawful punishment exceeding the facts in Neives. Exercise of core protected political expression is not contempt.

Dated at Bonita Springs, Florida this 15th day of October, 2018.

-/S/- Scott Huminski

Scott Huminski, pro se
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(239) 300-6656
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Certificate of Service

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-/s/- Scott Huminski

_____

Scott Huminski

No. 17-1174

IN THE

Supreme Court of the United States

LUIS A. NIEVES AND BRYCE L. WEIGHT,
Petitioners,

v.

RUSSELL P. BARTLETT,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE FIRST AMENDMENT FOUNDATION AND FANE LOZMAN AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

The First Amendment Foundation is a nonprofit organization dedicated to promoting government openness and transparency throughout Florida, at both the state and local government levels. In addition to working with volunteers to audit government compliance with open meetings, public records, and other "sunshine" laws, the Foundation educates government officials, journalists, and the public about citizens' rights to obtain information from their governments. The Foundation also operates a hotline to answer questions about open government laws, handling more than 150 inquiries per month. Some of these inquiries come from members of the public expressing concerns about government retaliation or intimidation after exercising their right to request information.

A number of the Foundation's members have reported facing intimidation or retaliation for exercising their First Amendment rights. For instance, one member told the Foundation that she submitted a public records request at a police station as part of one of the Foundation's compliance audits—and was followed home by the police. Another member reported to the Foundation that he requested public records, and went to City Hall to pick them up—and was arrested for trespass upon arriving. And yet another informed the Foundation that, after he request-

[1] Counsel for all parties have consented to the filing of this brief. In accordance with Rule 37.6, amici confirm that no party or counsel for any party authored this brief in whole or in part, and that no person other than amici or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

ed public records in order to investigate a potential public safety hazard, he was almost arrested; was invoiced for nearly $1,000; and was threatened by the city clerk.

In light of its mission and the reported experiences of its members, the Foundation has a strong interest in the public's ability to exercise its First Amendment rights, such as the right to request information from government officials. Accordingly, the Foundation has an interest in this case.

Fane Lozman was the petitioner in *Lozman v. City of Riviera Beach*, 138 S. Ct. 1945 (2018), which presented last term the same question presented in the instant case. Mr. Lozman was subjected to retaliatory arrest when speaking at a city council meeting in Riviera Beach, Florida, after a council member who had previously suggested that the city use its resources to "intimidate" Mr. Lozman for suing the city ordered him "carr[ied] out" of the meeting. *Id.* at 1949-50. Mr. Lozman has an interest in this case as someone who has previously been subjected to retaliatory arrest, litigated this issue, and whose ongoing political activity and dispute with the City of Riviera Beach lead him to believe he may be subjected to retaliatory arrest in the future.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

It is a bedrock principle of First Amendment law that government officials may not retaliate against individuals for engaging in constitutionally protected speech. In a variety of contexts, this Court has recognized that when government officials take an ad-

verse action against an individual for the purpose of punishing or suppressing her speech—whether the government deprives the speaker of a government contract, dismisses her from public employment, or treats her unfavorably in prison—the government unlawfully chills expression. *See, e.g.*, *Board of Cty. Comm'rs v. Umbehr*, 518 U.S. 668, 685 (1996); *Branti v. Finkel*, 445 U.S. 507, 515 (1980); *Crawford-El v. Britton*, 523 U.S. 574, 578, 588 n.10 (1998). Under the established framework for analyzing such retaliation claims, government defendants will be liable for violating the First Amendment if the factfinder concludes that the defendants would not have taken action against the plaintiff but for their intent to punish or suppress protected expression. *See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977).

As the Court recognized last term, there are "substantial arguments" that this standard should apply to retaliatory arrest claims, particularly because "there is a risk that some police officers may exploit the arrest power as a means of suppressing speech." *Lozman*, 138 S. Ct. at 1953. But despite those concerns, the Court was not required to confront that issue in Mr. Lozman's case, because there the Court understood the source of the retaliation to be "official policy" rather than the abuse of power of individual police officers. *Id.* at 1954. Nonetheless, the Court held that the standard retaliation test should apply in the retaliatory arrest context for claims like Mr. Lozman's. *Id.* at 1954-55.

This case squarely presents the troubling context recognized by the Court last term, where police officers may have exploited the arrest power to penalize a

member of the public for his speech activity. Two police officers arrested Respondent after interactions in which he (a) declined to be interviewed by one; and (b) questioned the authority of the other to question a minor outside the presence of a parent or guardian. *Bartlett v. Nieves*, No. 4:15-cv-00004-SLG, 2016 WL 3702952, at *1 (D. Alaska July 7, 2016). Such retaliatory arrests are an especially potent means of chilling First Amendment activity, for two reasons. First, retaliatory arrests not only silence the individual in question, but also send the message to others in the community that expression of disfavored views or questioning police misconduct may result in being taken into law enforcement custody. Second, the power to arrest individuals, including for minor offenses, is particularly susceptible to misuse for retaliatory purposes. As a practical matter, police and other officials have broad discretion to arrest, or order the arrest of, individuals for an exceedingly wide range of infractions, however minor. The sheer breadth of that discretion has made retaliatory arrests in response to protected First Amendment activity a serious problem, as recent media reports and retaliatory arrest cases demonstrate.

In many cases, the only way for a citizen to deter such government retaliation, and to seek redress for past retaliation, is through an after-the-fact damages action. In order to ensure that such suits remain an effective check on all retaliatory arrests, this Court should hold that the *Mt. Healthy* framework applies in this context, as it does in Equal Protection challenges to racially motivated arrests, to First Amendment and Equal Protection challenges to other government actions that single out citizens for disfavored treatment for impermissible motives, and to retalia-

tory arrest claims like Mr. Lozman's. That framework properly recognizes that the governmental motive behind any restriction on speech is "a hugely important—indeed, the most important—explanatory factor in First Amendment law." Elena Kagan, *Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine*, 63 U. Chi. L. Rev. 413, 415 (1996). In fact, the Court has explicitly held that illicit motive is the key consideration in evaluating government retaliation for an individual's exercise of First Amendment rights. *See Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1418 (2016) (affirming the primacy of official motivation where the government took adverse action against an individual based on the mistaken belief that he had engaged in protected speech). And just last term, this Court concluded in Mr. Lozman's case that the *Mt. Healthy* framework applies in retaliatory arrest cases where a plaintiff alleges an official policy of retaliation for petitioning activities undertaken prior to and separate from the events of the plaintiff's arrest. 138 S. Ct. at 1954-55. The same rule should apply here.

By contrast, holding that the existence of probable cause renders official intent irrelevant would provide standing pretext for governmental officials to single out and punish dissenters without consequence. In light of the innumerable minor infractions contained in state and local codes, and the relative ease of demonstrating probable cause, government defendants will almost always be able to point to one or more offenses for which probable cause existed. This case provides a particularly salient example: Petitioners defeated Respondent's claim in the district court by establishing that his arrest was supported by probable cause of the offense of harassment—an

offense different than the one for which he was arrested and charged. Compare *Bartlett*, 2016 WL 3702952 at *3 with *id.* at *11. If probable cause defeats a First Amendment retaliatory arrest claim, then, municipalities and officials will be insulated from liability for most retaliatory arrest claims.

The danger of being arrested in retaliation for engaging in protected speech—without recourse—chills the exercise of core First Amendment rights, such as questioning or otherwise criticizing the government. The chilling effect is likely to be especially acute in smaller towns and cities or other small, isolated communities across America, where vocal critics often continuously interact with local officials and where there are likely to be fewer neutral figures with the power to prevent or discourage retaliation. This Court should therefore reverse the decision below and hold that probable cause, standing alone, does not automatically defeat a First Amendment claim for retaliatory arrest.

ARGUMENT

A RULE THAT PROBABLE CAUSE, STANDING ALONE, AUTOMATICALLY DEFEATS A FIRST AMENDMENT RETALIATORY ARREST CLAIM WOULD SEVERELY UNDERMINE FREEDOM OF EXPRESSION.

The First Amendment embodies "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *N.Y. Times Co. v. Sul-*

livan, 376 U.S. 254, 270 (1964). Reflecting this "profound national commitment" to the freedom of expression, *id.*, "the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out[.]" *Hartman v. Moore*, 547 U.S. 250, 256 (2006). The ability to bring a damages action when such "retaliatory actions" occur, *id.*, serves as both an important check on government abuse, and an opportunity—often the only one—for the individual to vindicate her rights. *See, e.g.*, 42 U.S.C. § 1983; *Robertson v. Wegmann*, 436 U.S. 584, 590–91 (1978).

Adopting the rule advocated by Petitioners would severely limit the effectiveness of this check because it would bar a plaintiff from stating a claim for retaliatory arrest where there is probable cause that she has committed *any* infraction, no matter how strong the evidence of retaliatory motive, or how minor the infraction. Given the myriad federal, state, and local laws and regulations that govern everyday activities, most people routinely—and unintentionally—commit minor infractions. Under the decision below, probable cause to believe a person has committed any of these infractions will immunize a retaliatory arrest from First Amendment challenge, leaving citizens with no effective means of addressing the chilling effect such arrests create.

A. Arrests Carried Out In Retaliation For Protected Speech Are A Serious Problem.

Given the wide range of offenses that can lead to arrest, officers can almost always identify some probable cause sufficient to justify an arrest. That is a

serious problem, not only in theory, but also as borne out by the experience of citizens across the country.

1. Most individuals, often inadvertently, commit some sort of arrestable infraction on a regular, if not daily, basis. Consider these observations about the typical American traffic code:

> There is no detail of driving too small, no piece of equipment too insignificant, no item of automobile regulation too arcane to be made the subject of a traffic offense. Police officers in some jurisdictions have a rule of thumb: the average driver cannot go three blocks without violating some traffic regulation. . . . For example, in any number of jurisdictions, police can stop drivers not only for driving too fast, but for driving too slow. In Utah, drivers must signal for at least three seconds before changing lanes; a two second signal would violate the law. In many states, a driver must signal for at least one hundred feet before turning right; ninety-five feet would make the driver a[n] offender. . . . Many states have made it a crime to drive with a malfunctioning taillight, a rear-tag illumination bulb that does not work, or tires without sufficient tread. They also require drivers to display not only license tags, but yearly validation stickers, pollution control stickers, and safety inspection stickers; driving without these items displayed on the vehicle in the proper place violates the law.

David A. Harris, *"Driving While Black" and All Other Traffic Offenses*, 87 J. Crim. L. & Criminology 544, 557–59 (1997) (citations omitted).

Such intricate regulatory systems are not unique to the traffic code—thousands of federal and state laws criminalize a wide range of activity. *See, e.g.*, *Overcriminalization*, Nat'l Ass'n of Criminal Def. Lawyers[2] (observing that there are "over 4,450 crimes scattered throughout the federal criminal code, and untold numbers of federal regulatory criminal provisions"); *Overcriminalization*, Right on Crime[3] (observing that Texas alone has more than 1,700 crimes on the books).

Officers have wide discretion under state and federal law to arrest individuals for these offenses, however minor. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 323, 344 & nn.12–13, 355–60 (2001); U.S. Dep't of Justice Civil Rights Division, Investigation of the Ferguson Police Dep't 82 (2015)[4] (discussing the Ferguson Police Department's "aggressive enforcement of even minor municipal infractions"). "The breadth of street crime violations—loitering, trespassing, gang injunctions, and the like—confers vast power on urban police that permits widespread arrests for petty offenses." Alexandra Natapoff, *Misdemeanors*, 85 S. Cal. L. Rev. 1313, 1359 (2012).

And even if an individual is not arrested at the time of an infraction, she may be subject to later arrest for a missed court appearance or missed payment relating to that infraction. *See* Investigation of the Ferguson Police Dep't 55; *see also id.* ("The large number of warrants issued by the court . . . is due ex-

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[2] https://www.nacdl.org/overcrim/ (last visited Oct. 4, 2018).
[3] http://rightoncrime.com/category/priority-issues/overcriminalization/ (last visited Oct. 4, 2018).
[4] https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

clusively to the fact that the court uses arrest warrants and the threat of arrest as its primary tool for collecting outstanding fines for municipal code violations."); *id.* at 56 ("From 2010 to December 2014, the offenses (besides Failure to Appear ordinance violations) that most often led to a municipal warrant were: Driving While License Is Suspended, Expired License Plates, Failure to Register a Vehicle, No Proof of Insurance, and Speed Limit violations.").

The sheer breadth of police discretion gives rise to a significant danger that officers or other officials will sometimes decide to arrest individuals for improper reasons—including in retaliation for their protected speech.

2. That danger is hardly hypothetical, as a survey of current events demonstrates. For instance, last year, a federal court granted a preliminary injunction in favor of plaintiffs alleging that police had engaged in unconstitutional conduct in connection with protests following a state-court criminal case verdict, enjoining defendant City of St. Louis from, among other things, "[d]eclar[ing] an unlawful assembly": (1) "when the persons against whom it would be enforced are engaged in expressive activity, unless the persons are acting in concert to pose an imminent threat to use force or violence or to violate a criminal law with force or violence," or (2) "for the purpose of punishing persons for exercising their constitutional rights to engage in expressive activity." *See Ahmad v. City of St. Louis*, No. 4:17 CV 2455 CDP, 2017 WL 5478410, at *1, *10, *18 (E.D. Mo. Nov. 15, 2017).

This problem reaches not only protesters but also journalists. For example, also last year, Public News

Service reporter Dan Heyman was reportedly arrested based on alleged willful disruption of a state-government process, after asking then-Health and Human Services Secretary Tom Price about health care policy. *See* Yasmeen Serhan, *The Arrest of a Journalist Asking About Health Care*, The Atlantic (May 10, 2017).[5] Reportedly, one condition of Mr. Heyman's bail was that he "had to keep away from the state capitol"—impinging on his ability to work. *See Reporter Arrested for Shouting Questions at Trump Cabinet Official*, U.S. Press Freedom Tracker (updated Sept. 6, 2017).[6] The charges against Mr. Heyman have since been dropped. *Id.* According to the U.S. Press Freedom Tracker, Mr. Heyman is one of 34 journalists to have been arrested on the job in 2017. *See Arrest/Criminal Charge*, U.S. Press Freedom Tracker.[7] Six journalists currently face criminal charges. *Id.*

3. Reported cases from around the country further demonstrate that retaliatory arrests based on protected First Amendment activity are a serious concern—and underscore the dangers of the rule advocated by Petitioners. This troubling practice often arises, as it does in this case, in the context of police arrests of individuals that result from those individuals' exercise of their First Amendment right to question or disagree with the police in non-exigent circumstances.

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[5] https://www.theatlantic.com/news/archive/2017/05/the-arrest-of-a-west-virginia-journalist/526149/.

[6] https://pressfreedomtracker.us/all-incidents/reporter-dan-heyman-arrested-shouting-questions-hhs-secretary/ (last visited Oct. 4, 2018).

[7] https://pressfreedomtracker.us/arrest-criminal-charge/ (last visited Oct. 3, 2018).

a. In *Allen v. Cisneros*, 815 F.3d 239 (5th Cir. 2016), a Houston street preacher alleged that he had been subjected to two retaliatory arrests in violation of his First Amendment rights. *Id.* at 241–43. Both times, he was arrested after preaching on the street carrying a shofar, which "is a trumpet-like instrument made from a ram's horn" that is "used in Judaism to mark the holidays of Rosh Hashanah and Yom Kippur." *Id.* at 241–43 & n.1. The preacher and the defendants had differing versions of the events that transpired, with the preacher alleging that, each time, he had been arrested after trying to film the police. *See id.* at 242–43. But because the plaintiff's "possession of his shofar independently provided reasonable suspicion for his detention" based on a "city ordinance" that "specifically prohibited 'carry[ing] or possess[ing] while participating in any demonstration' objects that 'exceed three-quarters inch in their thickest dimension,'" *id.* at 245 (alterations in original), the Fifth Circuit held that the officers should prevail as a matter of law. *See id.* at 245–47.

b. In *Alston v. City of Darien*, --- F. App'x ----, No. 17-15692, 2018 WL 4492422 (11th Cir. Sept. 19, 2018), the plaintiff was initially pulled over because his windows were tinted and portions of his license plate were obstructed. *Id.* at *1. The officer gave the plaintiff citations for the incident, but when he heard the plaintiff say to his wife on the phone that "[t]his is the reason I don't come to McIntosh County because it's f***ed up over here," he pulled out his taser, ordered the plaintiff out of the car, handcuffed, and arrested him. *Id.* at *1-2. The arresting officer told a second officer that he was "getting [the plaintiff] because of how he acted in the car with his wife, and he was cussing me so I will call his job and have

him fired." *Id.* at *2. The officer did in fact call and complain to the plaintiff's employer, although plaintiff was not disciplined as a result. *Id.* The Eleventh Circuit summarily affirmed dismissal of the plaintiff's retaliatory arrest claim on the ground that his arrest was supported by probable cause based on the vehicle issues for which he was pulled over, and the officers thus had qualified immunity. *Id.* at *6.

c. In *Baldauf v. Davidson*, No. 1:04-cv-1571-JDT-TAB, 2007 WL 2156065 (S.D. Ind. July 24, 2007) (hereinafter *Baldauf II*), the plaintiff was arrested after a confrontation with a police officer at a convenience store. *Id.* at *1. At one point, the officer pointed a finger at the plaintiff, but she pushed it aside. *Id.* After the confrontation, the officer told the plaintiff that "he was not going to arrest her and that she could leave." *Id.* But as the plaintiff "was leaving, she told [the officer] that she was going to file a complaint with" the police chief. *Id.* The officer then arrested her when she was talking to the police chief at the station. *Id.* The district court determined that, although the plaintiff may have had an "otherwise worthy [retaliatory arrest] claim," it was barred by the existence of probable cause that she had committed battery when she had earlier pushed aside the officer's finger. *Id.* at *1, *4; *see also Baldauf v. Davidson*, No. 1:04-cv-1571-JDT-TAB, 2007 WL 1202911, at *4 (S.D. Ind. Apr. 23, 2007) (hereinafter *Baldauf I*) (existence of probable cause as to battery). The court accordingly granted summary judgment in the defendant's favor. *Baldauf II*, 2007 WL 2156065, at *6.

d. In *Collins v. Hood*, No. 1:16-cv-00007-GHD-DAS, 2018 WL 1055526 (N.D. Miss. Feb. 26, 2018),

the plaintiff was pulled over for speeding and given a citation. *Id.* at *1. She questioned why she was being ticketed and after the citation was issued, told the officer she "would be calling his boss." *Id.* Although the officer initially ordered her to drive away, as she did so he ordered her to stop the vehicle, ordered her out of the vehicle, and ultimately arrested her. *Id.* The court denied the officer's motion to dismiss the plaintiff's retaliatory arrest claim, because once he had told her to drive away, the traffic stop had ended and he needed new probable cause to pull her over again. *Id.* at *5. The court also noted that the officer's contention that she called him a "'racist mother-----'" as he was walking away was not sufficient grounds to arrest her. *Id.* at *6.

e. In *Laning v. Doyle*, No. 3:14-cv-24, 2015 WL 710427 (S.D. Ohio Feb. 18, 2015), a 63-year-old woman was directed to pull over in a strip mall parking lot for a traffic violation. *Id.* at *1. She did not immediately stop once the officer "activated the lights on his police cruiser"; instead, she kept driving through the parking lot and parked outside of her office. *Id.* After the plaintiff stepped out of her car, the defendant officer pointed his taser at her. *Id.* "[S]he asked why she was being detained," but he did not respond and instead forcefully arrested her, allegedly in retaliation for her question. *Id.* at *1, *14. On the way to the jail, the plaintiff alleged, the officer drove erratically—doing donuts in a parking lot—and verbally taunted her. *Id.* at *1. The court held that while it was not clearly established that the officer lacked probable cause to arrest the plaintiff for failing to comply with an officer based on her failure to immediately pull over, *id.* at *7–9, the allegations viewed in the light most favorable to her could sup-

port a finding that the officer retaliated against her for exercising her First Amendment right to "question[] why he had pulled her over," *id.* at *15.

f. In *Sebastian v. Ortiz*, No. 16-20501-CIV-MORENO, 2017 WL 4382010 (S.D. Fla. Sept. 29, 2017), the plaintiff was pulled over for speeding, but refused to grant the police permission to search his car. *Id.* at *2. The police then removed the plaintiff from the car and handcuffed him. *Id.* The plaintiff told the police that they could not search his car because they did not have a warrant. *Id.* One of the officers "responded by asking him if he was a 'YouTube lawyer' or 'constitutionalist' and that they 'didn't need a warrant.'" *Id.* After a search revealed a gun that the plaintiff was licensed to carry as a security guard employed by Miami-Dade County, he was charged with two counts of resisting or obstructing an officer without violence, and one count of reckless display of a firearm. *Id.* at *2–3. The charges were abandoned, but the plaintiff pled guilty to speeding. *Id.* at *3. Following his arrest, the plaintiff lost his job and was unable to find another one as an armed security guard. *Id.* When the plaintiff brought suit alleging that "he was arrested in retaliation for asserting his rights," the court dismissed the claim on qualified immunity grounds, solely on the basis that there was probable cause that the plaintiff had been speeding. *Id.* at *5–6.

4. First Amendment retaliatory arrest actions are not limited to the context of police confrontations. As Mr. Lozman's case last term and the examples below demonstrate, such arrests often target citizens for criticizing the government.

a. In *Lozman*, Mr. Lozman had long been an outspoken critic of the City of Riviera Beach's development policy. 138 S. Ct. at 1949. In addition to speaking against the policy at city council meetings, he filed a lawsuit against the city challenging some of the council's actions to advance that policy. *Id.* At one council meeting, a council member suggested that the city "intimidate" Mr. Lozman and other councilmembers "responded in the affirmative" when asked whether there was "a consensus on what [the first council member] is saying." *Id.* When Mr. Lozman appeared and began to speak at a subsequent council meeting, the councilmember who had suggested "intimidat[ing] Mr. Lozman ordered him to be arrested. *Id.* at 1949-50. This Court held that Mr. Lozman "need not prove the absence of probable cause to maintain a claim of retaliatory arrest against the City," and remanded to the Court of Appeals, where his case is still pending, to determine the proper next steps for Mr. Lozman's claim under the correct standard. *Id.* at 1955.

b. In *Roper v. City of New York*, No. 15 Civ. 8899 (PAE), 2017 WL 2483813 (S.D.N.Y. June 7, 2017), two photographers filed First Amendment retaliatory arrest claims after being arrested during a Black Lives Matter protest in Times Square. *Id.* at *1, *3. One plaintiff was arrested "for standing in the street" after being told by police "to move from the street to the sidewalk"—but he could not do so because police barricades and other officers were in the way. *Id.* at *1 (citing First Amended Complaint). The second plaintiff, a photojournalist, had crossed the street to find a restroom—but was arrested for disorderly conduct after he failed to use a crosswalk, even though police were blocking the crosswalks. *Id.* Because the

police had probable cause to arrest the "plaintiffs for violating . . . traffic rules" relating to sidewalk use, the plaintiffs' retaliatory arrest claims had to be dismissed under Second Circuit law, "even assuming that compliance with the . . . [police's] dispersal orders was not realistically possible." *Id.* at *3–5.

c. In *Morse v. San Francisco Bay Area Rapid Transit District (BART)*, No. 12-cv-5289 JSC, 2014 WL 572352 (N.D. Cal. Feb. 11, 2014), a journalist brought a retaliatory arrest claim after he was arrested by a Bay Area Rapid Transit ("BART") Deputy Police Chief while documenting a peaceful protest. *Id.* at *1. The plaintiff had a history of writing and publishing articles critical of the BART police, even "openly mock[ing] and ridicul[ing] the agency and its officers." *Id.* at *1–4, *9. By the time of the plaintiff's arrest, he was "'personally acquainted' with leaders of the BART organization," leading the police to, before the protest where the plaintiff was arrested, distribute flyers identifying him and give orders to arrest him if he "'incite[d] a riot or act[ed] in a criminal manner.'" *Id.* at *2, *4. Ultimately, the plaintiff was the sole member of the media arrested for standing in front of a fare gate—even though his conduct was indistinguishable from that of other journalists at the protest. *Id.* at *6–7, *9–10. Although the officer had probable cause to arrest the plaintiff for hindering the operation of a rail line, the district court, after identifying the ample evidence suggestive of defendants' retaliatory motive, denied the defendants' motion for summary judgment on the plaintiff's retaliatory arrest claim under Ninth Circuit law. *Id.* at *9–15.

d. In *Fernandes v. City of Jersey City*, Civ. No. 2:16-cv-07789-KM-JBC, 2017 WL 2799698 (D.N.J. June 27, 2017), a plaintiff brought a First Amendment retaliation claim after being forcibly removed from a City Council meeting at the mayor's request. *Id.* at *3, *9–11. A few months before that removal, the plaintiff and his wife obtained a construction permit and began to remodel their home. *Id.* at *2. But within days, City officials came onsite and ordered them to stop, "resulting in weather damage" to their home when they were unable to continue the project. *Id.* at *1–2. The plaintiff began attending City Council meetings and other public meetings to complain about the City's conduct. *Id.* at *3. At "one such meeting," the City Council President "accosted" the plaintiff; at another, the plaintiff was forcibly removed at the mayor's request even though, according to the plaintiff, he had not done anything to cause a disturbance. *Id.* The defendants argued that they did, in fact, have probable cause to remove him for causing a disturbance. *Id.* at *11. The court concluded that there was a genuine issue of material fact as to the existence of probable cause, and denied the defendant officers' motion to dismiss on qualified immunity grounds. *Id.* at *11, *15–16.

e. In *Galarnyk v. Fraser*, 687 F.3d 1070 (8th Cir. 2012), a bridge safety consultant criticized a government agency on a number of national news networks after a bridge collapsed in Minnesota, and later visited the collapse investigation command center to discuss his concerns with officials. *Id.* at 1071–72. After meeting with an official in one of the command center's trailers, he entered another trailer without permission and further criticized the government. *Id.* at 1072. He was asked to leave, and did. *Id.* But he

was stopped by a law enforcement officer after he had begun to leave the site, and was arrested shortly thereafter. *Id.* at 1073. Despite the plaintiff's allegations that the officer who stopped him repeatedly commented to a colleague that the plaintiff needed to be "locked up" for speaking out about the bridge collapse on national television, *id.*, the Eighth Circuit affirmed the dismissal of the safety consultant's claim on summary judgment because there was probable cause that he had trespassed, *id.* at 1076.

f. In *Ballentine v. Las Vegas Metropolitan Police Department*, No. 2:14-cv-01584-APG-GWF, 2017 WL 3610609 (D. Nev. Aug. 21, 2017), members of an activist group filed First Amendment retaliation claims after they were arrested for chalking anti-police messages on the sidewalks near a police station and a courthouse. *Id.* at *1–4, *6. Two officers had cited the plaintiffs, but encouraged them to protest in other ways, such as through holding signs. *Id.* at *2. The Court granted summary judgment in the officers' favor, in light of the lack of evidence of any retaliatory intent on their part in issuing the citations. *Id.* at *6. The court denied summary judgment, however, to a third officer who prepared the declaration of arrest for the plaintiffs. *Id.* Among other things, he included the chalked messages' anti-police content in his declaration ("f*** pigs" and "f*** the cops"), and when he had encountered the plaintiffs chalking, instead of telling them to stop, "he took pictures of their activities and challenged the content of their messages by disputing with the protestors the accuracy of their speech." *Id.* Even though the officer had reason to believe that there was probable cause that the plaintiffs had violated an anti-graffiti statute, *id.* at *1, *12, the court held that the retaliation claim survived

under Ninth Circuit law because "a reasonable jury could conclude that [the officer] intended to chill the plaintiffs' anti-police messages . . . and that he would not have sought the warrants but for the content of the plaintiffs' speech," *id.* at *6.

g. In *Abujayyab v. City of New York*, 15 Civ. 10080 (NRB), 2018 WL 3978122 (S.D.N.Y. Aug. 20, 2018), the plaintiff was punched in the face by a police officer and subsequently arrested in the course of participating nonviolently in a Black Lives Matter protest against police brutality. *Id.* at *1-2. The court dismissed his retaliatory arrest claim because, among other reasons, the officers had probable cause to arrest him for violating a New York traffic law which prohibits pedestrians from walking on a roadway when sidewalks are present, even when no traffic is present. *Id.* at *10-11.

Importantly, although each of these cases presents an example of officials using arrest in order to punish plaintiff's acts criticizing the government, this Court's decision in Mr. Lozman's case from last term would not necessarily prevent courts from dismissing cases like many of the above without probable cause. While the plaintiffs in these cases share with Mr. Lozman the fact that they were exercising their First Amendment right to criticize official conduct, they could not all necessarily demonstrate that (a) they were subjected to an official retaliatory policy, rather than an individual officer's retaliatory act; (b) they were not suing the arresting officer; and (c) their activity qualifies as petitioning activity. *See Lozman*, 138 S. Ct. at 1954-55.

B. Requiring A Plaintiff To Demonstrate The Absence Of Probable Cause Would Effectively Immunize Officials And Municipalities From Liability For Retaliatory Arrests.

1. The sheer number of minor infractions described above—carrying a shofar, failing to step onto a sidewalk, speeding, blocking a fare gate, entering a trailer, driving with tinted windows, or speaking at a city council meeting—demonstrates that many retaliatory arrests will likely be supported by probable cause that the arrestee committed some offense, however minor. Thus, contrary to Petitioners' suggestion that their proposed rule "might preclude . . . meritorious claims in rare instances," Pet. Br. 48, adopting a rule that the existence of probable cause bars the plaintiff's claim entirely will effectively immunize potentially retaliatory arrests from judicial scrutiny. The breadth of that immunity is confirmed by two additional, significant consequences of the Petitioners' proposed rule.

First, because probable cause is an objective inquiry, *see Devenpeck v. Alford*, 543 U.S. 146, 153 (2004), defendants can raise multiple theories of probable cause in the hope that the court accepts one, pointing to alleged infractions that were not even on the officer's mind, or communicated to the plaintiff, at the time of arrest. So in *Roper*, while the officers had originally arrested the plaintiffs for disorderly conduct at the Black Lives Matter protest, the court upheld the existence of "probable cause to arrest" them "for offenses relating to pedestrian traffic." 2017 WL 2483813, at *3–4. The court explained that "the relevant inquiry is 'whether probable cause existed to ar-

rest for *any* crime,' not necessarily for the crimes cited by the officers or ultimately charged." *Id.* at *3 (emphasis added) (quoting *Marcavage v. City of New York*, 689 F.3d 98, 109 (2d Cir. 2012)). And so the existence of probable cause that the plaintiffs had "violat[ed] . . . traffic rules" precluded their claim as a matter of law. *Id.* at *3–4.

The instant case serves as a prime example of the troubling consequences of allowing probable cause to be a moving target. Respondent was arrested for and charged with disorderly conduct and resisting arrest (charges that were subsequently dropped). *See* J.A. 10, J.A. 20-21, J.A. 24-25, J.A. 245. But the district court found that the officers had probable cause to arrest him for "harassment," despite that charge appearing nowhere in the contemporaneous records of his arrest. *Compare* J.A. 17 (contemporaneous arrest report of Petitioner Nieves stating "I... advised [Respondent] that he was under arrest for disorderly conduct.") *with* J.A. 142 (declaration of Petitioner Nieves in support of summary judgment motion stating "I informed [Respondent] that he was going to jail for harassing an officer.").[8]

[8] That Petitioners relied on harassment as the offense for which they have probable cause underscores the problems with Petitioners' proposed rule discussed *supra* at 9-15: That offense can be satisfied by "taunt[ing] or challeng[ing] another person"—in other words, challenging the authority of a police officer—"in a manner likely to provoke an immediate violent response." AS 11.61.120(a)(1). The district court found this second element met by the officers' "violent[]" acts arresting Mr. Bartlett. 2016 WL 3702952 at *5. In short, at least under the rationale of the district court, one could *never* make out a claim for retaliatory arrest against a police officer in Alaska if one's speech "challenge[d]" the officer and the *officer* responded aggressively.

Mr. Lozman's case last term presented a disturbingly similar pattern. A few months after Mr. Lozman filed a lawsuit against the City of Riviera Beach alleging the violation of government transparency laws, Mr. Lozman tried to speak at a City Council meeting. When he did so, a Councilmember who had previously stated a desire to "intimidate" Mr. Lozman in response to the lawsuit ordered his arrest. *Lozman*, 138 S. Ct. at 1949-50.

Like Respondent here, Mr. Lozman was charged with disorderly conduct and resisting arrest.[9] *Id.* at 1950. But just as the district court did here, the lower courts in Mr. Lozman's case relied on the finding that probable cause existed for a wholly separate offense in order to support a judgment against Mr. Lozman on his retaliatory arrest claim. Initially, the district court determined that, as a matter of law, there was no probable cause as to *either* offense. *See* Joint Appendix, *Lozman v. City of Riviera Beach,* No. 17-21, at J.A. 108 (S. Ct. Dec. 22, 2017). So the city switched gears *during trial*, at the district court's encouragement, alleging probable cause for two additional offenses that had not been raised up to that point, one of which was disturbance of a lawful assembly. *See id.* at J.A. 108-121; J.A. 131-134. The Eleventh Circuit accepted that the existence of probable cause as to the newly identified offense of disturbance of a lawful assembly meant that Mr. Lozman's retaliatory arrest claim failed as a matter of law. *Lozman v. City of Riviera Beach*, 681 F. App'x 746, 750-752 (11th Cir. 2017). In both this case and Mr. Lozman's, therefore, the defendants were able to

[9] Also as in the instant case, the prosecutor in Mr. Lozman's case never pursued the charges. 138 S. Ct. at 1950.

defeat the plaintiff's claim by testing theories of probable cause until they hit on one that stuck.

Second, the Petitioners' "no probable cause" rule bars First Amendment retaliatory arrest claims in the face of probable cause even where there is strong evidence of a retaliatory motive. In other contexts, however, this Court has recognized that the touchstone of the First Amendment retaliation inquiry is the government's motive: "the government's reason for [taking adverse action] is what counts." *Heffernan*, 136 S. Ct. at 1418. That is because the government inflicts the relevant "constitutional harm"—discouraging citizens from engaging in protected speech—whenever it acts because of retaliatory animus. *Id.* at 1419.

Yet the "no probable cause" rule renders irrelevant evidence of retaliatory intent, no matter how overwhelming. In this case, the court of appeals concluded that Respondent had sufficiently alleged that Petitioners acted with retaliatory intent, based on respondent's assertion that Sergeant Nieves said "bet you wish you would have talked to me now" after his arrest. Pet. App. 6. And in Mr. Lozman's case, his arrest was just one event in a longer string of reprisals committed by the City pursuant to a councilmember's stated desire to "intimidate" him because of his lawsuit against the City. *Lozman*, 138 S. Ct. at 1949. Yet even though the Eleventh Circuit concluded that Mr. Lozman "seems to have established a sufficient causal nexus between [the councilmember] and the alleged constitutional injury of his arrest," it held that the existence of probable cause rendered that conclusion irrelevant. *Lozman*, 681 F. App'x at 752. Although this Court held that the specific circum-

stances of Mr. Lozman's case did not require him to make a showing of probable cause to prevail on his retaliatory arrest claim, plaintiffs in other contexts making equally strong showings of retaliatory intent would still be barred from recovery under Petitioners' proposed rule.

Similarly, the *Roper* plaintiffs could not pursue a retaliatory arrest claim even though one plaintiff, before he was arrested at the Black Lives Matter protest, "heard an NYPD supervisor instruct his officers to '[j]ust take somebody and put them in handcuffs.'" 2017 WL 2483813, at *1 (alteration in original). Galarnyk, the plaintiff bridge consultant, could not survive summary judgment on his retaliatory arrest claim despite the fact that one officer asserted repeatedly that Galarnyk needed to be "locked up" for sharing his views about the bridge collapse on national television. *Galarnyk*, 687 F.3d at 1073. And Baldauf, the plaintiff involved in a confrontation with a small-town police officer could not withstand summary judgment on her retaliatory arrest claim, even though the officer had told her following the confrontation that he was not going to arrest her, but changed course after she threatened to—and did—report the officer to the police chief. *Baldauf II*, 2007 WL 2156065, at *1, *4; *Baldauf I*, 2007 WL 1202911, at *1.

Because journalist Morse was arrested in California, his First Amendment retaliatory arrest claim against the BART Police could proceed despite the existence of probable cause for interfering with a rail line. *Morse*, 2014 WL 572352, at *11–15. But if he had been arrested in Florida instead—where Mr. Lozman was arrested last year and where the Elev-

enth Circuit has adopted Petitioners' "no probable cause" rule—his claim would have failed as a matter of law—notwithstanding Morse's presentation of evidence that BART police officers knew of inflammatory articles he had written about them; had circulated flyers with an image of his face prior to the protest; and preemptively ordered his arrest if he did anything criminal. *Id.* at *3–4.

2. The more nuanced rule advocated by Respondent would avoid effectively immunizing retaliatory arrests, while giving factfinders the ability to distinguish between legitimate law enforcement activities and improper retaliation. Under the *Mt. Healthy* framework, the existence of probable cause would still be relevant evidence of the defendant's lack of retaliatory intent. *See* Resp. Br. 38-39, 50-52. But the existence of probable cause, without more, would not categorically bar a plaintiff who is able to establish that she was in fact arrested in retaliation for her speech from seeking redress for that constitutional injury.

For instance, imagine that a police officer pulled over a driver for the stated reason that the car displayed a political bumper sticker that the officer found offensive. Upon checking the driver's information, the officer realized that the driver was subject to an outstanding felony warrant, and arrested her. If the driver subsequently brought a retaliatory arrest claim, the police officer would prevail under the *Mt. Healthy* framework (despite the direct evidence of retaliatory intent), because he would be readily able to demonstrate that he would have arrested the driver even in the absence of retaliatory animus. *See* Resp. Br. 38, 51-52; *Mt. Healthy*, 429

U.S. at 287. If, however, the driver is able to establish that the outstanding warrant was one for which she ordinarily would not have been arrested (for instance, because it had been automatically issued for a minor offense such as failure to appear), the outcome might be different. In that situation, the warrant would not establish that the officer would have made the arrest in the absence of retaliatory intent. *See* Resp. Br. 39.

The *Mt. Healthy* framework thus permits factfinders to consider probable cause, and to conclude based on the nature of that probable cause, as well as the surrounding circumstances, that the arrest should not give rise to liability because it reflected legitimate law enforcement concerns—even if retaliatory animus played some role in the encounter. But where the existence of probable cause does not rebut the inference that the arrest was driven by retaliatory intent rather than law enforcement objectives, Respondent's approach enables the factfinder to hold the defendant liable. Doing so in that circumstance furthers First Amendment values without undermining legitimate government interests.

This balancing will be easier as more and more police departments use body cameras to record their officers and as members of the public increasingly have cellular phones able to record video of arrests. Indeed, increased availability of video of arrests will, in general, reduce the "causation problem" that concerned the Court in Mr. Lozman's case, i.e., that there can be difficulty determining the connection between the defendant's alleged animus and plaintiff's injury. 138 S. Ct. 1954; *see id.* at 1953. As the Court acknowledged—contrary to Petitioners' central ar-

gument here, see Pet. Br. 13-14—this problem is less of an issue in the retaliatory arrest context than in the retaliatory prosecution context. *Lozman*, 138 S. Ct. at 1953 (noting that "in retaliatory prosecution cases, the causal connection between the defendant's animus and the prosecutor's decision to prosecute is weakened by the 'presumption of regularity accorded to prosecutorial decisionmaking'" but that this "presumption does not apply in [the retaliatory arrest] context"). While video may not capture all the relevant evidence of motive, it will undoubtedly capture significant evidence in many cases, enabling courts and juries to evaluate the connection for themselves. *See, e.g.*, Alberto R. Gonzales & Donald Q. Cochran, *Police-Worn Body Cameras: An Antidote to the "Ferguson Effect"?*, 82 Mo. L. Rev 299, 311 (Spring 2017) ("Police-worn body cameras contribute to a sense of fairness and justice when they assist in resolving what would otherwise be suspect officer-citizen encounters by creating an 'objective and reviewable record.'"). By contrast, under Petitioners' "no probable cause" rule, increased availability of video recordings of arrests can be expected to produce more cases in which documented police retaliation is nonetheless immunized from suit, running the risk of increasing public unrest and frustration at perceived injustices.

3. By contrast, the consequence of permitting the existence of probable cause of any infraction to categorically bar First Amendment retaliatory arrest claims would be to give officials a blank check to use such arrests to punish disfavored speech. Given that officials would rarely, if ever, face liability for retaliatory arrests, such arrests could become an attractive means of punishing or deterring criticism of the government.

That danger would be exacerbated by the relative ease with which officials may order or undertake an arrest. As in Mr. Lozman's case, for example, a single official may order or execute an on-the-spot arrest of an individual who is engaging in speech. In that respect, retaliatory arrests are a much more readily available means of punishing speech than retaliatory prosecutions. As the Court explained in *Hartman*, to institute a retaliatory prosecution, an official with retaliatory animus must persuade the prosecutor to institute criminal process and to devote state resources to the prosecution. 547 U.S. at 261–64. Thus, *Hartman*'s holding that the plaintiff in a retaliatory prosecution case must establish the lack of probable cause does not give officials a particularly attractive means of retaliating against disfavored speech: prosecutions remain a cumbersome and costly mechanism for doing so. In the arrest context, however, applying *Hartman*'s "no probable cause" requirement would effectively insulate from liability the use of a readily available means of punishing speech.

C. Adopting Petitioners' Proposed "No Probable Cause" Requirement Would Chill The Exercise Of First Amendment Rights.

It is beyond dispute that the threat of being arrested for engaging in protected speech will deter First Amendment activities. Indeed, the very reason that "[o]fficial reprisal for protected speech" is prohibited is because "it threatens to inhibit exercise of the protected right." *Hartman*, 547 U.S. at 256 (quoting *Crawford-El*, 523 U.S. at 588 n.10); *Ford v. City of Yakima*, 706 F.3d 1188, 1194 (9th Cir. 2013) ("[A] person of ordinary firmness would be chilled from fu-

ture exercise of his First Amendment rights if he were booked and taken to jail in retaliation for his speech."). And such chilling extends beyond the target of government reprisal; retaliation against one individual "tells the others that they engage in protected activity at their peril." *Heffernan*, 136 S. Ct. at 1419.

An individual's ability to bring a First Amendment retaliatory arrest claim against vindictive government officials serves as an important check on such reprisal and the resultant chilling of protected activity. *See generally Morse*, 2014 WL 572352 (plaintiff journalist's claim for retaliatory arrest by BART police could move forward); *Ballentine v. Las Vegas Metro. Police Dep't*, 2017 WL 3610609 (plaintiff protestors' claim against officer who prepared declaration of arrest could move forward based on the officer's fixation on the content of the plaintiffs' messages); *see also Naveed v. City of San Jose*, No. 15-cv-05298-PSG, 2016 WL 2957147, at *1, *5–6 (N.D. Cal. May 23, 2016) (permitting First Amendment retaliatory arrest claim to proceed, despite the existence of probable cause to support the arrest, where the plaintiffs were arrested after attempting to film the police; and concluding that defendant officers' alleged "conduct would chill a person of ordinary firmness from future First Amendment activity"). Such suits help deter retaliatory conduct, making it less likely to happen in the future. And from the plaintiff's perspective, an after-the-fact damages suit is generally the only means she has to vindicate her rights after a retaliatory arrest.

But in jurisdictions where probable cause bars a First Amendment retaliatory arrest claim as a matter

of law, this check is effectively absent. Without the ability to pursue litigation against officials who have targeted them for their speech, citizens around the country could very well conclude that the danger of being arrested (and being taken to the police station, booked, and jailed) is simply too high a price to pay for the privilege of commenting on government policies, protesting the justification for their arrest, intervening to protect other citizens from what is perceived as inappropriate or unlawful police activity, or otherwise engaging in protected activity. *See, e.g.*, *Sebastian*, 2017 WL 4382010, at *2–3 (recounting that, after the police arrested the plaintiff, who worked as a security guard for Miami-Dade Transit, the police told him that "he would never return to his job with Miami-Dade County"; the plaintiff was, indeed, terminated from his job following the arrest). That chilling effect is precisely what the First Amendment guards against.

This risk of self-censoring is particularly acute in interactions between individuals and their local governments—especially in smaller cities and towns and in other small, isolated community environments like in the instant case. In smaller towns and communities, citizens are much likelier to interact with government officials or individual police officers on a regular basis. Government critics and dissenters are more likely to be known to officials, and officials are more likely to have relationships with one another such that it is less likely for there to be any "neutral" officials to which an individual targeted for retaliation can appeal. It is no coincidence that, in a number of the examples discussed above, the retaliatory arrests at issue were effected by local government officials in smaller cities and towns. *See, e.g.*, Public

Data, Google, goo.gl/dh55sP (last visited Oct. 3, 2018) (Riviera Beach, Florida, where Mr. Lozman was arrested in retaliation for his speech activity, has a population of 34,674; Pittsboro, Indiana, where plaintiff Baldauf got into an altercation with a police officer in a convenience store, has a population of 3,375; Huber Heights, Ohio, where 63-year-old plaintiff Laning was pulled over, arrested, and forced to ride in a police car while the officer did "donuts," has a population of 37,986); *see also* Pet. Br. at 2-3 ("upwards of 10,000 people gathering at "multi-day" Arctic Man festival). The greater degree of interaction between citizens of smaller towns and their local governments and closer relationships between government officials in those areas give rise to both increased opportunities for retaliation and more severe chill when retaliation occurs.

CONCLUSION

For the foregoing reasons, and for the reasons stated in Respondent's brief, the judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

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No. 17-1174

IN THE

Supreme Court of the United States

LUIS A. NIEVES, ET AL.,

Petitioners,

v.

RUSSELL P. BARTLETT,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to preserve the rights and freedoms it guarantees. CAC accordingly has a strong interest in this case and in the scope of the First Amendment rights that are protected by 42 U.S.C. § 1983.

INTRODUCTION AND SUMMARY OF ARGUMENT

Russell Bartlett alleges that Petitioners Luis Nieves and Bryce Weight arrested him in retaliation for exercising his First Amendment rights—that is, because he verbally protested what he believed to be improper conduct by the officers. Petitioners argue that even if this is true, Bartlett is prohibited from seeking damages under 42 U.S.C. § 1983 for First Amendment retaliatory arrest because they had probable cause to arrest him for "harassment" under Alaska law—a crime with which he was never charged. Pet. App. 12-13. Their position is that no one in Bartlett's position may seek redress under Section 1983 if there was probable cause to arrest that

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[1] The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

person for any crime, no matter how minor, and regardless of whether the actual reason for the arrest was retaliation.

This position is at odds with the text of Section 1983, contradicts the history that led to its enactment, and undermines the statute's manifest purpose. Moreover, contrary to Petitioners' contentions, state common law rules that existed when Section 1983 was enacted provide no justification for the result they seek.

Importantly, this case is about a federal statute—42 U.S.C. § 1983—and so this Court's decision should turn on the proper interpretation of that statute. Throughout Petitioners' brief, there is little indication of that. Instead, Petitioners invite this Court to base its decision on the Court's own views about what would be best for society—specifically, what rules would strike the ideal balance between the value of protecting free speech and the importance of shielding police officers from lawsuits. But this is not a *Bivens* case, in which the judiciary is crafting "an implied cause of action," *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1856-57 (2017), nor is the Court here fashioning "federal general common law," *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). The question is whether the statute under which Bartlett seeks relief, first enacted by Congress in 1871, imposes the rule Petitioners advocate.

It does not. Section 1983 was a key part of "extraordinary legislation," Cong. Globe, 42nd Cong., 1st Sess. 322 (1871) (hereinafter "Globe") (Rep. Stoughton), that was enacted during Reconstruction to "alter[] the relationship between the States and the Nation with respect to the protection of federally created rights," *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). Its purpose was to provide "some further safeguards

to life, liberty, and property," Globe 374 (Rep. Lowe), by allowing individuals to seek damages or injunctive relief in the federal courts for deprivations of rights "secured by the Constitution of the United States," 17 Stat. 13. Critically, the statute is not "a federalized amalgamation of pre-existing common-law claims, an all-in-one federal claim encompassing the torts of assault, trespass, false arrest, defamation, [and] malicious prosecution." *Rehberg v. Paulk*, 566 U.S. 356, 366 (2012). Instead, it furnished "a uniquely federal remedy" for incursions on "rights secured by *the Constitution*." *Wilson v. Garcia*, 471 U.S. 261, 271-72 (1985) (quoting *Mitchum*, 407 U.S. at 239) (emphasis added).

Congress placed no limits on the constitutional rights that could be vindicated under Section 1983, nor did it suggest that the scope of those rights should be narrowed to match the causes of action that state tort law already recognized. This breadth is precisely what the bill's opponents emphasized, *see Monroe v. Pape*, 365 U.S. 167, 178 (1961), with legislators complaining that its remedial terms were "as comprehensive as can be used," Globe App. 217 (Sen. Thurman). Then, as now, objections were raised that Section 1983's broad remedy would "give rise to numerous vexations and outrageous prosecutions," *id.* App. 50 (Rep. Kerr), exposing state officers to frivolous lawsuits:

> [I]f the sheriff levy an execution, execute a writ, serve a summons, or make an arrest, . . . pure in duty as a saint, . . . they are liable, and most certain, at the suit of any knave, plain or colored, under the pretext of the deprivation of his rights, privileges, and immunities as a citizen, *par excellence*, of the United States, to be summarily stripped of official

> authority, dragged to the bar of a distant and unfriendly court, and there placed in the pillory of vexatious, expensive, and protracted litigation . . . .

Globe 365 (Rep. Arthur); *id.* at 385 (Rep. Hawley) ("this bill . . . . puts in jeopardy the officers of the States, though in the conscientious discharge of their duties"). Those objections failed in the political process nearly a century and a half ago, and this Court should not revive them now by adding requirements to Section 1983 that are absent from its text and inconsistent with its remedial purpose.

Petitioners attempt to shore up their policy-based argument by offering an ostensibly neutral basis for it. They say that to identify the elements a plaintiff must prove in a First Amendment retaliatory arrest case, courts should impose the elements that were required by two "analogous" torts from state common law—false imprisonment and malicious prosecution. Because those two torts, according to Petitioners, required plaintiffs to plead and prove an absence of probable cause for their detention or prosecution, a Section 1983 plaintiff alleging retaliatory arrest must do the same.

Contrary to Petitioners' premise, however, these two torts were not analogous to a claim of First Amendment retaliation. As explained below, they protected fundamentally different interests and served entirely different aims than the First Amendment. And so the specific requirements of those torts, which were calibrated to balance a distinct set of concerns under state law, have no place in applying a federal statute meant to create an independent remedy for violations of the U.S. Constitution. Artificially limiting the scope of that federal constitutional remedy—in order to fit it within the confines of these

dissimilar state torts—would undermine Congress's statutory plan and the promise of Section 1983.

ARGUMENT

I. Section 1983 Was Meant To Vindicate the Unique and Fundamental Rights Guaranteed by the Federal Constitution, Not the Interests Protected by State Tort Law.

Section 1983, which derives from the first section of the Civil Rights Act of 1871, was enacted to create "a private right of action to vindicate violations of rights, privileges, or immunities secured by the Constitution." *Rehberg*, 566 U.S. at 361 (quotation marks omitted). The title of the 1871 legislation made its purpose clear: "An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes." 17 Stat. 13. This Act, "along with the Fourteenth Amendment it was enacted to enforce, were crucial ingredients in the basic alteration of our federal system accomplished during the Reconstruction Era," *Patsy v. Bd. of Regents*, 457 U.S. 496, 503 (1982), which established "the role of the Federal Government as a guarantor of basic federal rights against state power," *Mitchum*, 407 U.S. at 239; *see* Globe 577 (Sen. Carpenter) ("one of the fundamental . . . revolutions effected in our Government" by the Fourteenth Amendment was to "give Congress affirmative power . . . to save the citizen from the violation of any of his rights by State Legislatures").

The text of what is now Section 1983 left no doubt about the new primacy of "federally secured rights," *Smith v. Wade*, 461 U.S. 30, 34 (1983), over state laws and practices that denied or frustrated those rights. The statute gave any person who was

deprived of "any rights, privileges, or immunities secured by the Constitution of the United States" the ability to hold the perpetrator liable, "*any . . . law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding.*" 17 Stat. 13 (emphasis added); *see* Globe 692 (Sen. Edmunds) (declaring it the "solemn duty of Congress . . . to secure to the individual, in spite of the State, or with its aid, as the case might be, precisely the rights that the Constitution gave him").

"The specific historical catalyst" for the passage of this legislation "was the campaign of violence and deception in the South, fomented by the Ku Klux Klan, which was denying decent citizens their civil and political rights." *Wilson*, 471 U.S. at 276. In the debates over the Act, supporters "repeatedly described the reign of terror imposed by the Klan upon black citizens and their white sympathizers in the Southern states," which was made possible "because Klan members and sympathizers controlled or influenced the administration of state criminal justice." *Briscoe v. LaHue*, 460 U.S. 325, 337 (1983); *see* Globe 158 (Sen. Sherman) ("against these roaming bands of Ku Klux the law in North Carolina is a dead letter").

Significantly, these were not "cases of ordinary crime" but rather "political offenses." Globe 158 (Sen. Sherman). The Klan, in other words, was not a criminal organization but a terrorist organization, with "a political purpose" that it "sought to carry out . . . by murders, whippings, intimidation, and violence against its opponents." *Id.* at 320 (Rep. Stoughton). "Their object was the overthrow of the reconstruction policy of Congress and the disenfranchisement of the negro." *Id.* (quoting committee testimony of former Klan member).

In particular, the Klan—sheltered from punishment by the state—strove to suppress the speech and associational rights of the former slaves and their white allies, retaliating against those who dared defy them. *See* Globe 155 (Sen. Sherman) (quoting testimony describing attack in which the Klan "made all the colored men promise they would never vote the Radical ticket again"); *id.* at 157 (Sen. Sherman) ("[t]he negroes I allude to were killed because they were summoned as witnesses in the Federal courts"); *id.* at 321 (Rep. Stoughton) (quoting testimony of Klan victim: "They wanted to run them off because the principal part of them voted the Radical ticket. . . . They have been trying to get us to vote the Conservative ticket."); *id.* (Rep. Stoughton) (following a "meeting of the citizens . . . to protest against the outrages," "warrants were issued [at the Klan's instigation] for the arrest of peaceable and well-disposed negroes upon the charge of 'using seditious language'"); *id.* at 332 (Rep. Hoar) ("these citizens so murdered, outranged, or outlawed suffer all this because of their attachment to their country, their loyalty to its flag, or because their opinions on questions of public interest coincide with those of a majority of the American people").

Although Klan violence was "the principal catalyst for the legislation," Section 1983 "'was not a remedy against the Klan or its members but against those who representing a State in some capacity were unable or unwilling to enforce a state law.'" *District of Columbia v. Carter*, 409 U.S. 418, 426 (1973) (quoting *Monroe*, 365 U.S. at 175-76 (brackets omitted)). Congress recognized that laws were being applied selectively across the South to punish disfavored groups (the former slaves) and disfavored viewpoints (those of their white allies). While "outrages committed up-

on loyal people through the agency of this Ku Klux organization" went unpunished, as Senator Pratt noted, "[v]igorously enough are the laws enforced against Union people. They only fail in efficiency when a man of known Union sentiments, white or black, invokes their aid." Globe 505; *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 167 (1970) (noting "the persistent and widespread discriminatory practices of state officials").

The fundamental problem, therefore, was not isolated acts of violence—the type of discrete, individual harms for which state tort law was designed to provide compensation. Rather, it was that the Southern states' selective and discriminatory tolerance of this violence was "denying decent citizens *their civil and political rights*." *Wilson*, 471 U.S. at 276 (emphasis added); Globe 375 (Rep. Lowe) (Southern states were "permit[ing] the rights of citizens to be systematically trampled upon"). And that denial merited a remedy. *Id.* at 333 (Rep. Hoar) ("Suppose that . . . every person who dared to lift his voice in opposition to the sentiment of this conspiracy found his life and his property insecure. . . . In that case I claim that the power of Congress to intervene is complete and ample.").

To address this problem, Section 1983 "interpose[d] the federal courts between the States and the people, as guardians of the people's federal rights." *Patsy*, 457 U.S. at 503 (quoting *Mitchum*, 407 U.S. at 242). Previously "Congress relied on the state courts to vindicate essential rights arising under the Constitution." *Carter*, 409 U.S. at 427-28 (quoting *Zwickler v. Koota*, 389 U.S. 241, 245 (1967)). But "[w]ith the growing awareness that this reliance had been misplaced," lawmakers enacted Section 1983 to provide "indirect federal control over the unconstitutional ac-

tions of state officials." *Id.* at 428. Thus, while the violence inflicted on freedmen and their sympathizers "often resembled the torts of assault, battery, false imprisonment, and misrepresentation, § 1983 was not directed at the perpetrators of these deeds as much as at the state officials who tolerated and condoned them." *Owens v. Okure*, 488 U.S. 235, 249 n.11 (1989).

Section 1983 broke new ground, first, by making available a federal forum, based on the belief that federal courts would be able to "act with more independence" and "rise above prejudices or bad passions or terror." Globe 460 (Rep. Coburn).

Second, and most critical here, "Section 1983 impose[d] liability for violations of rights protected by *the Constitution*, not for violations of duties of care arising out of tort law." *Baker v. McCollan*, 443 U.S. 137, 146 (1979) (emphasis added); *see Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 686 n.45 (1978) (Representative Bingham, the Fourteenth Amendment's principal architect, "declared the bill's purpose to be 'the enforcement . . . of the Constitution on behalf of every individual citizen of the Republic.'" (quoting Globe App. 81)). "The coverage of the statute is thus broader than the pre-existing common law of torts." *Kalina v. Fletcher*, 522 U.S. 118, 123 (1997). It "was designed to expose state and local officials to *a new form of liability*," *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 259 (1981) (emphasis added), by providing a remedy for "federally secured rights," *Smith*, 461 U.S. at 34, and would be "supplementary to any remedy any State might have," *McNeese v. Bd. of Educ.*, 373 U.S. 668, 672 (1963). Regardless of what recourse might be available under state tort law for an injury, "[p]roponents of the measure repeatedly argued that . . . an independent federal remedy was

necessary." *Briscoe*, 460 U.S. at 338; *see* Globe 370 (Rep. Monroe) ("occasions arise in which life, liberty, and property require *new guarantees* for their security" (emphasis added)).

In sum, Section 1983 provides "*a uniquely federal remedy* against incursions under the claimed authority of state law upon *rights secured by the Constitution*." *Wilson*, 471 U.S. at 271-72 (quoting *Mitchum*, 407 U.S. at 239) (emphasis added). With full awareness that it was "altering the relationship between the States and the Nation with respect to the protection of federally created rights," Congress enacted Section 1983 to "protect *those* rights." *Mitchum*, 407 U.S. at 242 (emphasis added).

II. State Tort Rules May Be Borrowed To Fill in the Gaps of Section 1983 Only When Those Rules Are Compatible with the Statute's Purpose.

A. As with any statute, when interpreting Section 1983, "the starting point in [the] analysis must be the language of the statute itself." *Owen v. City of Independence*, 445 U.S. 622, 635 (1980). The statute's text clearly identifies the interests it protects, which include the "rights, privileges, or immunities secured by the Constitution," and the general types of remedies it provides, which include an "action at law." 42 U.S.C. § 1983. But the text lacks many details concerning how the constitutional tort remedy it authorizes should operate. So when a plaintiff alleges the violation of a constitutional right under Section 1983, courts "must determine the elements of, and rules associated with, an action seeking damages for its violation." *Manuel v. City of Joliet*, 137 S. Ct. 911, 920 (2017). That task, however, is "one essentially of statutory construction," *Wood v. Strickland*, 420 U.S. 308, 316 (1975), not an opportunity for a "freewheel-

ing policy choice," *Rehberg*, 566 U.S. at 363 (quoting *Malley v. Briggs*, 475 U.S. 335, 342 (1986)).

As this Court has recognized, "Congress intended the statute to be construed in the light of common-law principles that were well settled at the time of its enactment." *Kalina*, 522 U.S. at 123. That conclusion is premised on the "important assumption . . . that members of the 42d Congress were familiar with common-law principles . . . and that they likely intended these common-law principles to obtain, absent specific provisions to the contrary." *City of Newport*, 453 U.S. at 258. Because Congress "borrowed general tort principles" in crafting Section 1983, *Heck v. Humphrey*, 512 U.S. 477, 485 n.4 (1994), this Court has often filled in the gaps of the statute with "federal rules conforming in general to common-law principles," *Wallace v. Kato*, 549 U.S. 384, 388 (2007); *see, e.g.*, *Monroe*, 365 U.S. at 187 (the statute "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions").

Crucially, however, "the Court has not suggested that § 1983 is simply a federalized amalgamation of pre-existing common-law claims, an all-in-one federal claim encompassing the torts of assault, trespass, false arrest, defamation, malicious prosecution, and more." *Rehberg*, 566 U.S. at 366. Instead, it has recognized that "[t]he new federal claim created by § 1983 differs in important ways from those pre-existing torts," most significantly in that "it reaches constitutional and statutory violations that do not correspond to any previously known tort." *Id.* Because of that, "any analogies to those causes of action are bound to be imperfect." *Owens*, 488 U.S. at 248-49; *see Wilson*, 471 U.S. at 272 (the statute has "no precise counterpart in state law"); *Monroe*, 365 U.S.

at 196 (Harlan, J., concurring) ("a deprivation of a constitutional right is significantly different from and more serious than a violation of a state right and therefore deserves a different remedy even though the same act may constitute both a state tort and the deprivation of a constitutional right").

Accordingly, while this Court "look[s] first to the common law of torts" when "defining the contours and prerequisites of a § 1983 claim," tort principles "are meant to guide rather than to control the definition of § 1983 claims, serving 'more as a source of inspired examples than of prefabricated components.'" *Manuel*, 137 S. Ct. at 920-21 (quoting *Hartman v. Moore*, 547 U.S. 250, 258 (2006)). Thus the elements of a state cause of action are not to be mechanically imposed on a Section 1983 claim through "narrow analogies." *Owens*, 488 U.S. at 248. Instead, when "applying, selecting among, or adjusting common-law approaches, courts must closely attend to the values and purposes of the constitutional right at issue." *Manuel*, 137 S. Ct. at 921.[2]

Rather than rely inflexibly on analogies to specific state torts, therefore, this Court's approach has

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[2] *See, e.g.*, *Malley*, 475 U.S. at 340 ("[W]hile we look to the common law for guidance, we do not assume that Congress intended to incorporate every common-law immunity into § 1983 in unaltered form."); *Anderson v. Creighton*, 483 U.S. 635, 644-45 (1987) ("our determinations as to the scope of official immunity are made in the light of the common-law tradition," but "we have never suggested that the precise contours of official immunity can and should be slavishly derived from the often arcane rules of the common law" (quotation marks omitted)); *Rehberg*, 566 U.S. at 364 (although "tied to" the common law, the "Court's precedents have not mechanically duplicated the precise scope of the absolute immunity that the common law provided").

traditionally been to call upon more basic, fundamental, and broadly applicable principles of tort law. *See, e.g.*, *Tenney v. Brandhove*, 341 U.S. 367, 372-73 (1951) (legislator immunity "was taken as a matter of course by those who severed the Colonies from the Crown and founded our Nation . . . a reflection of political principles already firmly established in the States"); *Briscoe*, 460 U.S. at 334 ("the common law's protection for witnesses is a tradition so well grounded in history and reason that we cannot believe that Congress impinged on it by covert inclusion in the general language before us" (citation and quotation marks omitted)); *Carey v. Piphus*, 435 U.S. 247, 254-55 (1978) (relying on "[t]he cardinal principle of damages in Anglo-American law," which "hardly could have been foreign to the many lawyers in Congress in 1871" (quotation marks omitted)); *Pierson v. Ray*, 386 U.S. 547, 554-55 (1967) ("The immunity of judges for acts within the judicial role is equally well established, and we presume that Congress would have specifically so provided had it wished to abolish the doctrine."). Reliance on such general, foundational principles makes sense because they are the ones that "members of the 42d Congress were familiar with" and "likely intended" to apply under Section 1983. *City of Newport*, 453 U.S. at 258.

That is critical because "[r]ights, constitutional and otherwise, do not exist in a vacuum. Their purpose is to protect persons from injuries to particular interests, and their contours are shaped by the interests they protect." *Carey*, 435 U.S. at 254. The federal Constitution protects interests distinct from those recognized by state tort law, *Daniels v. Williams*, 474 U.S. 327, 333 (1986) ("the United States Constitution" and "traditional tort law . . . do not address the same concerns"), even when these two

sources of law prohibit conduct that is superficially similar.

B. To be sure, sometimes "the interests protected by a particular branch of the common law of torts may parallel closely the interests protected by a particular constitutional right. In such cases, it may be appropriate to apply the tort rules . . . directly to the § 1983 action." *Carey*, 435 U.S. at 258. "In other cases," however, "the interests protected by a particular constitutional right may not also be protected by an analogous branch of the common law torts." *Id.*; *see Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 394 (1971) ("The interests protected by state laws regulating trespass and the invasion of privacy, and those protected by the Fourth Amendment's guarantee against unreasonable searches and seizures, may be inconsistent or even hostile."); *Manuel*, 137 S. Ct. at 925 (Alito, J., dissenting) (citing "a severe mismatch" between the Fourth Amendment and the elements of a claim for malicious prosecution).

Where constitutional requirements and the interests they protect do not neatly align with any particular common law tort, "[t]he purpose of § 1983 would be defeated if injuries caused by the deprivation of constitutional rights went uncompensated simply because the common law does not recognize an analogous cause of action." *Carey*, 435 U.S. at 258; *see McNeese*, 373 U.S. at 674 (where "petitioners assert that respondents . . . are depriving them of rights protected by the Fourteenth Amendment," it "is immaterial whether respondents' conduct is legal or illegal as a matter of state law"). In a Section 1983 suit, the question is not whether the defendant has breached a duty of care imposed by state law, but rather whether he or she "has conformed to the re-

quirements of the Federal Constitution." *Owen*, 445 U.S. at 649.

"In order to further the purpose of § 1983," therefore, "the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question—just as the common-law rules of damages themselves were defined by the interests protected in the various branches of tort law." *Carey*, 435 U.S. at 258-59; *see Manuel*, 137 S. Ct. at 921. Because state courts do not develop the rules of their common law "with national interests in mind," the federal courts must ensure that any reliance on state law "will not frustrate or interfere with the implementation of national policies." *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 367 (1977). This Court's "consideration of state common law rules is only a device to facilitate determination of Congressional intent," *Smith*, 461 U.S. at 67 (Rehnquist, J., dissenting), and "Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action," *Wilson*, 471 U.S. at 269.

C. Further, even when this Court identifies a common law principle that may be appropriate to import into Section 1983, the Court does not embrace that rule without first considering whether it is consistent with the history and purpose of Section 1983.

With respect to damages, for instance, the Court has explained that, in the absence of "specific guidance" from Section 1983's text and history, it "look[s] first to the common law of torts," but only "with such modification or adaptation as might be necessary to carry out the purpose and policy of the statute." *Smith*, 461 U.S. at 34.

Likewise, with respect to immunities, even when this Court determines that "an official was accorded immunity from tort actions at common law when the Civil Rights Act was enacted in 1871, the Court next considers whether § 1983's history or purposes nonetheless counsel against recognizing the same immunity in § 1983 actions." *Malley*, 475 U.S. at 340 (quoting *Tower v. Glover*, 467 U.S. 914, 920 (1984)). That is because "it would defeat the promise of the statute to recognize any preexisting immunity without determining . . . its compatibility with the purposes of § 1983." *City of Newport*, 453 U.S. at 259; *see Wyatt v. Cole*, 504 U.S. 158, 164 (1992) ("irrespective of the common law support, we will not recognize an immunity available at common law if § 1983's history or purpose counsel against applying it in § 1983 actions").

Similarly, in deciding which kind of state statutes of limitations to apply, this Court has rejected yoking Section 1983 actions to the "multiplicity of state intentional tort statutes of limitations." *Owens*, 488 U.S. at 245 (1989). "Given that so many claims brought under § 1983 have no precise state-law analog, applying the statute of limitations for the limited category of intentional torts would be inconsistent with § 1983's broad scope." *Id.* at 249; *see id.* ("The intentional tort analogy is particularly inapposite in light of the wide spectrum of claims which § 1983 has come to span.").

D. On rare occasions, this Court has employed a variant on the approach described above. This alternative method begins by identifying a specific tort available in 1871 that represents the "closest analogy" to whatever constitutional claim is being considered. *Heck*, 512 U.S. at 484. The Court has then imposed the elements and associated rules of that spe-

cific tort on the constitutional claim. *See Manuel*, 137 S. Ct. at 920 ("Sometimes, that review of common law will lead a court to adopt wholesale the rules that would apply in a suit involving the most analogous tort." (citing *Wallace*, 549 U.S. at 388-90; *Heck*, 512 U.S. at 483-87)).

This approach was first used in *Heck v. Humphrey*. There, the Court reasoned that "[t]he common-law cause of action for malicious prosecution provide[d] the closest analogy" to the plaintiff's claims, and concluded that "[o]ne element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." *Heck*, 512 U.S. at 484. The Court therefore imposed the same element on a Section 1983 plaintiff challenging his state confinement. *Id.* at 486-87.

This approach risks limiting the breadth of Section 1983's constitutional remedy to the scope of the common law torts that states recognized in 1871. Despite that risk, this approach can effectuate congressional intent—when the constitutional right at issue truly is analogous to an interest that was protected by state tort law. In *Wallace v. Kato*, for instance, where a plaintiff sought damages under Section 1983 for an unlawful arrest, the question arose when the plaintiff's cause of action accrued. This Court identified the tort of false imprisonment as "the proper analogy" to the plaintiff's cause of action, because "[t]he sort of unlawful detention remediable by the tort of false imprisonment is detention *without legal process*, . . . and the allegations before us arise from respondents' detention of petitioner *without legal process*." 549 U.S. at 389. The Court therefore applied the "distinctive" accrual rules of that tort to the plaintiff's claim. *Id.* Because those rules reflected

"the reality that the victim may not be able to sue while he is still imprisoned," *id.*, they were capable of vindicating the federal constitutional right at issue, notwithstanding their origin in state tort law.

But when a constitutional claim has no true analogue in the torts that were available in 1871—as here, *see infra*, Part III—restricting the breadth of that constitutional claim by forcing it within the confines of a dissimilar state tort would diminish the statute's promise of "a uniquely federal remedy" for "rights secured by the Constitution," *Wilson*, 471 U.S. at 271-72 (quoting *Mitchum*, 407 U.S. at 239). That is, if this Court were to insist on selecting a "most analogous" state tort for every type of constitutional claim—and mechanically transplanting the elements of that tort, regardless of differences between the two—the Court would undermine the purpose of Section 1983, which was meant to provide a unique federal right, "some *further safeguards* to life, liberty, and property." Globe 374 (Rep. Lowe) (emphasis added); *see McNeese*, 373 U.S. at 672 (Section 1983 was enacted to offer a federal remedy "supplementary to any remedy any State might have").

There is no valid basis for such a restrictive approach, especially because the Forty-Second Congress understood that Section 1983 would be interpreted broadly to promote its remedial goals. "Representative Shellabarger, the author and manager of the bill in the House, explained in his introductory remarks the breadth of construction that the act was to receive." *Owen*, 445 U.S. at 636. He noted: "This act is remedial, and in aid of the preservation of human liberty and human rights. All statutes and constitutional provisions authorizing such statutes are liberally and beneficently construed. . . . As has been again and again decided by your own Supreme Court

of the United States, . . . the largest latitude consistent with the words employed is uniformly given in construing such statutes . . . ." Globe App. 68. "Similar views of the Act's broad remedy for violations of federally protected rights were voiced by its supporters in both Houses of Congress." *Owen*, 445 U.S. at 636; *cf. Wilson*, 471 U.S. at 272 (adopting interpretation of Section 1983 that "best fits the statute's remedial purpose").

Rigidly adhering to the "analogy" approach, even when the analogy does not fit, loses sight of the interpretive goal this approach is supposed to serve—effectuating congressional intent. Recognizing that pitfall, this Court has repeatedly avoided "drawing narrow analogies between § 1983 claims and state causes of action," *Owens*, 488 U.S. at 248, and it should maintain that course here.

III. Because the Torts of False Imprisonment and Malicious Prosecution Are Not Analogous to a Claim of First Amendment Speech Retaliation, It Would Undermine Section 1983 To Impose the Rules of Those Torts Here.

As explained above, when a plaintiff brings a Section 1983 action for a constitutional violation, and this Court "determine[s] the elements of . . . an action seeking damages for [that] violation," *Manuel*, 137 S. Ct. at 920, the "precise contours" of those elements are not to be "slavishly derived from the often arcane rules of the common law," *Anderson*, 483 U.S. at 645. Instead, they "should be tailored to the interests protected by the particular right in question." *Carey*, 435 U.S. at 259.

In this case, the right in question is the freedom to speak without being arrested by law enforcement

in retaliation for that speech. And the interests that this right protects are fundamentally unlike the interests protected by superficially similar state torts in 1871. Because of that fundamental disparity, the elements of those torts—such as the requirement of an absence of probable cause—should not be imposed on a First Amendment claim of retaliatory arrest.

False Imprisonment. False imprisonment was defined in 1871 as "the unlawful restraint of a person contrary to his will, either with or without process of law." 1 Francis Hilliard, *The Law of Torts or Private Wrongs* § 1a, at 195 (1866) (emphasis omitted). When process of law was employed, the tort was sometimes called false arrest. *See Wallace*, 549 U.S. at 388.

At first glance, false imprisonment may seem similar to First Amendment retaliatory arrest because both involve an allegedly wrongful detention. But there the resemblance ends. The nineteenth-century tort of false imprisonment served different goals, and protected different interests, than the freedom from speech-based arrests.

The essence of false imprisonment was the *absence of legal grounds* for the detention or arrest: "False imprisonment is a trespass committed by one man against the person of another, by *unlawfully* arresting him, and detaining him *without any legal authority*." 2 C.G. Addison, *A Treatise on the Law of Torts* § 798, at 13 (H.G. Wood ed., 1881) (emphasis added); *see Burns v. Erben*, 40 N.Y. 463, 466 (1869) (false imprisonment is "an *illegal* arrest and detention," and "[t]he gist of such an action is an *unlawful* detention" (emphasis added)). Indeed, the tort was sometimes even referred to as "[u]nlawful or false imprisonment." Martin L. Newell, *A Treatise on the Law of Malicious Prosecution, False Imprisonment, and the Abuse of Legal Process* § 1, at 56 (1892); *id.*

(defining the tort as "confinement or detention *without sufficient authority*" (emphasis added)).

Because an *absence of legal authority* was at the core of false imprisonment—baked into its very definition—it is clear why the existence of probable cause would defeat such a claim. An arrest could lawfully be carried out if there were reasonable and sufficient grounds for it. *Chrisman v. Carney*, 33 Ark. 316, 321 (1878); *Rohan v. Sawin*, 59 Mass. 281, 285 (1850). Therefore the existence of such reasonable and sufficient grounds meant the arrest was not unlawful. *Id.*

That principle, virtually a tautology, illustrates the fundamental mismatch between the common law claim of false imprisonment and a First Amendment claim of speech retaliation. The latter does not depend on showing that a defendant lacked legal authority to take the action he or she took. To the contrary, it is generally a given in such cases that the challenged decision was otherwise within the defendant's lawful authority. *See, e.g., Bd. of Cty. Comm'rs, Wabaunsee Cty. v. Umbehr*, 518 U.S. 668, 674 (1996) ("the government is entitled to terminate [an employee] for no reason at all," but may not do so "'on a basis that infringes his constitutionally protected . . . freedom of speech'" (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972))). The gravamen of the First Amendment claim, rather, is that retaliation was the deciding factor in the defendant's choice. *Id.* at 675 ("The First Amendment's guarantee of freedom of speech protects government employees from termination *because of* their speech on matters of public concern."); *see Lozman v. City of Riviera Beach*, 138 S. Ct. 1945, 1949 (2018). The essence of the wrong, in other words, is the government's impermissible reprisal for speech, which "offends the Constitution [because] it threatens to inhibit exercise of the protected right."

Hartman, 547 U.S. at 256 (quoting *Crawford–El v. Britton*, 523 U.S. 574, 588 n.10 (1998)).

By contrast, false imprisonment had nothing to do with the motives or intent of the defendant. That is why, courts explained, "if the arrest was unlawful, no malice need be shown. The defendant, if he participated in it, or instigated or encouraged it, is liable for the false imprisonment, however pure his motives may have been." *Chrisman*, 33 Ark. at 321. But in a claim of First Amendment retaliation, motive is the very crux of the matter. *Hartman*, 547 U.S. at 259 (plaintiffs "must show a causal connection between a defendant's retaliatory animus and subsequent injury").

Further widening the gulf, the tort of false imprisonment was not designed specifically to address misconduct *by the government*. Private persons, no less than government officers, could be held liable for false imprisonment. *See* Hilliard, *supra*, § 16, at 206-07 ("The most numerous cases of false imprisonment, are those involving the right of peace-officers *or private individuals* to arrest without warrant . . . ." (emphasis added)).[3] As this fact underscores, the tort was not aimed at deterring or redressing *government* misconduct. Indeed, government officers were "treated with *more* indulgence" under the rules of false imprisonment than private persons were. Thomas M.

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[3] Such actions against private persons were common, because the law gave private persons broad authority to arrest suspected felons. *See Brockway v. Crawford*, 48 N.C. 433, 437 (1856) ("the law encourages every one, as well private citizens as officers, to keep a sharp look-out for the apprehension of felons, by holding them exempt from responsibility for an arrest, . . . unless the arrest is made . . . without probable cause"); *Burns*, 40 N.Y. at 466 ("any man, upon reasonable probable ground of suspicion, may justify apprehending a suspected person").

Cooley, *A Treatise on the Law of Torts* 175 (1879) (emphasis added); *see Rohan*, 59 Mass. at 285 ("as to constables, and other peace-officers, acting officially, the law clothes them with greater authority").

Likewise, the tort of false imprisonment was obviously not designed to safeguard the interests of free speech in any way. Its aim was simply to compensate individuals for "causeless arrests," Cooley, *supra*, at 175, that had impinged on their liberty of movement. The tort's rules and prerequisites were fashioned to balance *that* interest—regarded as a strictly personal one—with the countervailing societal need to encourage the arrest of felons and promote law and order: "the problem always is, how to harmonize the *individual right to liberty* with the *public right to protection*." *Id.* (emphasis added).

In stark contrast, the First Amendment is specifically and exclusively focused on *governmental suppression of speech* and the unique harms that it entails—not only for the individual targeted but for others holding similar views and for the nation at large. "The First Amendment presupposes that the freedom to speak one's mind is *not only an aspect of individual liberty*—and thus a good unto itself—but also is essential to the common quest for truth and the vitality of society as a whole." *Bose Corp. v. Consumers Union, Inc.*, 466 U.S. 485, 503-04 (1984) (emphasis added).

Moreover, while false imprisonment rules were designed solely to compensate individual victims of unlawful detentions for their injuries, Section 1983 has a broader purpose: its constitutional remedy is "intended not only to provide compensation to the victims of past abuses, but to serve as a deterrent against future constitutional deprivations." *Owen*, 445 U.S. at 651; *see Smith*, 461 U.S. at 49 ("deter-

rence of future egregious conduct is a primary purpose" of Section 1983); *City of Newport*, 453 U.S. at 268 (the goals are "compensation *and* deterrence" (emphasis added)).

Indeed, for the Forty-Second Congress, compensating individual victims for their injuries was primarily a means to an end: preventing state governments from depriving individuals of their federally guaranteed constitutional rights. The text Congress enacted reveals the centrality of its deterrent and preventive function, by making available *injunctive* relief, "or other proper proceeding for redress," in addition to damages. 17 Stat. 13. The bill's proponents also made this point clear. *See* Globe 501 (Sen. Frelinghuysen) ("How is the United States to protect the privileges of citizens of the United States in the States? It cannot deal with the States or with their officials to compel proper legislation and its enforcement; it can only deal with the offenders who violate the privileges and immunities of citizens of the United States. . . . as you cannot reach the Legislatures, the injured party should have an original action in our Federal courts . . . ."); *id.* at 376 (Rep. Lowe) ("The Federal Government cannot serve a writ of *mandamus* upon State Executives or upon State courts to compel them to observe and protect the rights, privileges, and immunities of citizens. There is no legal machinery for that purpose. . . . Hence this bill throws open the doors of the United States courts to those whose rights under the Constitution are denied or impaired."). A comparable emphasis on deterrence is absent from the common law rules of false imprisonment.

None of these discrepancies should be surprising: "It would indeed be the purest coincidence if the state remedies for violations of common-law rights by pri-

vate citizens were fully appropriate to redress those injuries which only a state official can cause and against which the Constitution provides protection." *Monroe*, 365 U.S. at 196 n.5 (Harlan, J., concurring). Quite simply, false imprisonment is an inappropriate analogy for Section 1983 retaliatory arrest claims.

Even if one ignored all this and insisted on analogizing First Amendment retaliatory arrest to false imprisonment, the rules governing false imprisonment still would not justify the probable cause rule that Petitioners seek in this case. For it was crystal clear in 1871 that false imprisonment claims were defeated only where there was probable cause to believe a *felony* had occurred. *Chrisman*, 33 Ark. at 321; *Burns*, 40 N.Y. at 466; *Brockway*, 48 N.C. at 437; *Rohan*, 59 Mass. at 285; Addison, *supra*, § 802, at 15; Cooley, *supra*, at 175; Newell, *supra*, § 1, at 56. "A constable ha[d] no power at common law to arrest a person without warrant on suspicion of his having committed a misdemeanor." Addison, *supra*, § 802, at 15; *see* Hilliard, *supra*, § 17, at 207 ("somewhat nice distinctions have been established upon this subject, depending on the nature and degree of the crime").

To be sure, the boundary between felonies and misdemeanors may not be the same today as it was in 1871, but it is doubtful that the crime of "harassment," *see* Alaska Stat. 11.61.120(a)(1), would have been understood by the members of the Forty-Second Congress as the type of offense for which a warrantless arrest could be conducted on probable cause without fear of liability. *See, e.g.*, *Rohan*, 59 Mass. at 286 ("Larceny of goods"); Cooley, *supra*, at 174

("setting fire to [a] neighbor's house"); Hilliard, *supra*, § 19, at 210 ("furious driving").[4]

Moreover, as Petitioners and the United States acknowledge, it was not even universally established among the states that probable cause of a felony always defeated an action for false imprisonment. *See, e.g.*, *Hawley v. Butler*, 54 Barb. 490, 503 (N.Y. Sup. 1868) (stating that only "the officer *acting without malice or bad motive*, will be protected" (emphasis added)). As discussed above, borrowing a specific tort rule to flesh out Section 1983 is justifiable only when that rule was so pervasive and "well grounded in history" that members of Congress cannot be assumed to have departed from it through silence. *Briscoe*, 460 U.S. at 334 (quoting *Tenney*, 341 U.S. at 376).

Significantly, therefore, even though the common law rules of false imprisonment did not safeguard speech rights, address the motives of government officers, or seek to deter violations of fundamental constitutional rights—all of which are reasons why this tort is an inapt analogy for First Amendment retalia-

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[4] It was also generally acknowledged that "[f]orcible breaches of the peace, in affrays, riots, etc." justified warrantless arrests without fear of liability, based on "their tendency to lead to serious, and perhaps fatal, injuries." Cooley, *supra*, at 175-76. Here too, it appears that the types of conduct encompassed within this rule were more serious than what Alaska's "harassment" misdemeanor covers. *See* Addison, *supra*, § 811, at 23 ("It is not enough to show that the plaintiff made a great noise and disturbance, and refused to depart, and was in great heat and fury . . . . Disturbance and annoyance of a public meeting, by putting questions to the speaker, making observations on their statements, and saying, 'That's a lie,' do not constitute a breach of the peace." (quotation marks omitted)). And if "breach of the peace" in some jurisdictions covered activity protected today by the First Amendment, that would only highlight the disparity between that Amendment and the rules of the common law.

tion—those rules *still* do not support the immunity from liability that Petitioners seek.

Malicious Prosecution. The tort of malicious prosecution fares no better as an analogy to First Amendment retaliatory arrest.

Malicious prosecution involved instigating legal process to have another person arrested or detained, such as by initiating a criminal prosecution. *Ahern v. Collins*, 39 Mo. 145, 150 (1866) ("The essential ground of an action for malicious prosecution . . . consisted in the fact that there had been a legal prosecution against the plaintiff without reasonable or probable cause."); *Chrisman*, 33 Ark. at 321 ("To have procured the warrant from malice and without probable cause is a distinct civil injury.").

In an action for malicious prosecution, therefore, the defendant was not accused of having personally apprehended or detained the plaintiff, but rather of having caused such acts by those with legal authority to carry them out. *See Cardival v. Smith*, 109 Mass. 158, 158 (1872) (malicious prosecution "is an action for bringing a suit at law"). And the wrongdoer in a malicious prosecution case—the person who allegedly acted with ill intent—was often not a government official. Under traditional common law rules, private persons could initiate criminal prosecutions, *see, e.g.*, *Ventress v. Rosser*, 73 Ga. 534 (1884) (defendant charged plaintiff with larceny and caused his arrest and prosecution); *Herman v. Brookerhoff*, 8 Watts 240 (Pa. 1839) (defendant caused a writ of detention to be issued against plaintiff for selling merchandise without a license), and they could even have someone detained as part of a *civil* lawsuit, such as "for an alleged fraud in contracting a debt," *Hogg v. Pinckney*, 16 S.C. 387, 392 (1882), or an "alleged infringement of a patent right," Hilliard, *supra*, § 22, at 219. If

they did so maliciously and without probable cause, they were liable for malicious prosecution. *Dinsman v. Wilkes*, 53 U.S. 390, 402 (1851) ("The action has been extended to civil as well as criminal cases where legal process has been maliciously used against another without probable cause."); *Cardival*, 109 Mass. at 158 ("if one maliciously causes another to be arrested and held to bail for a sum not due . . . . an action for a malicious prosecution may be maintained against him").[5]

In short, the tort of malicious prosecution had no special focus on wrongdoing by government officers. *See, e.g.*, *Stoecker v. Nathanson*, 98 N.W. 1061, 1061-62 (Neb. 1904) (defendant had plaintiff prosecuted over unpaid bill); *Wheeler v. Nesbitt*, 65 U.S. 544, 548 (1860) (defendants included both a magistrate and private persons).

That is highly significant because, as discussed above, the harm that First Amendment retaliation claims seek to deter is the harm of allowing the *government* to make reprisals for one's speech, which would allow it to "produce a result which (it) could not command directly." *Perry*, 408 U.S. at 597 (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)). The rules of malicious prosecution were not shaped to address this concern, but on the contrary to encourage prosecutions, *see Chesley v. King*, 74 Me. 164, 175-76 (1882); *Ventress*, 73 Ga. at 541, by ensuring that "*whatever may be the motive* of the prosecutor in a criminal action, *he is free from danger* if there be a probable cause for the accusation which he makes," *Hogg*, 16 S.C. at 393 (emphasis added). That goal is

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[5] In cases involving civil process, the tort was sometimes termed "malicious arrest" and involved slightly different rules. *See Ahern*, 39 Mo. at 150; *Herman*, 8 Watts at 241.

incompatible with the aim of deterring police officers from selectively employing their lawful authority to punish those whose speech they dislike.

Indeed, notwithstanding its name, this tort's rules and elements were not focused on deterring malice. Instead, much like false imprisonment, this tort was designed to compensate individuals for the harms that resulted from being prosecuted without an adequate reason. "The essential ground of an action for malicious prosecution," therefore, "consisted in the fact that there had been a legal prosecution against the plaintiff *without reasonable or probable cause*." *Ahern*, 39 Mo. at 150 (emphasis added); *see Herman*, 8 Watts at 241 ("[t]he gist of the action . . . is the origination of a malicious *and groundless* prosecution, which *ipso facto* put the party in peril" (emphasis added)); *Chrisman*, 33 Ark. at 322-23 ("The law does not undertake to compel—however society may respect—a nice sense of honor, by inflicting a pecuniary liability upon a person for what he might lawfully and ought to do, because his motives were selfish.").

While malice was also a "necessary ingredient," many courts allowed it to "be inferred from the want of probable cause," *Ahern*, 39 Mo. at 150; *Turner v. O'Brien*, 5 Neb. 542, 543-44 (1877) ("if want of probable cause is established . . . , then malice may be, and most commonly is inferred"), illustrating its secondary status. *See Wheeler*, 65 U.S. at 551-52 (a plaintiff must "prove affirmatively . . . that the defendant had no reasonable ground for commencing the prosecution," but the jury may make an "inference of malice"). Some authorities went so far as to actually define "malicious" actions as those with no justifiable basis. *See Hogg*, 16 S.C. at 398 ("malice in law being a wrongful act done intentionally *without just cause*

or excuse" (emphasis added)); *Boyd v. Cross*, 35 Md. 194, 197 (1872) ("there ought to be enough to satisfy a reasonable man that the accuser had *no ground for proceeding* but his desire to injure the accused" (emphasis added)).

In sum, because of how this tort treated the concepts of malice and intent, its elements are incapable of handling the unique harms addressed by the First Amendment freedom from speech-based retaliation. The common law recognized that "a person actuated by the plainest malice may nevertheless . . . have a justifiable reason for the prosecution of the charge." *Wheeler*, 65 U.S. at 550. And as far as the common law was concerned, having "a justifiable reason" was enough to immunize defendants from liability for this tort. But if one is seeking to prevent the selective use of governmental power to suppress disfavored ideas, the existence of "a justifiable reason" for an officer's conduct is not enough.

This Court, therefore, should not artificially limit First Amendment claims of retaliatory arrest by imposing on them the elements of this state tort. Doing so would be a significant step toward erasing the concept of retaliation from the remedy that Section 1983 provides. And as a result, it would become less true that "the First Amendment prohibits government officials from retaliating against individuals for engaging in protected speech." *Lozman*, 138 S. Ct. at 1949. There is not the slightest indication in the text, history, or purpose of Section 1983 "that Congress would have sanctioned this interpretation of its statute." *Wilson*, 471 U.S. at 274-75.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

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No. 17-1174

In the Supreme Court of the United States

LUIS A. NIEVES AND BRYCE L. WEIGHT,

Petitioners,

v.

RUSSELL P. BARTLETT,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF INSTITUTE FOR JUSTICE AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS CURIAE* AND SUMMARY OF ARGUMENT

The Institute for Justice (IJ) is a nonprofit public-interest law firm that litigates in support of greater judicial protection for individual rights, including citizens' First Amendment right to speak about issues of public concern in their communities.[1]

As part of its efforts, IJ works to empower citizens affected by local government policies to become activists for change. IJ has trained thousands of these activists in person, including more than 2,400 property rights activists whose homes or businesses were threatened with blight designations or eminent domain and more than 900 entrepreneurs whose businesses were harmed by regulation. IJ has also worked with more than 150 communities of property owners and entrepreneurs who sought to change local law or oppose harmful proposed projects—including, for example, a group of food truck owners in Sarasota, Florida, fighting an ordinance prohibiting food trucks from operating within 800 feet of a brick-and-mortar restaurant without the owner's consent, and homeowners in a Charlestown, Indiana, neighborhood targeted for redevelopment.

In addition to training activists in person, IJ has assisted countless others by publishing "survival guides" for entrepreneurs and opponents of eminent domain to use in organizing grassroots political cam-

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[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* and its counsel made a monetary contribution to its preparation or submission. The parties have filed blanket consents to the filing of *amicus curiae* briefs with the Clerk.

paigns in their communities. See, *e.g.*, Inst. for Justice, *Entrepreneur's Survival Guide* (Sept. 2014), perma.cc/-PFG5-BK54. These guides instruct activists on how to advocate for change in local government policies.

IJ has a strong interest in ensuring that courts are able to hold governments accountable when they unlawfully arrest individuals in retaliation for exercising their First Amendment rights. The question presented here directly implicates that interest.

A holding that a retaliatory arrest claim is barred when the arrest was supported by probable cause would seriously erode Americans' ability to exercise their First Amendment rights. By foreclosing any judicial inquiry into the motivations behind an arrest—even where there is substantial evidence of a retaliatory motive—a probable cause bar would block a large number of meritorious retaliatory arrest claims. Moreover, by replacing the burden-shifting framework of *Mt. Healthy City School District Bd. of Education* v. *Doyle*, 429 U.S. 274 (1977), with a legal standard far more deferential to the government, the probable cause bar would encourage officials to retaliate through arrests rather than by other means that would remain subject to meaningful First Amendment scrutiny.

Thus, a probable-cause bar would deter citizens from speaking on issues of public concern. It is relatively easy for a person speaking out against government action to be arrested on some charge, and a probable cause bar would ensure that any First Amendment claim based on such an arrest would fail. Faced with the risk of retaliatory arrest and likely deprived of any legal recourse, many citizen activists will avoid public speech and assembly rather than expressing their views—a result that cannot be squared with the values that animate the First Amendment.

ARGUMENT

A. The question presented implicates important First Amendment values.

1. Democracy in America works when, and only when, every American is able to exercise "the prized American privilege to speak one's mind." *Bridges* v. *California*, 314 U.S. 252, 270 (1941). It is crucial that citizens be free not only to vote on Election Day but also to speak on issues of public concern without fear of reprisal.

Citizen speech, as this Court has explained, is essential to democratic governance because it is the mechanism by which public opinion informs government action. The American system presupposes that politicians will be "cognizant of and responsive to [the] concerns" of their constituents; indeed, "[s]uch responsiveness is key to the very concept of self-governance through elected officials." *McCutcheon* v. *FEC*, 572 U.S. 185, 227 (2014). This responsiveness, in turn, depends on maintaining a culture of open and robust public discourse. See *Stromberg* v. *People of State of Cal.*, 283 U.S. 359, 369 (1931) ("The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people * * *, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."). Public debate on critical issues indicates to elected officials what their constituents expect—and by drawing the public into the political process, it fosters a spirit of civic-mindedness.

Though public debate takes many shapes, there is no more quintessential form of political advocacy than public protests, demonstrations, and assemblies. The First Amendment recognizes the importance of such activities by protecting "the right of the people peace-

ably to assemble" separately from the freedom of speech. U.S. Const. amend. I. And this Court's public-forum doctrine is founded on the understanding that public spaces, "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague* v. *Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939).

To be sure, as this Court has repeatedly observed, the right to assemble and speak in public "is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order." *Hague*, 307 U.S. at 516. Thus, public speech activities are subject to "reasonable restrictions on [their] time, place, or manner" (*Ward* v. *Rock Against Racism*, 491 U.S. 781, 791 (1989)), and law enforcement is frequently and rightly called upon to enforce those restrictions. But as this Court recently recognized, this policing entails "a risk that some police officers may exploit the arrest power as a means of suppressing speech." *Lozman* v. *City of Riviera Beach, Fla.*, 138 S. Ct. 1945, 1953 (2018). Law enforcement officers may, for example, single out the most vocal people at a protest, or those with particular slogans or signs.

The threat of reprisal from law enforcement may not be a strong deterrent to professional political activists and organizers, but many Americans who engage in public speech activities or attend public assemblies are not professional activists. On the contrary, they are often people who do not generally attend such public events or demonstrations but happen to be passionate about a particular issue or topic. These would-be activists have views that deserve to be heard—whether they pertain to policies at the national level or local government actions likely to impact their individual rights or livelihoods. But such activists are also

particularly susceptible to being deterred from speaking if they believe that they will face arrest for doing so.

B. Barring claims for retaliatory arrest where probable cause exists would severely chill First Amendment activity.

A categorical bar on First Amendment retaliation claims for arrests supported by probable cause would deal a serious blow to First Amendment freedoms. Under that approach, courts would be forbidden from undertaking the same kind of inquiry into the government's motives that they perform without difficulty in other First Amendment retaliation cases. Such an approach would give law enforcement free rein to deal with disfavored speakers through arrests, rather than other measures that would incur meaningful First Amendment scrutiny. This, in turn, would exert a serious chill on activists' protected political speech.

1. A categorical probable-cause bar would prevent courts from identifying the true motive behind government retaliation.

Like many other constitutional doctrines, the First Amendment's protection against government retaliation for individuals' speech implicates courts in the task of determining the motivation for state action. But in First Amendment retaliation cases, courts take a much harder look at governmental intent than they do in other contexts.

In these cases, under the burden-shifting framework of *Mt. Healthy*, 429 U.S. at 287, plaintiffs need only show that their protected First Amendment activity was a "motivating factor" behind government action against them in order to make out a prima facie

case of retaliation. The burden then shifts to the government to show, by a preponderance of the evidence, "that it would have reached the same decision * * * even in the absence of the protected conduct." *Id.* This framework enables courts to hold state actors accountable for retaliation when they act with unlawful motives, while allowing official actions to stand when they would have been taken even absent any retaliation. And as respondent notes, that test has worked well in practice for years. Resp't Br. 42.

Under the approach favored by petitioners, however, no inquiry into governmental intent could ever occur, because a retaliatory arrest claim would be categorically barred as long as probable cause for the arrest existed. Pet'rs Br. 13-16. The result would be to insulate the government actors from liability even where, as here, there is enough evidence to go to a jury on the question whether an arrest was based on a retaliatory motive. Pet. App. 6.

The protection afforded to First Amendment rights should not turn on the method by which the government infringes them—but that is the result of an approach that requires judges and juries to close their eyes to the improper motive behind retaliatory arrests. In circumstances like these, there is no compelling reason to preclude the trier of fact from assessing the motivation for an arrest and to hold the defendant liable if the arrest is found to have been in retaliation for First Amendment activity.

2. A categorical probable-cause bar would unduly chill First Amendment activity.

Given that a probable-cause bar would preclude many meritorious claims for retaliatory arrest from going forward (by precluding scrutiny of the motivation

for the arrest), there can be no doubt that the bar would also severely chill First Amendment activity.

To start, this Court has often recognized that governmental retaliation for the exercise of First Amendment rights "'offends the Constitution'" by "'threaten-[ing] to inhibit exercise of the protected right.'" *Hartman* v. *Moore*, 547 U.S. 250, 256 (2006) (quoting *Crawford-El* v. *Britton*, 523 U.S. 574, 588 n.10 (1998)); see also, *e.g.*, *Perry* v. *Sinderman*, 408 U.S. 593, 597 (1972) (noting that if the government could take adverse action based on an individuals' First Amendment activity, "his exercise of those freedoms would in effect be penalized and inhibited"). Retaliation puts a person to the intolerable choice of exercising his rights and facing personal jeopardy on the one hand, and refraining from protected speech activities on the other. Faced with that choice, all but the most courageous individuals will refrain from exercising their First Amendment rights—undermining the "uninhibited, robust, and wide-open" debate on public issues that the First Amendment protects above all else. *N.Y. Times Co.* v. *Sullivan*, 376 U.S. 254, 270 (1964).

Retaliatory *arrest*, moreover, is one of the most fearsome tools for reprisal available to government officials. It is often easy for a police officer or other government actor to find a legal pretext on which to arrest someone whose speech is thought objectionable. For example, the offense for which respondent was arrested—harassment in the second degree—can be committed by "insult[ing], taunt[ing], or challeng[ing] another person in a manner likely to provoke an immediate violent response." Alaska Stat. Ann. § 11.61.120-(a)(1). That vague standard could sweep up virtually any passionate speech uttered in a police officer's presence. And even leaving that statute aside, an officer inclined to retaliate against a person based on

his speech could likely arrest him for jaywalking, loitering, disorderly conduct (Alaska Stat. Ann. § 11.61.110), "[r]efusing to assist a peace officer" (*id.* § 11.56.720(a)), or many other infractions.

And once an arrest is made—even for a trivial offense—the potential consequences are serious:

> A custodial arrest exacts an obvious toll on an individual's liberty and privacy, even when the period of custody is relatively brief. The arrestee is subject to a full search of her person and confiscation of her possessions. * * * The arrestee may be detained for up to 48 hours without having a magistrate determine whether there in fact was probable cause for the arrest. Because people arrested for all types of violent and nonviolent offenses may be housed together awaiting such review, this detention period is potentially dangerous. And once the period of custody is over, the fact of the arrest is a permanent part of the public record.

Atwater v. *City of Lago Vista*, 532 U.S. 318, 364-65 (2001) (O'Connor, J., dissenting) (citations omitted); *id.* at 346 (majority opinion) (acknowledging that, at a minimum, custodial arrests present the opportunity for "gratuitous humiliation[]" of the arrestee). It is self-evident, therefore, that an arrest, accompanied by these collateral consequences, is among the most drastic forms of government retaliation.

It follows that a probable-cause bar will have a profound chilling effect on First Amendment activity. That is so for two reasons. First, as we have shown, by effectively precluding governmental liability for retaliatory arrest as long as probable cause is present, the bar ensures that many instances of unlawful

retaliation will go unredressed. And second, by making it much harder to prove a claim for retaliatory arrest than for other retaliatory conduct, the bar encourages the government to retaliate by way of arrests, rather than other means.

The prospect of reprisal through arrest will surely deter many would-be activists from speaking out on public issues. As explained above, many people who engage in public speech are novices who find the prospect daunting. If they believe that they will be retaliated against if the content of their speech offends the wrong official, these individuals will either censor their political speech or refrain from speaking altogether—to their own detriment and to the detriment of the community that is deprived of hearing their views. The First Amendment cannot abide that result.

This Court's decision last Term in *Lozman* v. *City of Riviera Beach, Florida* is unlikely to be a meaningful check on such abuses. Although *Lozman* held that an individual arrested for speaking out against local government policies could maintain a retaliatory-arrest claim notwithstanding the existence of probable cause for his arrest, the decision relied on the proposition that the facts of that case were "far afield from the typical retaliatory arrest claim." 138 S. Ct. at 1954. Indeed, the Court noted, the petitioner in *Lozman* "allege[d] more governmental action than simply an arrest"; rather, he alleged that he was retaliated against "pursuant to an 'official municipal policy' of intimidation" and that the city government he criticized "formed a premeditated plan to intimidate him." *Ibid.* (quoting *Monell* v. *Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 691 (1978)). The Court held that, because "[a]n official retaliatory policy is a particularly troubling and potent form of retaliation," there is "a compelling need for adequate avenues of

redress" that justified dispensing with any probable-cause bar. *Ibid.* That "narrow" holding is unlikely to give much protection to individuals who find themselves in less extreme circumstances (*id.* at 1951); only a holding in *this* case affirmatively rejecting a probable-cause bar for all arrests will ensure that those individuals are able to exercise their First Amendment rights in full.

C. Retaliatory arrests are a greater threat to First Amendment activity than retaliatory prosecutions.

In saying all this, we are mindful that the Court, in *Hartman* v. *Moore*, 547 U.S. 250, 265-66 (2006), held that probable cause is a bar to a retaliatory prosecution claim. We agree with respondent that extension of *Hartman*'s rule to the arrest context is unwarranted as a legal matter because *Hartman*'s logic does not apply in the context of retaliatory arrests. See Resp't Br. 34-42. But as a factual matter, too, retaliatory arrests and retaliatory prosecutions are different matters altogether—and extending *Hartman*'s rule to the retaliatory arrest context would pose a far greater threat to protected speech.

The decision whether to prosecute is a weighty one, made after multiple levels of review by multiple officials. A police officer cannot alone make the decision. Instead, a line attorney in the prosecutor's office typically coordinates with the police or other law enforcement officers before making a recommendation to his or her superior. The decision whether to prosecute then ordinarily requires the approval of one or more senior officials before an indictment is filed in the name of the state district attorney or U.S. Attorney or handed up by a grand jury. These layers of review better ensure

that decisions to prosecute are thoughtful and deliberate, and not the product of whim or malice.

By contrast, the decision whether or not to arrest is typically made in the heat of the moment by a single police officer, with little to constrain his or her discretion. Indeed, as we demonstrated above (at 7-8), the grounds for probable cause necessary for a lawful arrest are hardly a safeguard against capricious or abusive conduct—jaywalking, "harassment," and disorderly conduct are enough. And as this Court noted in *Lozman*, the "'presumption of regularity accorded to prosecutorial decisionmaking,'" on which *Hartman* partly relied, "does not apply" to arrests. *Lozman*, 138 S. Ct. at 1953 (quotations omitted).

Arrest is also an easier means of retaliation in light of the difference in the legal standards applied to arrests and prosecutions. An officer need only have probable cause to believe that a crime has been committed to arrest an individual. See, *e.g.*, *Devenpeck* v. *Alford*, 543 U.S. 146, 152 (2004). A decision to prosecute requires more: Under generally accepted principles, a prosecutor should bring criminal charges only if they are supported by probable cause *and* "admissible evidence will be sufficient to support conviction beyond a reasonable doubt." See Standards for Criminal Justice § 3-4.3(a) (ABA 2015). A retaliatory arrest thus may on its face appear lawful, even reasonable, where a retaliatory prosecution would not.

In short, affirming the lower court here has far greater potential to chill First Amendment activity than might have the Court's decision in *Hartman*. That counsels strongly against petitioners' bid to extend *Hartman*'s rule to retaliatory arrests.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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BRIEF OF THE NATIONAL POLICE ACCOUNTABILITY PROJECT, RODERICK & SOLANGE MACARTHUR JUSTICE CENTER, AMERICAN CIVIL LIBERTIES UNION, AND ACLU OF ALASKA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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OTHER AUTHORITIES

INTEREST OF AMICI CURIAE[1]

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with over 1.5 million members dedicated to defending the principles embodied in the Constitution and our nation's civil rights laws. The ACLU of Alaska is a state affiliate of the national ACLU. Since its founding in 1920, the ACLU has frequently appeared before this Court in First Amendment cases, both as direct counsel and as amicus curiae. Many landmark civil rights decisions of the 1950s and 1960s arose out of free speech controversies, and involved the government's attempted use of its arrest powers to silence ideas and movements critical of government. *See, e.g., Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969). History demonstrates that governmental efforts to retaliate against particular viewpoints are often aimed at those who challenge and criticize the status quo. The preservation of the principle of viewpoint neutrality is therefore of immense concern to the ACLU, its civil rights clients seeking justice, and its members and donors.

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address allegations of misconduct by law-enforcement and detention-facility officials through coordinating and assisting civil-rights lawyers representing their victims. NPAP has approximately six hundred attorney members

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel for a party (nor a party itself) made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

practicing in every region of the United States. NPAP provides training and support for these attorneys and other legal workers, public education and information on issues related to law-enforcement and detention-facility misconduct and accountability, and resources for non-profit organizations and community groups involved with victims of such misconduct. NPAP supports legislative efforts aimed at increasing law-enforcement and detention-facility accountability, and appears regularly as an amicus curiae in cases such as this one presenting issues of particular importance for its member lawyers and their clients, who include protesters and victims of police misconduct.

The Roderick and Solange MacArthur Justice Center (RSMJC) is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC has offices at the Northwestern Pritzker School of Law, at the University of Mississippi School of Law, in New Orleans, in St. Louis, and in Washington, D.C. RSMJC attorneys have led civil rights battles in areas that include police misconduct, the rights of the indigent in the criminal justice system, compensation for the wrongfully convicted, and the treatment of incarcerated men and women.

SUMMARY OF ARGUMENT

"The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *City of Houston v. Hill*, 482 U.S. 451, 462–63 (1987).

Police officers sometimes arrest people in retaliation for protected expression. Speech that triggers police retaliation takes two principal forms. First, officers retaliate with arrests when protesters direct their outrage at police misconduct. Second, in "contempt of cop" arrests, police retaliate against people who disagree with or criticize them for actions or attitudes in the course of their employment, making arrests for technical infractions that would normally result in citation and release or no citation at all.

This Court recognized in *Lozman v. City of Riviera Beach*, 138 S. Ct. 1945 (2018), that the existence of probable cause does not immunize government actors against First Amendment claims for retaliatory arrest in all circumstances. The Court should now hold that such circumstances include instances where police officers arrest someone with the purpose to silence or punish protected speech.

If a person can be arrested for speech so long as there happens to be probable cause to arrest for something else, police can arrest people solely because of speech they disfavor. It is easy to find a pretext for arrest because statutes and ordinances forbid a wide range of unremarkable human activity—like wearing saggy pants, crossing the street while reading a text message, and barbecuing in a front yard.

More specifically, ordinary protest activities commonly violate an array of statutes and municipal ordinances that prohibit a wide range of broadly defined activities, such as blocking sidewalks, amplifying sound, unlawful assembly, and disorderly conduct. These laws extend to so much behavior that

police frequently have probable cause to believe that a protestor has broken a law. Therefore, if probable cause categorically defeats a retaliatory arrest claim, the police will acquire the power to arrest protesters for the very purpose of silencing disfavored messages.

ARGUMENT

I. ILLEGAL ARRESTS FOR DISFAVORED SPEECH ARE A SYSTEMIC PROBLEM IN MANY LAW ENFORCEMENT AGENCIES.

Recent years have witnessed a series of well-documented findings that certain police departments systemically arrest people in retaliation for their speech. Two types of protected speech commonly trigger retaliatory arrests: (1) protests and demonstrations perceived as "anti-police," and (2) "contempt of cop" encounters in which an officer feels slighted or insulted.

In a 2015 report, the Department of Justice found that "suppression of speech" by the Ferguson, Missouri Police Department (FPD) "reflects a police culture that relies on the exercise of police power—however unlawful—to stifle unwelcome criticism." UNITED STATES DEPARTMENT OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 28 (2015).[2] The report noted that despite a settlement agreement and a consent decree in two separate cases regarding protest activities, "it appears that FPD continues to interfere with

[2] Available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

individuals' rights to protest and record police activities." *Id.* at 27. For example, on February 15, 2015, the six-month anniversary of the shooting death of Michael Brown, "protesters stood peacefully in the police department's parking lot, on the sidewalks in front of it, and across the street." *Id.* The police responded with retaliatory arrests:

> Video footage shows that two FPD vehicles abruptly accelerated from the police parking lot into the street. An officer announced, "everybody here's going to jail," causing the protesters to run. Video shows that as one man recorded the police arresting others, he was arrested for interfering with police action. Officers pushed him to the ground, began handcuffing him, and announced, "stop resisting or you're going to get tased." It appears from the video, however, that the man was neither interfering nor resisting. A protester in a wheelchair who was live streaming the protest was also arrested. . . . Six people were arrested during this incident. It appears that officers' escalation of this incident was unnecessary and in response to derogatory comments written in chalk on the FPD parking lot asphalt and on a police vehicle.

Id. at 27–28.

Similarly, in 2011, the Department of Justice issued a findings letter regarding the Maricopa County Sheriff's Office (MCSO) in Arizona:

> We find that MCSO command staff and deputies have engaged in a pattern or practice

> of retaliating against individuals for exercising their First Amendment right to free speech. Under the direction of Sheriff Arpaio and other command staff, MCSO deputies have sought to silence individuals who have publicly spoken out and participated in protected demonstrations against the policies and practices of MCSO—often over its immigration policies.

Letter from Thomas E. Perez, Assistant Attorney General, to William R. Jones, Counsel, Maricopa County Sheriff's Office, at 13 (Dec. 15, 2011).[3] For example, during two separate meetings of the County Board of Supervisors, deputies arrested several individuals who expressed criticism of the MCSO. *Id.* at 14. None of the protesters were convicted. *Id.* The Department of Justice concluded: "The arrests and harassment undertaken by MCSO have been authorized at the highest levels of the agency and constitute a pattern of retaliatory actions intended to silence MCSO's critics." *Id.*

The Department of Justice made similar findings regarding the Baltimore Police Department in 2016: "BPD violates the First Amendment by retaliating against individuals engaged in constitutionally protected activities. Officers frequently detain and arrest members of the public for engaging in speech the officers perceive to be critical or disrespectful." UNITED STATES DEPARTMENT OF JUSTICE,

[3] Available at https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf.

INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 9 (2016).[4]

A recent preliminary injunction decision issued by the United States District Court for the Eastern District of Missouri analyzes the St. Louis Police Department's response to protests triggered by the acquittal of Officer Jason Stockley for the fatal shooting of Anthony Lamar Smith. *Ahmad v. City of St. Louis*, No. 17-cv-2455, 2017 WL 5478410, at *1 (E.D. Mo. Nov. 15, 2017). These protests, which began on Friday, September 15, 2017, were directed at both the verdict and "broader issues, including racism and the use of force by police officers." *Id.* "The participants often express[ed] views critical of police." *Id.*

As the protests continued on Sunday, September 17, there were reports of protesters damaging property, and some protesters put on goggles and masks (likely because of concerns about tear gas or mace). *Id.* at *3.

In an illustration of the manner in which very broad laws empower the police to retaliate against speakers, the police declared an "unlawful assembly" and then carried out a mass arrest. *Id.* at *3–5. In fact, Lieutenant Timothy Sachs testified that officers have sole discretion to declare an assembly unlawful because there are no policies or guidelines defining when it is appropriate to do so. *Id.* at *6.

After declaring an unlawful assembly, and giving orders to disperse, police blocked off points of egress and trapped the protesters in an intersection by marching toward it. *Id.* at *4–5. Then they made a

[4] Available at https://www.justice.gov/crt/file/883296/download.

mass arrest of everyone trapped in the intersection, even though the protesters complied with police commands. *Id.* at *5.

Ultimately, the district court issued a preliminary injunction. *Id.* at *17–18. One provision enjoins the police from declaring "an unlawful assembly . . . for the purpose of punishing persons for exercising their constitutional rights to engage in expressive activity." *Id.* at *18.

One particularly common form of retaliation occurs when police arrest people for what has come to be called "contempt of cop." In these cases, a police officer has probable cause to believe an offense has occurred, but the suspect's speech, perceived as disrespectful, is the real reason for the arrest, as opposed to a citation and release. Notably, *Police Magazine*, which bills itself as "the law enforcement magazine" and a "community for cops[,]" has a glossary of "cop slang" which defines "Contempt of Cop" as "the true underlying behavior of disrespect toward an officer leading to an expensive ticket or arrest for an offense that actually is a law violation." *Contempt of Cop*, POLICE MAGAZINE: COP SLANG.[5]

A 1999 review of the New Jersey State Police by then-New Jersey Attorney General John J. Farmer documented a common phenomenon of arresting people for "contempt of cop":

> The single most common allegation among all the allegations reviewed was improper attitude and demeanor. This is true in law enforcement nationwide. We observed in

[5] Available at http://www.policemag.com/cop-slang/contempt-of-cop.aspx (last visited Oct. 4, 2018).

> several cases a problem which, for lack of a better term, may be called "occupational arrogance." The discussion of this problem is by no means unique to the New Jersey State Police. In fact, internal affairs detectives at one municipal police department, noting its prevalence, termed this phenomenon "contempt of cop." Simply put, it is the tendency for certain police officers to approach the public with an attitude that they, the officer, are in no way to be challenged or questioned. Among the cases we reviewed, several seem to illustrate this phenomenon.

FINAL REPORT OF THE STATE POLICE INTERVIEW TEAM 93–94 (1999).[6]

More recently, the Department of Justice found that Newark Police Department officers often arrest people for contempt of cop: "The [Newark Police Department's] arrest reports and [internal affairs] investigations . . . reflect numerous instances of the [department's] inappropriate responses to individuals who engage in constitutionally protected First Amendment activity, such as questioning or criticizing police actions." UNITED STATES DEPARTMENT OF JUSTICE, INVESTIGATION OF THE NEWARK POLICE DEPARTMENT 13 (2014).[7] In one instance, for example, "an individual was arrested after he questioned officers' decision to arrest his neighbor." *Id.*

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[6] Available at https://pdfs.semanticscholar.org/649c/a046a3baca0f9ebafa2641b744c8a2b80e06.pdf.

[7] Available at https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf.

Similarly, in the Ferguson report, the Department of Justice found that police not only retaliated against demonstrators, but also that officers routinely made "contempt of cop" arrests:

> [O]fficers frequently make enforcement decisions based on what subjects say, or how they say it. Just as officers reflexively resort to arrest immediately upon noncompliance with their orders, whether lawful or not, they are quick to overreact to challenges and verbal slights. These incidents—sometimes called "contempt of cop" cases—are propelled by officers' belief that arrest is an appropriate response to disrespect.

UNITED STATES DEPARTMENT OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 25 (2015). Notably, the breadth of offenses contained in Feguson's municipal code made it easy to come up with charges: "These arrests are typically charged as a Failure to Comply, Disorderly Conduct, Interference with Officer, or Resisting Arrest." *Id.*

II. BROAD REGULATIONS MAKE IT ALL TOO EASY TO FIND PROBABLE CAUSE TO ARREST PEOPLE FOR DISFAVORED SPEECH.

If the existence of probable cause, standing alone, defeats a retaliatory arrest claim, the police will acquire vast discretion to punish dissent by arresting protesters with whom they disagree. Many laws are so broadly written and prohibit so much activity that it is very easy for police to arrest people in retaliation for their speech. In various municipalities across the United States, it is illegal to wear saggy

pants,[8] to cross a street while viewing a cell phone,[9] and to have a barbecue in one's front yard.[10]

This Court has long recognized the threat of censorship posed by laws that endow the police with excessive discretion. In *City of Houston v. Hill*, the Court noted that an ordinance challenged in the case "criminalizes a substantial amount of constitutionally protected speech, and accords the police unconstitutional discretion in enforcement. The ordinance's plain language is admittedly violated scores of times daily, yet only some individuals—those chosen by the police in their unguided discretion—are arrested." 482 U.S. 451, 466–67 (1987).

To be sure, the vagueness and overbreadth doctrines provide a partial antidote to laws that confer wide discretion to trench on protected speech. That said, courts cannot be in the business of

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[8] Abbeville, Louisiana Code of Ordinances § 13-25 ("It shall be unlawful for any person in a public place or in view of the public to wear pants or a skirt in such a manner as to expose their underlying garments."); *see also* William C. Vandivort, Note, *I See London, I See France: The Constitutional Challenge to "Saggy" Pants Laws*, 75 BROOK L. REV. 667, 673 (2009) (cataloging similar saggy pants ordinances across the country).

[9] Revised Ordinances of Honolulu § 15-24.23, https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_15a21_28_.pdf ("No pedestrian shall cross a street or highway while viewing a mobile electronic device.").

[10] Berkeley, Missouri Code of Ordinances § 210.2250 ("Subject to certain exceptions mentioned hereinbelow, no person shall be permitted to barbecue or conduct outdoor cooking in front of the building line of any single-family dwelling, multi-family dwelling or commercial structure."); *see also* Pagedale, Missouri Code of Ordinances § 210.750(A).

invalidating every law that prohibits some protected conduct or could be worded more lucidly. "Invalidating any rule on the basis of its hypothetical application to situations not before the Court is 'strong medicine' to be applied 'sparingly and only as a last resort.'" *F.C.C. v. Pacifica Foundation*, 438 U.S. 726, 743 (1978) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)). Some laws are broad enough that the threat of retaliatory enforcement is quite serious, but not so broad as to warrant the "strong medicine" of facial invalidation.

Furthermore, the vagueness and overbreadth doctrines apply only to laws that regulate speech. Most laws, of course, do not regulate speech. Thus, for example, if an officer arrests a motorist driving one mile over the speed limit because the officer dislikes a political bumper sticker on the car, the motorist cannot make a First Amendment vagueness or overbreadth challenge to the speeding law. In cases where the offense of arrest does not regulate speech, the only remedy for an individual is to bring a First Amendment retaliation claim demonstrating that the arrest was carried out solely to punish the expression of a disfavored viewpoint.

A. Laws Affecting Protest Provide Probable Cause For Arrest In A Wide Range Of Circumstances.

Protesters often violate broad statutes and ordinances that prohibit a wide range of activity, such as blocking sidewalks, unlawful assembly, violating noise ordinances, and disorderly conduct. Because these laws encompass so much conduct, the police have probable cause to arrest large numbers of protesters. For example, in *Ahmad*, the court noted

that in St. Louis, "an individual officer can decide, in his or her discretion, to declare an unlawful assembly, and there are no guidelines, rules, or written policies with regard to when an unlawful assembly should be declared." 2017 WL 5478410, at *6.

Even leaving aside the constitutional validity of such laws affecting protests, selective enforcement of such laws can provide a cover for viewpoint discrimination by police. Where there is evidence that police have chosen to enforce such laws only against critics they disagree with, or to punish certain viewpoints, the existence of probable cause should not categorically bar a retaliation claim. If probable cause categorically defeats a retaliatory arrest claim, the police will be able to wield the power to arrest protesters for the very purpose of silencing disfavored messages.

1. Unlawful Assembly And Failure To Disperse

Under typical "unlawful assembly" ordinances, "officials can disperse a protest as long as they conclude that participants are at some point planning to engage in forceful or violent lawbreaking." John Inazu, *Unlawful Assembly as Social Control*, 64 U.C.L.A. L. Rev. 2, 7 (2017). Because these statutes grant police the power to disperse gatherings that could lead to force or violence, officers "are forced to rely on judgments and inferences about future acts" by protesters or bystanders. *Id.* at 6–7. In fact, some unlawful assembly statutes allow the police to disperse a protest where they believe the demonstrators will engage in an act that is illegal but nonviolent. *Id.* at 7.

The ability to declare an unlawful assembly based solely on predictions about the intent of the protesters, and in the absence of any observed violence or illegality, vests the police with too much power to shut down protests with which they disagree. For example, the California Penal Code defines "unlawful assembly" to include two or more people gathering for the purpose of committing an act that is unlawful, but non-violent: "Whenever two or more persons assemble together to do an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly." Cal. Penal Code § 407. Unlawful assembly is a misdemeanor. Cal. Penal Code § 408.[11]

Police have used their discretion under unlawful assembly laws to "target citizens across the political spectrum, including civil rights workers, antiabortion demonstrators, labor organizers, environmental groups, Tea Party activists, Occupy protesters, and antiwar protesters." Inazu, *supra*, at 5.

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[11] *See also* Idaho Code §§ 18-6404, 18-6405 (2017) (stating that the misdemeanor of unlawful assembly occurs "[w]henever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous or tumultuous manner . . ."); Iowa Code § 723.2 (2017) ("An unlawful assembly is three or more persons assembled together, with them or any of them acting in a violent manner, and with intent that they or any of them will commit a public offense. A person who willingly joins in or remains a part of an unlawful assembly, knowing or having reasonable grounds to believe that it is such, commits a simple misdemeanor.").

2. Blocking Roads And Sidewalks

State and local governments often prohibit blocking roads, highways, and sidewalks. For example, the Code of the District of Columbia provides that "[i]t is unlawful ... [t]o crowd, obstruct, or incommode ... [t]he use of any street, avenue, [or] alley." D.C. Code § 22–1307(a) (2016).[12]

The police use these laws to arrest protesters. For example, following the police shooting of Alton Sterling, police arrested numerous protesters in Baton Rouge under Louisiana's obstruction of a highway law. Third Amended Complaint at 4–6, *Tennart v. City of Baton Rouge*, No. 17-179-JWD-EWD (M.D. La. filed July 13, 2017). The plaintiffs in the *Tennart* case allege that they were arrested on "the pretext that the protesters had violated a state law proscribing obstruction of highways and public roads." *Id.* at 3.[13]

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[12] *See also* Ga. Stat. § 16-11-43 (2017) ("A person who, without authority of law, purposely or recklessly obstructs any highway, street, sidewalk, or other public passage in such a way as to render it impassable without unreasonable inconvenience or hazard and fails or refuses to remove the obstruction after receiving a reasonable official request or the order of a peace officer that he do so, is guilty of a misdemeanor."); La. Rev. Stat. § 14:97 (2017) ("Simple obstruction of a highway of commerce is the intentional or criminally negligent placing of anything or performance of any act on any railway, railroad, navigable waterway, road, highway, thoroughfare, or runway of an airport, which will render movement thereon more difficult.").

[13] Roderick and Solange MacArthur Justice Center attorneys are among the counsel for the *Tennart* plaintiffs.

3. Disorderly Conduct Ordinances

Police also arrest protesters under disorderly conduct ordinances. In *Lewis v. City of Tulsa*, "prolife activists were picketing an abortion clinic." 775 P.2d 821, 822 (Okla. Crim. App. 1989). Clayton Lewis and other activists stood 50-60 feet away from the entrance to the clinic and yelled at people entering that "it was murder. You should feel guilty about what you are doing." *Id.* For these lawful activities, Mr. Lewis was arrested and convicted under Tulsa's disorderly conduct ordinance. *Id.* The Oklahoma Court of Criminal Appeals ultimately reversed his conviction. *Id.*

4. Noise Ordinances

Noise ordinances typically impose limits on the amplification of sound. For example, the Chicago Municipal Code provides:

> No person on the public way shall employ any device or instrument that creates or amplifies sound, including but not limited to any loudspeaker, bullhorn, amplifier, public address system, musical instrument, radio or device that plays recorded music, to generate any sound, for the purpose of communication or entertainment, that is louder than average conversational level at a distance of 100 feet or more, measured vertically or horizontally, from the source.

Chicago Mun. Code § 8-32-070(a) (2017).[14]

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[14] *See also, e.g,* Norfolk Code of Ordinances § 26-4 (2017) ("Operating, playing or permitting the operation or playing of any . . . bullhorn, megaphone, sound amplifier or similar device which produces, reproduces or amplifies sound in such

Police often use noise and amplification provisions to arrest protesters. For example, Stephen Nylen, alleges in a case proceeding in the United States District Court for the Western District of Michigan that police have repeatedly threatened him with arrest under a noise and amplification ordinance. Second Amended Compl. at 5, *Nylen v. City of Grand Rapids*, No. 17-cv-716 (W.D. Mich. filed Nov. 20, 2017). Roughly half of these arrest threats occurred while Mr. Nylen was speaking about his faith on a public sidewalk near an abortion clinic. *Id.* at 5.

Similarly, in the aftermath of the shooting of Michael Brown in Ferguson, Missouri, three plaintiffs were arrested for failure to comply with a police order during a peaceful protest that followed a candlelight vigil. First Amended Compl. at 4, *Powers v. City of Ferguson*, No. 16-cv-1299 (E.D. Mo. filed August 9, 2016). Three days later, another plaintiff was arrested for violating a noise ordinance while waiting for the police to release Antonio French, an alderman arrested during the protests. Powers was acquitted of the charges at trial. *Id.* at 5. In 2015, protesters demanding expanded Medicaid coverage were threatened with arrest for noise violations for singing outside the chambers of the Florida House of Representatives. *20 Arrested at North Carolina*

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a manner as to create noise disturbance across a real property line boundary or within a noise sensitive zone set forth in table I, 'Maximum Sound Pressure Levels,' shall constitute a violation of this section, unless allowed pursuant to an exception established by ordinance.").

Legislature Protest in April Face Judge, 11 ABC News (Jun. 8, 2017).[15]

B. Police Officers Exploit The Discretion Created By Broad Laws To Arrest Protesters With Whom They Disagree.

Police officers have used the discretion provided by broad statutes and ordinances to retaliate against speakers and demonstrators with whom they disagree. For example, in September of 2015, Michael Picard was protesting legally near a DUI checkpoint with a sign that read "Cops Ahead. Keep Calm and Remain Silent." Amy Wang, *Cops Accidentally Record Themselves Fabricating Charges Against Protester, Lawsuit Says*, Wash. Post (Sept. 20, 2016). He was also legally recording the police with his cell phone. *Id.* One of the officers slapped Picard's cell phone out of his hand and confiscated it. *Id.* The officer inadvertently allowed the cell phone camera to continue recording as he and other officers discussed charging Picard. *Id.*

The transcript of the video provides a rare glimpse into how police officers (in this case, Master Sergeant Patrick Torneo, Sergeant John Jacobi, and Trooper John Barone) sometimes fabricate charges to retaliate against a protester. Torneo is heard saying: "Have that Hartford lieutenant call me, I want to see if he's got any grudges."[16] Barone asks: "You want me to punch a number [slang for opening an

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[15] Available at http://abc11.com/politics/20-arrested-at-nc-legislature-face-judge/772567/.

[16] The full video is available here: https://www.washingtonpost.com/news/post-nation/wp/2016/09/20/cops-accidentally-record-themselves-fabricating-charges-against-protester-lawsuit-says.

investigation] on this either way? Gotta cover our ass."[17]

The officers proceed to debate how to charge Picard, illustrating how broad statutes and ordinances often grant the police vast discretion to effectuate retaliatory arrests:

> Jacobi: So, we can hit him with reckless use of the highway by a pedestrian and creating a public disturbance, and whatever he said.
>
> Barone: That's a ticket?
>
> Jacobi: Two tickets.
>
> Barone: Yeah.
>
> Jacobi: That's a ticket with two terms, yeah. It's 53a-53-181, something like that for—
>
> Barone: I'll hit him with that, I'll give him a ticket for that.
>
> Jacobi: Crap! I mean, we can hit him with creating a public disturbance.
>
> Jacobi: All three are tickets-
>
> Torneo: Yep.
>
> Jacobi: We'll throw all charges three on the ticket.

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[17] *See supra* n.14.

> Torneo: And then we claim that, um, in backup, we had multiple people, um, they didn't want to stay and give us a statement, so we took our own course of action. [18]

The Department of Justice Ferguson report also illustrates the phenomenon of police creatively charging people in order to retaliate against them for protected speech. In one case, "a police officer arrested a business owner on charges of Interfering in Police Business and Misuse of 911 because she objected to the officer's detention of her employee." UNITED STATES DEPARTMENT OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 25 (2015). Indeed, the officer made the arrest after the business owner attempted to call the police chief, which "suggests that [the officer] may have been retaliating against her for reporting his conduct." *Id.* In another instance, an officer arrested a man for violating an extremely broad "Manner of Walking in Roadway" ordinance because the man cursed at the officer. *Id.*

Similarly, in *Allee v. Medrano*, this Court found a "persistent pattern of police misconduct," in the enforcement of Texas statutes, including an unlawful assembly law, against activists seeking to organize a farmworkers' union. 416 U.S. 802, 815 (1974). The Court noted that the district court found that "the defendants selectively enforced the unlawful assembly law ... treating as criminal an inoffensive union gathering...." *Id.* at 808 (citation omitted).

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[18] *See supra* n.14.

In *Ford v. City of Yakima*, 706 F.3d 1188, 1191 (9th Cir. 2013), an officer arrested and jailed a motorcyclist under a noise ordinance. The officer decided to make the arrest because he became irritated with the motorist for (lawfully) talking back. *Id.* at 1190–91. Prior to the arrest, the officer made a series of statements that included, "[i]f you run your mouth, I will book you in jail for it. Yes, I will, and I will tow your car," and "[i]f you have diarrhea of the mouth, you will go to jail." *Id.* The officer also said: "A lot of times we tend to cite and release people for [noise ordinance violations] or we give warnings. However ... you acted a fool ... and we have discretion whether we can book or release you. You talked yourself—your mouth and your attitude talked you into jail." *Id.*

CONCLUSION

In protests against the police, some see courage and dissent, while others see insult, exaggeration, and ingratitude. Freedom of expression lives and breathes in that clash of ideologies, a reflection of our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

The First Amendment commands that conflicts of ideas must be resolved through public discourse—not through retaliatory arrests intended to silence one side of the conversation. For that reason, this Court should affirm the judgment below.

Respectfully submitted,

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October 2018

No. 17-1174

In The
Supreme Court of the United States

LUIS A. NIEVES and BRYCE L. WEIGHT,

Petitioners,

v.

RUSSELL P. BARTLETT,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE RUTHERFORD INSTITUTE AS *AMICUS CURIAE* SUPPORTING RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1]

Amicus The Rutherford Institute, a nonprofit civil-liberties organization, is deeply committed to protecting the constitutional freedoms of every American and the fundamental human rights of all people. The Rutherford Institute advocates for protection of civil liberties and human rights through *pro bono* legal representation and public education on a wide spectrum of issues affecting individual freedom in the United States and around the world.

As a central part of its mission, The Rutherford Institute advocates against government infringement of citizens' rights to freely express themselves, seeking redress in cases where citizens have faced retaliation for exercising their First Amendment right to free speech. To ensure the vitality of the First Amendment, The Rutherford Institute believes that the existence of probable cause should not bar recovery in cases where citizens would not have been arrested but for engaging in constitutionally protected speech. Instead, the Court should confirm that the burden-shifting approach set out in *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 287 (1977), strikes the proper balance between the right to freedom of speech and the right of officers to make legitimate arrests that

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[1] Letters expressing the parties' consent to the filing of *amicus* briefs have been filed with the Clerk. Pursuant to this Court's Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

merely coincide with, but are not motivated by, an individual's exercise of First Amendment rights.

SUMMARY OF THE ARGUMENT

The history of the enactment of the First Amendment and its modern interpretation by this Court both underscore the essential role of freedom of speech as a bulwark against tyranny. As the Court reaffirmed last term, free speech "is essential to our democratic form of government, and it furthers the search for truth." *Janus v. Am. Fed'n of State, Cty., & Mun. Emps.*, 138 S. Ct. 2448, 2464 (2018) (citations omitted). "Whenever the Federal Government or a State prevents individuals from saying what they think on important matters . . . it undermines these ends." *Id.*

Yet that is precisely the danger petitioners' proposed test invites, enhancing the government's ability to silence speech by insulating retaliatory arrests from review whenever there is probable cause to believe the speaker also has committed a crime of any kind. *See* Pet. Br. 16 ("To maintain a damages claim for retaliatory arrest in violation of the First Amendment, a plaintiff must plead and prove the absence of probable cause for the arrest."). Rather than allowing the existence of probable cause to eradicate retaliatory-arrest claims, as petitioners advocate, probable cause should be balanced against the speaker's right to freedom of speech through the

traditional, burden-shifting framework articulated by this Court in *Mt. Healthy*, 429 U.S. at 287. The probable-cause-based exception to *Mt. Healthy* recognized in *Hartman v. Moore*, 547 U.S. 250, 265 (2006), is uniquely suited to retaliatory-prosecution claims and should not be imported into the distinct context of retaliatory arrests.

In departing from the traditional *Mt. Healthy* framework and adding a no-probable-cause element to retaliatory-prosecution claims, this Court in *Hartman* cited practical and legal characteristics that inhere in prosecutions, *id.* at 259-65, but do not exist in the distinct context of arrests. While prosecutors enjoy a presumption of regularity in their prosecutorial discretion, *see id.* at 263, officers are granted no such presumption in connection with arrests. And a retaliatory arrest does not present the complicated causation issues inherent in a prosecution allegedly induced by the animus of an actor other than the prosecutor. *See id.* at 261-63. Additionally, the scope of the probable-cause element in a retaliatory-prosecution case is limited by the crime documented in the charging instrument underlying the prosecution, *see id.* at 261, whereas defendants in retaliatory-arrest cases would not be limited by that constraint.

In light of the wide array of arrestable offenses—including commonplace crimes like jaywalking and littering—it would not be difficult for officers to target speakers for their speech and then insulate the arrests from challenge by pointing to some misdemeanor offense for which probable cause arguably existed.

Because the existence of probable cause, alone, would require dismissal of a retaliatory-arrest claim under petitioners' proposed rule, *e.g.*, Pet. Br. at 16, it would not matter if the crime for which probable cause existed did not actually motivate the arrest; and it would not matter if the person arrested did not actually *commit* that crime. Speakers would have no avenue for redressing retaliatory arrests under petitioners' approach, the purpose of § 1983 would be defeated, and valuable speech would be chilled.

To ensure that freedom of speech continues to serve its vital role in our democracy, the Court should decline petitioners' invitation to create a per se, probable-cause barrier to retaliatory-arrest claims. The *Mt. Healthy* framework already successfully balances the interests of speakers and governmental actors when animus-based claims arise in a wide variety of constitutional contexts, and neither the legal nor practical realities of retaliatory-arrest claims require an exception to that longstanding rule.

ARGUMENT

I. LIMITING THE REDRESSABILITY OF ARRESTS MADE IN RETALIATION FOR PROTECTED SPEECH WOULD UNDERMINE THE PURPOSE OF THE FIRST AMENDMENT.

The probable-cause test proposed by petitioners would significantly limit the ability of speakers to hold

officers accountable for unconstitutional retaliation whenever an officer has probable cause to arrest a speaker for any offense, even if it can be shown that the officer would not have made an arrest were it not for unconstitutional animus. A lack of redress for such an arrest both removes an incentive for officers to avoid retaliation and chills the speech of those who will fear arrest. That result cannot be squared with the purpose of the First Amendment and the vital role of speech in the American democratic system.

The Founders created a government where power was derived solely from the people, who possessed absolute sovereignty. JAMES MADISON, THE VIRGINIA REPORT OF 1799-1800, *reprinted in* VIRGINIA GENERAL ASSEMBLY HOUSE OF DELEGATES, THE VIRGINIA REPORT OF 1799-1800, TOUCHING THE ALIEN AND SEDITION LAWS; TOGETHER WITH THE VIRGINIA RESOLUTIONS OF DECEMBER 21, 1798, INCLUDING THE DEBATE AND PROCEEDINGS THEREON IN THE HOUSE OF DELEGATES OF VIRGINIA AND OTHER DOCUMENTS ILLUSTRATIVE OF THE REPORT AND RESOLUTIONS 196 (Leonard W. Levy ed., Da Capo Press 1970) (1850) [hereinafter "THE VIRGINIA REPORT"]. This popular sovereignty necessitated that people remain free to criticize the government. *See id.* As Benjamin Franklin put it, "[f]reedom of speech is a principal pillar of a free government; when this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins." BENJAMIN FRANKLIN, *On Freedom of Speech and the Press*, PA. GAZETTE (Nov. 1737), *reprinted in* 2 BENJAMIN FRANKLIN, MEMOIRS OF BENJAMIN FRANKLIN 431 (1840).

According to Franklin, speech provided the citizenry's check on the government—"[r]epublics and limited monarchies derive their strength and vigor from a popular examination into the action of the magistrates." *Id.* (cautioning that "an evil magistrate intrusted with power *to punish for words* would be armed with a weapon the most destructive and terrible").

The same recognition of the importance of freedom of speech as a means of preventing tyranny can be found in state constitutions from the time of the Nation's founding. *See* PA. CONST. of 1776, declaration of rights, § XII, AVALON PROJECT (Sept. 28, 1776), http://avalon.law.yale.edu/18th_century/pa08.asp ("That the people have a right to freedom of speech, and of writing, and publishing their sentiments; therefore the freedom of the press ought not to be restrained."); VT. CONST. of 1777, ch. 1, cl. 14, AVALON PROJECT (July 8, 1777), http://avalon.law.yale.edu/18th_century/vt01.asp (including the same recognition that "the people have a right to freedom of speech, and of writing, and publishing their sentiments"); *see also* DAVID L. HUDSON, THE FIRST AMENDMENT: FREEDOM OF SPEECH 4-5 (2012) (discussing provisions safeguarding free speech in the constitutions of Virginia, Pennsylvania, North Carolina, and Vermont from 1776-1777). And the Preamble to the Bill of Rights emphasized an intent to enshrine freedom of speech among the individual liberties to be protected from governmental "misconstruction or abuse," to instill "public confidence in the Government" and "best ensure the beneficent ends of its institution." U.S. CONST., amend. I-X pmbl.,

THE NAT'L ARCHIVES (1789), https://www.archives.gov/founding-docs/bill-of-rights-transcript#toc-the-preamble-to-the-bill-of-rights.

To fulfill the anti-tyranny purpose of the First Amendment, the Founders rejected the English common-law approach to speech, which demonstrated suspicion of disfavored ideas and a willingness to silence speech perceived as dangerous to society. As Blackstone explained, expression that had an "immoral or illegal tendency" was grounds for legal punishment. 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *150-52 (1783). While such constraints on speech may have been compatible with Britain's parliamentary form of government, unchecked by popular will, they could not be reconciled with America's new democratic model, which derived its power from the people's sovereignty. America's departure from the parliamentary model therefore necessitated a rejection of English common-law constraints on speech, allowing speech to flourish, unrestrained, as a check on government power. *See* THE VIRGINIA REPORT, *supra*, at 220-21;[2] *see also* DAVID

[2] Some Founding Fathers resisted this notion, including John Adams, who supported the now-infamous Alien and Sedition Acts of 1798 that punished speech critical of the government. *See Adams Passes First of Alien and Sedition Acts*, HISTORY.COM (Nov. 16, 2009), https://www.history.com/this-day-in-history/adams-passes-first-of-alien-and-sedition-acts; *An Act Respecting Alien Enemies*, THE AVALON PROJECT (July 6, 1798), http://avalon.law.yale.edu/18th_century/alien.asp. Even at that time, however, there was notable debate as to the Acts' constitutionality. *See Adams Passes First of Alien and Sedition Acts, supra* (noting "strong political opposition to these acts"); THE VIRGINIA REPORT,

M. RABBAN, FREE SPEECH IN ITS FORGOTTEN YEARS, 1870-1920 194 (1997). As James Madison, drawing on Radical Whig philosophy, stated: "If we advert to the nature of a Republican Government, we shall find that the censorial power is in the people over the government, and not in the government over the people." JAMES MADISON, JAMES MADISON'S "ADVICE TO MY COUNTRY" 95 (David B. Mattern ed., 1997). Therefore, the Framers concluded that governmental restrictions on speech, even disfavored speech, must be rejected.

Modern First Amendment jurisprudence reinforces the vital role of free speech as a bulwark against tyranny and as a core value to protect. This Court has repeatedly emphasized the importance of free speech to political freedom and representative government. *See, e.g., Janus*, 138 S. Ct. at 2464 (reaffirming that freedom of speech "is essential to our democratic form of government"). Freedom of speech is "essential to free government" because its abridgment would "impair[] those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government." *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940).

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supra, at 219 (stating that the Acts were "positively forbidden by one of the amendments to the Constitution"). And the Acts since have been repudiated and viewed as an aberration from America's core commitment to freedom of speech. *See, e.g., N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 276 (1964) (recognizing that "the attack upon [the Sedition Act's] validity has carried the day in the court of history").

This Court has stated that speech on public issues "should be uninhibited, robust, and wide-open," even if it includes "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Sullivan*, 376 U.S. at 270. And, "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). To the contrary, "a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949). Even speech that advocates violations of the law is protected if not directed at inciting imminent lawless action. *Brandenburg v. Ohio*, 395 U.S. 444, 447-49 (1969) (per curiam).

This protection of critical, disfavored, or even offensive speech extends also to speech that "interrupts" police officers in their duties. *See City of Houston v. Hill*, 482 U.S. 451, 455, 471-72 (1987). As this Court stated:

> [I]n the face of verbal challenges to police action, officers and municipalities must respond with restraint. We are mindful that the preservation of liberty depends in part upon the maintenance of social order. But the First Amendment recognizes, wisely we think, that a certain amount of expressive disorder

> not only is inevitable in a society committed to individual freedom, but must itself be protected if that freedom would survive.

Id. (citation omitted).

A probable-cause shield that makes it easier for police officers to arrest speakers in retaliation for speech that offends or upsets an officer would not only squash expressive disorder at the cost of individual freedom, but also silence debate on controversial issues of public concern. That approach would result in less protection for precisely the type of speech that needs protection most. Because "[f]reedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth," *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring), *overruled in part by Brandenburg*, 395 U.S. at 449, the Court should not adopt a test that would insulate retaliatory motives from review, undermine the redressability of violations of First Amendment rights, and thereby chill speech vital to American democracy.

II. IMPORTING A PROBABLE-CAUSE TEST INTO THE RETALIATORY-ARREST CONTEXT IS UNJUSTIFIED AND UNNECESSARY TO WEED OUT INSUBSTANTIAL CLAIMS.

This Court need not create a new rubric for retaliatory-arrest claims because the burden-shifting framework articulated in *Mt. Healthy*, 429 U.S. at 287,

provides a suitable test for determining whether a plaintiff can recover for an action allegedly taken based on unconstitutional animus. This test has been applied successfully by this Court to a range of animus-infused constitutional claims and will work equally well in retaliatory-arrest cases. The unique characteristics that led this Court in *Hartman*, 547 U.S. at 259-65, to add a threshold, no-probable-cause element to retaliatory-prosecution claims are not present in the retaliatory-arrest context; and procedural rules, as well as the substantive defense of qualified immunity, already provide safeguards against officers' being burdened by insubstantial cases.

A. The Default *Mt. Healthy* Test Works Well When Applied To A Range Of Intent-Based Claims And Would Be Equally Effective For Analyzing Claims Alleging Retaliatory Arrests.

In *Mt. Healthy*, this Court considered how to evaluate whether an adverse governmental action was taken because of an individual's speech—in violation of the First Amendment—or occurred for independent, legitimate reasons. *See* 429 U.S. at 287. To prevail, an individual claiming unconstitutional retaliation must show that the exercise of a constitutionally protected right was a "substantial" or "motivating factor" for governmental action taken against the individual. *Id.* at 287. Once the individual has made such a showing,

the government will be held liable unless it shows "by a preponderance of the evidence that it would have reached the same decision . . . even in the absence of the protected conduct." *Id.*

This Court has applied *Mt. Healthy*'s burden-shifting test over a wide range of retaliation and other mixed-motive cases—from racial discrimination to various employment-related claims. *See Texas v. Lesage*, 528 U.S. 18, 20-21 (1999) (per curiam) (applying *Mt. Healthy* in a racial-discrimination case involving a university's admission decision); *Bd. of Cty. Comm'rs v. Umbehr*, 518 U.S. 668, 677, 685 (1996) (applying *Mt. Healthy* to claims by at-will independent contractors alleging termination for exercising free-speech rights); *Hunter v. Underwood*, 471 U.S. 222, 232 (1985) (applying *Mt. Healthy* to a claim that Alabama law disenfranchising people convicted of crimes involving moral turpitude was enacted as a result of racial discrimination); *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 870-72 & n.22 (1982) (plurality) (applying *Mt. Healthy* to a viewpoint-discrimination case involving a school board's decision to remove certain books from libraries); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264-66, 270-71 & n.21 (1977) (applying *Mt. Healthy* reasoning in an equal-protection

case to determine that a rezoning denial was impermissibly motivated by a discriminatory purpose).[3]

A test that has successfully been used to assess government decisions regarding zoning, employment, and university admissions, among others, is a good place for this Court to start in determining the best test for allegedly retaliatory arrest decisions. The *Mt. Healthy* test acts to protect plaintiffs who have been acted against on the basis of unconstitutional animus, even when there could have been other bases for the governmental action at issue. *See, e.g.*, *Umbehr*, 518 U.S. at 674, 677; *Hunter*, 471 U.S. at 231-32. At the same time, it prevents the imposition of liability when governmental officials take actions they would have taken in any event, even if there was also animus present. *E.g.*, *Lesage*, 528 U.S. at 20-21 (holding that, under *Mt. Healthy*, a public university is not liable for racial animus in its admissions process if it would have made the same decision absent discrimination). This

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[3] The courts of appeals have also successfully used versions of *Mt. Healthy*'s but-for test to evaluate a wide range of claims alleging that a governmental actor had an impermissible motive for its action. *See, e.g.*, *Maben v. Thelen*, 887 F.3d 252, 267 (6th Cir. 2018) (prisoner's punishment allegedly resulting from his verbal complaint to a prison official); *McCue v. Bradstreet*, 807 F.3d 334, 338-39, 344-45 (1st Cir. 2015) (government commissioner's alleged use of regulations to retaliate based on a dairy farmer's speech in an earlier business dispute between the two); *Ctr. for Bio-Ethical Reform, Inc. v. City of Springboro*, 477 F.3d 807, 817-18, 821, 823 (6th Cir. 2007) (police stop and search of a pro-life policy-and-advocacy group's "billboard trucks"); *Graham v. Henderson*, 89 F.3d 75, 79-81 (2d Cir. 1996) (prisoner's claims that prison officials discriminated against him based on race and speech).

structure, particularly when combined with the procedural and substantive protections already given to officers (as discussed in Part II.D, *infra*), strikes a balance between preserving the right to recover for unconstitutional retaliation and weeding out insubstantial cases that could unduly burden officers. *See Crawford-El v. Britton*, 523 U.S. 574, 591-92 (1998) (holding that balancing the interests of plaintiffs and defendants in retaliation cases does not necessitate altering the cause of action).

B. *Hartman*'s Retaliatory-Prosecution Rule Is Based On Unique Circumstances Not Present In Retaliatory-Arrest Cases.

This Court's addition of a new element and additional pleading requirement for retaliatory-prosecution claims should not be imported into the very different context of retaliatory-arrest claims. Reaffirming that a "standard case" for unconstitutional retaliation requires only a showing that retaliatory animus was a but-for cause of the challenged harm, this Court in *Hartman* determined that a plaintiff in a retaliatory-prosecution case, by contrast, must make a threshold showing of the absence of probable cause to support the crime charged. 547 U.S. at 265-66.

This Court identified three key characteristics of retaliatory-prosecution cases that justified this additional requirement: 1) the existence of probable

cause will always be a highly probative piece of evidence in evaluating why a prosecution occurred; 2) the causation analysis is uniquely complex because in most cases the individual alleged to harbor retaliatory animus is the same person who inflicts the challenged harm, whereas in retaliatory-prosecution cases the individual alleged to harbor the retaliatory animus (typically the arresting officer) is not the person who inflicts the challenged harm (by definition, the prosecutor); and 3) prosecutorial decisionmaking is afforded a strong presumption of regularity that the Court may not lightly discard. *Id.* at 261-63. None of those characteristics are present in the distinct context of retaliatory arrests.

The unusual causation analysis in retaliatory-prosecution cases underscores why the departure from *Mt. Healthy* in that context has no analog to warrant a similar departure in the very different context of retaliatory arrests. Because prosecutors enjoy absolute immunity, *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976), a plaintiff alleging retaliatory prosecution must look elsewhere for recovery, suing a different official for what this Court described as the "successful retaliatory inducement to prosecute." *Hartman*, 547 U.S. at 262. "Thus, the causal connection required here [in the retaliatory-prosecution context] is not merely the retaliatory animus of one person and that person's own injurious action, but between the retaliatory animus of one person and the action of another." *Id.* That is, a plaintiff "must show that the nonprosecuting

official acted in retaliation, and must also show that he induced the prosecutor to bring charges that would not have been initiated without his urging." *Id.*

Probable cause has a natural and inevitable role to play in that inducement analysis. When an officer arrests someone for a crime for which probable cause exists, the existence of probable cause reinforces the presumption of regularity that attaches to any prosecution that follows. By contrast, if a prosecutor brings charges despite the absence of probable cause, that scenario suggests that something irregular must have induced the prosecution. And that irregularity, in turn, opens the door to considering whether the officer's retaliatory animus motivated the prosecutorial harm. As such, want of probable cause "bridge[s] the gap between the nonprosecuting government agent's motive and the prosecutor's action, and [it] address[es] the presumption of prosecutorial regularity" otherwise afforded to a prosecutor's decisions. *Id.* at 263. Thus, in a retaliatory-prosecution claim, this Court did not view it as particularly burdensome—as a practical matter—to depart from *Mt. Healthy* and require a showing that probable cause is absent, because "[p]robable cause or its absence will be at least an evidentiary issue in practically all such cases" and "can be made mandatory with little or no added cost." *Id.* at 265-66.

By contrast, retaliatory-arrest cases do not involve circumstances that justify departing from the *Mt. Healthy* framework. First, the strong presumption of regularity accorded to prosecutorial decisions does not

apply to police making arrests. *Reichle v. Howards*, 566 U.S. 658, 669 (2012). Second, the causation that must be proved is straightforward: The governmental actor with the allegedly retaliatory animus is the same person who makes the challenged decision to arrest. Indeed, in *Hartman*, this Court expressly distinguished retaliatory-prosecution claims from "ordinary retaliation" claims where the individual harboring the retaliatory animus is also the individual taking the adverse action. 547 U.S. at 259. Retaliatory-arrest claims fit the "ordinary retaliation" model for which the *Mt. Healthy* test was designed, *see id.*, and should remain governed by that established framework.

Finally, the burden on a plaintiff of showing a lack of probable cause is less cabined and more onerous in retaliatory-arrest cases than in retaliatory-prosecution cases. In the context of a criminal prosecution, the government must have already committed to its theory of criminal liability and proffered evidence of probable cause in connection with the charging instrument. By contrast, a police officer need not commit to a theory of criminal liability to proceed with an arrest; indeed, the police may not come up with a theory of criminal liability—and therefore a theory of probable cause—until well after litigation of a retaliatory-arrest claim has already commenced. *See Lozman v. City of Riviera Beach*, 138 S. Ct. 1945, 1950 (2018) (noting that the city first brought up the statute forming the basis of the city's theory of probable cause during the retaliatory-arrest litigation). To successfully plead that

there was no probable cause for arrest, the plaintiff in a retaliatory-arrest case would theoretically have to pore over every possible crime for which he could have been arrested, alleging the absence of probable cause for each of them. *See infra* Part III; *see also Devenpeck v. Alford*, 543 U.S. 146, 153, 155 (2004) (stating that arrests do not violate the Fourth Amendment when probable cause exists under the facts known to the officer, regardless of the crime ultimately charged or even contemplated at the time of arrest). This not only renders the existence of probable cause less probative, but also creates a significantly greater burden on the retaliatory-arrest plaintiff compared to the retaliatory-prosecution plaintiff who must establish lack of probable cause only for those crimes included in the charging instrument.

C. The Common Law Does Not Provide Guidance For The Elements Of A Retaliatory-Arrest Claim Or Support The Addition Of A No-Probable-Cause Requirement.

Although the common law is an appropriate starting point for "defining the contours and prerequisites of a § 1983 claim," common-law torts are informative only to the extent they are analogous to—and thus provide redress for—the deprivation of the constitutional right at issue. *See, e.g., Manuel v. City of Joliet*, 137 S. Ct. 911, 920 (2017). No common-law tort addressed violations of freedom of speech through

retaliatory arrests; therefore, there is no appropriate common-law analog, and no viable common-law rationale, for departing from the traditional *Mt. Healthy* approach to animus-related § 1983 claims merely because an arrest is at issue.

As this Court noted in *Hartman*, "we certainly are ready to look at the elements of common-law torts when we think about elements of actions for constitutional violations, but the common law is best understood here more as a source of inspired examples than of prefabricated components of" constitutional claims. 547 U.S. at 258 (citation omitted). Lacking a common-law tort clearly analogous to a retaliatory prosecution in violate of the First Amendment, this Court did not look to the common law in *Hartman* when defining the elements of a retaliatory-prosecution claim. *See id.* at 258-59. Instead, in determining that a plaintiff should have to prove a lack of probable cause, the Court looked at the practical and legal realities of prosecution-based claims, not at prosecution-related, common-law torts. *See id.* at 259-65. And, as previously discussed, no comparable realities exist in the arrest context. *See* Part II.B.

Just as the common law contributed no guidance for defining the elements of a retaliatory-prosecution claim, so too is the common law uninformative when analyzing First Amendment rights in the arrest context. As even petitioners acknowledge, there was no common-law tort for retaliatory arrest in violation of freedom of speech at the time § 1983 was enacted.

Pet. Br. 43 (citing *Lozman*, 138 S. Ct. at 1957 (Thomas, J., dissenting)). The absence of such a tort is unsurprising given that the American law of freedom of speech was a conscious departure from that of the English common law, not a continuation of it. *See* Part I, *supra* (discussing America's rejection of Blackstone's conception of speech as potentially dangerous and worthy of punishment and America's adoption, instead, of a democratic model that values speech as a reflection of popular sovereignty). Moreover, First Amendment protection of speech had not even been incorporated as applicable to state governments when § 1983 was enacted in 1871. *See Gitlow v. New York*, 268 U.S. 652, 660 (1925) (stating, for the first time, that the First Amendment applies to the States).

None of the common-law torts invoked by petitioners—malicious arrest, malicious prosecution, and false imprisonment (Pet. Br. 43)—were designed to protect free-speech rights. Those torts are therefore neither analogous to nor sufficiently protective of speech rights to serve as models for retaliatory-arrest claims that invoke the First Amendment and are designed to protect speech. Section 1983 was not intended to be a static codification of common-law causes of action. *Rehberg v. Paulk*, 566 U.S. 356, 366 (2012). To the contrary, "[t]he purpose of § 1983 would be defeated if injuries caused by the deprivation of constitutional rights went uncompensated simply because the common law does not recognize an analogous cause of action." *Carey v. Piphus*, 435 U.S. 247, 258 (1978).

As in *Hartman*, this Court should look to the practical and legal realities of the arrest context when analyzing retaliatory-arrest crimes. But whereas the practical and legal realities of prosecutions were deemed to warrant proof of a probable-cause element, *Hartman*, 547 U.S. at 259-65, the practical and legal realities of officers' authority to make arrests are very different, and importing *Hartman*'s probable-cause requirement into the arrest context would create unwarranted obstacles to protecting and vindicating First Amendment rights.

D. The Law Already Includes Ways To Screen Out Insubstantial Retaliatory-Arrest Claims Without Imposing Additional Elements.

Fear of unmeritorious, burdensome litigation does not warrant creating a new element for retaliatory-arrest claims that requires plaintiffs to prove the absence of probable cause for the arrest in question. To do so would transform *Hartman*'s prosecution-cabined exception to *Mt. Healthy* into the general rule for motive-based constitutional claims—an approach this Court has already rejected. *See Crawford-El*, 523 U.S. at 592, 594 (determining that the burden on governmental officials sued for motive-based, constitutional violations "does not justify a judicial revision of the law to bar claims that depend on proof of an official's motive" and to do so "would stray far from the traditional limits on judicial authority"). Indeed, when previously faced with a proposal like

petitioners' that would prevent courts from admitting evidence of subjective motive once a governmental defendant asserted an alternative, objective explanation, *id.* at 612 (Scalia, J., dissenting), this Court flatly refused, explaining that it would be "unprecedented" for the law "to immunize all officials whose conduct is 'objectively valid,' regardless of improper intent." *Id.* at 594.

The Court should be particularly wary of imposing an additional pleading and proof requirement that would impose "serious limitations upon 'the only realistic' remedy for the violation of [a] constitutional guarantee[]." *See id.* at 591. As discussed in Part III, *infra*, requiring a plaintiff alleging a retaliatory arrest to plead and prove the absence of probable cause—prior to permitting any consideration of the officer's alleged motive to retaliate for protected speech—would drastically limit the redressability of these types of First Amendment violations, given the vast array of commonplace offenses that could be used by an officer to justify a retaliatory arrest. And the addition of such an element is not necessary because existing substantive and procedural rules already weed out insubstantial claims.

Insubstantial retaliatory-arrest claims—despite their element of subjective motive—are still amenable to dismissal or summary disposition. *See id.* at 593. A retaliatory motive by itself is insufficient to establish a claim for retaliatory arrest; a plaintiff must also show causation. *Id.* So, to survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a

plaintiff in a retaliatory-arrest case must allege sufficient facts to allow the court to draw the plausible inference that officers not only harbored animus toward the plaintiff because of the plaintiff's engagement in protected speech, but also that this animus was a substantial or motivating factor for the plaintiff's arrest. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."); *Mt. Healthy*, 429 U.S. at 287; *see also* FED. R. CIV. P. 12(b)(6). Merely alleging that the plaintiff engaged in protected speech and was arrested, without additional factual allegations to support causation, would fall short of showing that the plaintiff had a plausible claim for relief. *See Iqbal*, 556 U.S. at 678. Accordingly, insubstantial retaliatory-arrest claims will be susceptible to dismissal under Rule 12(b)(6), notwithstanding allegations that an officer harbored speech-related animus.

The but-for causation required to state a viable claim under the *Mt. Healthy* test also demonstrates why fears are unfounded that individuals engaging in criminal conduct will be able to shield themselves from arrest at the last minute by shouting some form of protected speech once arrest becomes imminent. *See, e.g.*, Brief for the District of Columbia, *et al.* as *Amici Curiae* Supporting Petitioner, *Nieves v. Bartlett* (No. 17-1174) 6-7 (noting that arrestees often criticize or insult police while being placed under arrest). If a

plaintiff alleges nothing more than engagement in protected speech while being arrested, that speech could not plausibly have motivated the arrest, which already was in motion when that plaintiff spoke.

Even if a complaint survives a Rule 12(b)(6) motion, there are a number of additional ways that insubstantial cases may be eliminated without the burden of a full trial. Officers still have the affirmative defense of qualified immunity in cases where the facts would not have led a reasonable officer to believe she was violating clearly established rights by making the arrest, *see Harlow v. Fitzgerald*, 457 U.S. 800, 817-18 (1982), and a denial of qualified immunity may be interlocutorily appealed when the ruling presents an issue of law. *See Behrens v. Pelletier*, 516 U.S. 299, 311 (1996). A court can also order the plaintiff to file a reply to the defendant's answer or grant a defendant's motion for a more definite statement prior to allowing discovery. *Crawford-El*, 523 U.S. at 598. In the event discovery does occur, district judges have broad discretion to limit the scope of discovery and dictate its course. *Id.* at 598-99. Furthermore, the defendant can prevail at summary judgment by showing that no genuine disputes of material fact would permit a juror to conclude that the arrest would not have occurred but for the plaintiff's protected speech. *Id.* at 593. When the subjective-motive element of a retaliatory-arrest claim is paired under the *Mt. Healthy* test with a but-for-causation requirement, there is no need to import an additional element requiring plaintiffs to prove absence of probable cause for the arrest to ensure that

insubstantial claims can be weeded out without subjecting officers to the burdens of trial. *See id.*

III. IMPORTING A PROBABLE-CAUSE REQUIREMENT WOULD PROVIDE OFFICERS WITH AN AUTOMATIC ESCAPE FROM TOO MANY RETALIATORY-ARREST SUITS, UNDERMINING THE CAPACITY OF § 1983 TO PROTECT FREE SPEECH.

Police officers enjoy tremendous discretion to arrest someone whenever there is probable cause to believe a crime has been committed. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001). That rule applies even to misdemeanors—including those that carry only small fines as possible penalties. *See id.* (holding that arrest for a misdemeanor seatbelt offense punishable only by a fine was supported by probable cause and therefore did not violate the Fourth Amendment); *see also id.* at 366 (O'Connor, J., dissenting) (observing that the decision gives police officers "constitutional carte blanche to effect an arrest whenever there is probable cause to believe a fine-only misdemeanor has been committed"). Many Americans, though they may not know or intend it, break the law daily by committing crimes that go largely unrecognized, such as jaywalking, exceeding the speed limit, or failing to signal before making a turn. Even calling in sick to work could be a federal crime. *See*

Sorich v. United States, 555 U.S. 1204, 1205-06 (2009) (Scalia, J., dissenting from denial of certiorari) (noting that 18 U.S.C. § 1346 arguably criminalizes a salaried employee's phoning in sick to attend a ball game).

Although these types of crimes may not often result in an arrest, the fact remains that an officer possesses the authority to arrest someone whenever probable cause exists to believe that person committed *any* crime.[4] *See Atwater*, 532 U.S. at 354. That means that in almost any circumstance in which a person might publicly exercise First Amendment rights—and potentially experience retaliation for that speech in the form of an arrest—the arresting officer could likely identify some violation of law, however trivial, and claim probable cause existed to justify the arrest. And even if the arrest were motivated by the officer's animus toward the speaker and would not otherwise have occurred, the existence of probable cause would defeat the First Amendment claim outright under petitioners' proposed test. Indeed, that would be the result even if the speaker did not actually break any law, since under petitioners' rule the plaintiff would have to prove that there was not even *probable cause* to believe the infraction occurred. *See, e.g.*, Pet. Br. 16.

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[4] Arrests for misdemeanor crimes have become increasingly prevalent. *See* Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1314-15 (2012) ("An estimated ten million misdemeanor cases are filed annually, flooding lower courts, jails, probation offices, and public defender offices.").

Suppose a person brings suit because she was arrested while handing out pamphlets on a public street and believes the arrest was made to retaliate against her in violation of her First Amendment rights. Before getting an opportunity to prove that her speech substantially motivated the officer's arrest, she might find herself having to prove, first, that the officer lacked probable cause to believe that she littered (*did a pamphlet accidentally slip out of her grasp?*)[5] or jaywalked (*did she see a break in traffic and dash across an empty intersection into a Starbucks?*).[6]

A speaker who is arrested while driving might have an even more difficult time showing that there was no probable cause for the arrest. Suppose a driver with a bullhorn mounted on his car is arrested while broadcasting speech; or maybe there is no bullhorn, but an arrest occurs when a bumper sticker offends the arresting officer. The driver might have to show that his actions gave the officer no reason to believe he was exceeding the posted speed limit,[7] was driving closer than reasonable to another car,[8] failed to come to a complete stop before proceeding through a flashing red

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[5] *E.g.*, ALA. CODE § 13A-7-29.

[6] *E.g.*, GA. CODE ANN. §§ 40-6-1, 40-6-92.

[7] *E.g.*, N.M. STAT. ANN. §§ 66-7-3, 66-7-301; TEX. TRANSP. CODE ANN. §§ 542.301, 543.001, 545.352.

[8] *E.g.*, VA. CODE ANN. §§ 46.2-816, 46.2-937.

signal,[9] failed to wear a safety belt,[10] or engaged in "careless driving."[11]

And some road-related crimes are so nebulous and subjective that it would be nearly impossible for a plaintiff to disprove the existence of probable cause. In Colorado, for example, it is a misdemeanor to drive "without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances." COLO. REV. STAT. ANN. § 42-4-1402. It would not be difficult for an officer to mask a retaliatory motive by asserting probable cause to arrest the speaker for driving without due regard for the grade of the street. *See id.* Whereas the *Mt. Healthy* test would require the officer to show he would have made that same arrest regardless of the driver's speech, *see* 429 U.S. at 287, petitioners' probable-cause test would require dismissal of the claim without any consideration of the role speech played in the officer's decision.

Additional examples abound. A person exercising First Amendment rights at a rally who is then arrested while riding her bicycle home might have to plead that the officer lacked probable cause to believe she was not riding as far to the right of the roadway as

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[9] *E.g.*, S.D. CODIFIED LAWS § 32-38-7.

[10] *E.g.*, TEX. TRANSP. CODE ANN. § 545.413.

[11] *E.g.*, N.J. STAT. ANN. §§ 39:4-97, 39:4-104; N.M. STAT. ANN. § 66-8-114.

practicable,[12] rode more than two abreast,[13] or failed to give a hand signal continuously during the last 100 feet traveled before a turn or failed to continuously use a hand signal while stopped and waiting to turn.[14] Many of these rules—like their motor-vehicle equivalents, disorderly conduct, or even littering violations—give officers wide latitude to make subjective judgment calls when it comes to arrest. And that latitude, under petitioners' probable-cause proposal, would make it easy for an officer to defeat a retaliatory-arrest claim by articulating a belief that the rally speaker failed to continuously use a hand signal while stopped on her bike, waiting to turn. A § 1983 claim alleging an arrest made in retaliation for protected speech should not be dismissed based exclusively on the speaker's biking conduct without any consideration of the biker's speech.

To hold that an officer, even one patently acting on retaliatory animus, can escape liability merely by showing that he had probable cause to believe the plaintiff committed one of the crimes above, or one of the hundreds (if not thousands) of other potential misdemeanors, *see* Natapoff, *supra*, at 1314-15, would make it too easy for officers to escape liability for retaliatory arrests. Although this Court determined

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[12] *E.g.* GA. CODE ANN. §§ 40-6-1, 40-6-294(b); W. VA. CODE §§ 17C-11-1, 17C-11-5(a).

[13] *E.g.* GA. CODE ANN. §§ 40-6-1, 40-6-294(c); W. VA. CODE §§ 17C-11-1, 17C-11-5(c).

[14] *E.g.*, S.D. CODIFIED LAWS § 32-20B-6.

that adding a probable-cause element to retaliatory-*prosecution* claims would neither burden plaintiffs nor diminish § 1983's capacity to vindicate First Amendment rights, *see Hartman*, 547 U.S. at 265-66, the same cannot be said in the context of retaliatory arrests. To protect freedom of speech and ensure that speakers have a meaningful opportunity to seek redress for retaliatory arrests in violation of the First Amendment, this Court should reject petitioners' probable-cause proposal and continue to apply the tried-and-true *Mt. Healthy* framework that successfully balances the interests of speakers and governmental actors when animus-based claims arise in a wide variety of constitutional contexts.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

JOHN W. WHITEHEAD
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October 9, 2018

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 18, 2018

CASE NO.: 2D18-3856
L.T. No.: 17-CA-421,
17-MM-815

SCOTT HUMINSKI	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition for writ of prohibition is denied.

Petitioner's motion for appointment of counsel and to waive filing fee is denied. Petitioner's emergency motion to stay arrest warrant is denied. Petitioner's motion to stay order of conviction is denied.

VILLANTI, LUCAS, and ROTHSTEIN-YOUAKIM, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa Scott Huminski Linda Doggett, Clerk

td

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 26, 2018

CASE NO.: 2D18-3856
L.T. No.: 17-CA-421,
17-MM-815

SCOTT HUMINSKI	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for reconsideration/rehearing en banc is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa Scott Huminski Linda Doggett, Clerk

ag

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA APPELLATE DIVISION

SCOTT HUMINSKI,

Appellant,

vs.

TOWN OF GILBERT, A.Z. **Appellate Case No. 18-AP-3**

Appellee,

STATE OF FLORIDA, **Appellate Case No. 18-AP-9**

Appellee.

CONSOLIDATED APPEAL NO. 18-AP-3
Lower Case No. 17-MM-815

_____/

ORDER DISMISSING COURT APPOINTED COUNSEL'S MOTION TO WITHDRAW WITHOUT PREJUDICE AND DIRECTING COUNSEL TO COMPLY WITH MARCH 20, 2018 ORDER WITHIN FIFTEEN (15) DAYS

THIS CAUSE comes before the Court on its own motion. Attorney Anthony Candela was appointed to represent Appellant in 18-AP-3 on March 20, 2018 and in 18-AP-9 on May 21, 2018, after the Court found that conflicts exist with the Public Defender and Regional Counsel in both cases. On July 26, 2018, counsel's motion to have the above appeal cases consolidated was granted. In the same order, counsel's request for leave to file an amended notice of appeal, directions to the clerk and designations to the court reporter was granted. Additionally, counsel's motion to have the cases transferred to the Second District Court of Appeal was dismissed without prejudice for counsel to re-file the motion with a more thoroughly argued basis for transfer.

Appointed counsel did not file the amended notice of appeal, directions to the clerk or designations to the court reporter within the time provided by the Court, nor has counsel filed an amended motion to transfer. Instead, counsel filed a motion to withdraw on August 8, 2018. On

August 22, 2018, the Court dismissed the motion to withdraw without prejudice because it did not set forth a true conflict of interest and because Appellant had not filed any pro se pleadings seeking to represent himself pro se in these appeal cases. The Court also directed counsel to file an initial brief within 20 days, as the time period for filing the amended notice of appeal, directions to the clerk or designations to the court reporter had lapsed.

Since its August 22, 2018 order, counsel has again failed to file an amended notice of appeal, directions to the clerk or designations to the court reporter, or the initial brief, or an amended motion to withdraw, or an amended motion to transfer. Instead, on September 11, 2018, appointed counsel filed a "Motion for Evidentiary Hearing," apparently seeking the scheduling of a hearing before the appellate banc to determine whether Appellant should be allowed to proceed pro se. In support of this request, appointed counsel cited case law applicable at the trial level, not the appellate level. The Court is unaware of any case law or rule of procedure supporting counsel's request for a Nelson/Faretta hearing in an appeal case. Moreover, even if such case law exists, an allegation of ineffective assistance of appellate counsel or a request to proceed pro se must come from Appellant, not from his attorney. Accordingly, Counsel's motion for an evidentiary hearing is denied. To the extent that the motion repeated counsel's request to withdraw from this case, at this time, the request is dismissed without prejudice.

The Clerk is awaiting the filing of directions to the clerk and/or designations to the court reporter before completing the record. Counsel pleads that there have been hundreds of pages of pro se motions filed in the lower case; however, the size of the record on appeal has no bearing on counsel's ability or obligation to file the directions to the clerk and the designation to the court reporter. Within fifteen days, counsel shall comply with the Court's July 26, 2018 order and file the directions to the clerk and designations to the court reporter. Once the clerk files the appellate record, counsel may refile his request to withdraw, if necessary. The initial brief shall be due

within thirty days of the filing of the record.

Failure to comply with this order will result in an order to show cause as to why sanctions should not be imposed.

Thus, it is hereby

ORDERED AND ADJUDGED that counsel's "Motion for Evidentiary Hearing" is DENIED. To the extent that the motion contained a request from court-appointed counsel to withdraw from this case, the request is dismissed without prejudice.

It is further **ORDERED AND ADJUDGED** that counsel shall comply with the Court's July 26, 2018 order within fifteen days of the date of this order by filing directions to the clerk and designations to the court reporter. Counsel may also file an amended notice of appeal, if necessary and appropriate. After the record is filed, the initial brief shall be due within thirty days; motions for extension of time to file the initial brief will be considered if timely filed in good faith.

DONE AND ORDERED in Chambers at Ft. Myers, Lee County, Florida this 29TH day of Oct, 2018.

Joseph C. Fuller, Jr.
Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the forgoing filed in the above styled case has been e-mailed/mailed to:

- **Court Administration (XXIV)**
- **Scott Huminski**
- **Town of Gilbert AZ**
- **State of Florida**
- **Anthony M. Candela, Esq.**

Dated: 10/29/18

LINDA DOGGETT, CLERK OF COURT

By: ____________________
Deputy Clerk

THE COUNTY COURT
IN AND FOR LEE COUNTY

CRIMINAL JUSTICE

STATE OF FLORIDA CASE NO.: 17-MM-000815

v.

SCOTT A. HUMINSKI

DIRECTIONS TO THE CLERK

Defendant directs the clerk to include the following items in the record on appeal:

1. A copy of the order to show cause (charging document);
2. A copy of all court minutes filed with the court;
3. A copy of all correspondence filed with the court;
4. A copy of all "other documents" filed with the court;
5. A copy of all orders filed with court;
6. A copy of all "minutes" filed with the court;
7. A copy of all "Commitment Form Filed" filed with the court;
8. A copy of all "Final Disposition" filed with the court;
9. A copy of the judgment and sentence filed with the court;
10. A copy of all orders from either the Second District Court of Appeal of the Florida Supreme Court;
11. A copy of all warrants and affidavits of probation;
12. A copy of all orders of probation;
13. A copy of all notices of appeal/amended notices of appeal;
14. A copy of all transcripts filed with this court; and
15. A copy of these directions.

Please note that any supplement pages must be numbered consecutively to the pages in the original record or any other supplement previously filed.

See Fla. R. App. P. 9.200(d)(1)(B).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Directions to Clerk has been furnished to ServiceSAO-LEE@sao.cjis20.org to the Office of the Attorney General, email address: CrimAppTPA@MyFloridaLegal.com; and a copy to the Appellant Scott Huminski at s_huminski@live.com on the 31st day of October 2018.

Respectfully submitted,

Attorney for Defendant
10312 Bloomingdale Ave Ste 108-170
Riverview FL 33578
Office: (813) 417-3645
Facsimile: (813) 330-2400

ANTHONY M. CANDELA, Esquire
Board Certified Criminal Trial
Florida Bar No: 0332010
Primary E-mail: service@candelalawfirm.com
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THE COUNTY COURT
IN AND FOR LEE COUNTY

CRIMINAL JUSTICE

STATE OF FLORIDA CASE NO.: 17-MM-000815

v.

SCOTT A. HUMINSKI

DEFENDANT'S AMENDED NOTICE OF APPEAL

Notice is hereby given that the Defendant, SCOTT A. HUMINSKI, pursuant to Fla. R. App. P. 9.030(b)(1)(A) and Fla. R. App. P. 9.140(b)(1)(A), (C), (E), (F), or (G), and Puleo v. State, 109 So.2d 39 (Fla. 2d DCA 1959) (jurisdiction for review of criminal contempt lies in the District Court and not the Circuit Court); and Sandstrom v. State, 336 So.2d 572, *dismissed on jurisdictional grounds*, Justice England dissent., and by and through undersigned counsel, hereby takes and enters this appeal to the District Court of Appeal, Second District, Lakeland, Florida, to review an Order of contempt issued by the Lee County Court, bearing date 16 March 2017, entered in the above-styled cause. The nature of the Order appealed from is one or all of the below listed reasons listed in the rule:

(A) a final judgment adjudicating guilt;
(C) an order granting probation…;
(E) an unlawful or illegal sentence;
(F) a sentence, if the appeal is required or permitted by general law; or
(G) as otherwise provided by general law.

All parties in this cause are called upon to take notice of the entry of this appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing AMENDED NOTICE OF APPEAL has been furnished to ServiceSAO-LEE@sao.cjis20.org to the Office of the Attorney General, email address: CrimAppTPA@MyFloridaLegal.com; and a copy to the Appellant Scott Huminski at s_huminski@live.com on the 31st day of October 2018.

Respectfully submitted,

Attorney for Defendant
10312 Bloomingdale Ave Ste 108-170
Riverview FL 33578
Office: (813) 417-3645
Facsimile: (813) 330-2400

ANTHONY M. CANDELA, Esquire
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THE COUNTY COURT
IN AND FOR LEE COUNTY

CRIMINAL JUSTICE

STATE OF FLORIDA CASE NO.: 17-MM-000815

v.

SCOTT A. HUMINSKI

I. DESIGNATIONS TO THE COURT REPORTER

TO: Electronic Court Reporting, 1700 Monroe St., Ft. Myers, FL 33901

Please transcribe and file with the clerk of the court the following in triplicate:

- All hearings were in front of Judge Adams.

1. Arraignment, 29 June 2017 8:30 a.m.;
2. Status hearing, 15 August 2017 at 1:00 p.m.;
3. Status hearing, 1 September 2017 at 8:30 a.m.;
4. Status hearing, 22 September 2017 at 8:30 a.m.;
5. Status hearing, 27 October 2017 at 8:30 a.m.;
6. Status hearing, 17 November 2017 at 8:30 a.m.;
7. Status hearing, 21 December 2017 at 8:30 a.m.;
8. Status hearing, 8 January 2018 at 8:30 a.m.;
9. Status hearing, 13 February 2018 at 1:00 p.m.;
10. Status hearing, 6 March 2018 at 8:30 a.m.;
11. Bench Trial – opening statements, 16 March 2018;

12. Testimony, 16 March 2018;

13. Judgment of Acquittal Arguments, 16 March 2018;

14. Closing Arguments, 16 March 2018;

15. Verdict, 16 March 2018; and

16. Sentencing, 16 March 2018.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Designations to Court Reporter has been furnished to ServiceSAO-LEE@sao.cjis20.org to the Office of the Attorney General, email address: CrimAppTPA@MyFloridaLegal.com; and a copy to the Appellant Scott Huminski at s_huminski@live.com on the 31st day of October 2018.

Respectfully submitted,

Attorney for Defendant
10312 Bloomingdale Ave Ste 108-170
Riverview FL 33578
Office: (813) 417-3645
Facsimile: (813) 330-2400

ANTHONY M. CANDELA, Esquire
Board Certified Criminal Trial
Florida Bar No: 0332010
Primary E-mail: service@candelalawfirm.com
Secondary E-mail: tony@candelalawfirm.com

Appeal from STATE OF FLORIDA vs. SCOTT A. HUMINSKI

Circuit Court Case No. 17-MM-000815

II. COURT REPORTER'S ACKNOWLEDGEMENT

1. The designation to the court reporter was served on _____

and received on _____.

2. Because the Defendant has been previously determined to be indigent, the court reporter is satisfied that the county will pay for the preparation of the transcript.

3. Number of trials or hearings: _____ .

4. Estimated number of transcript pages: _____ .

5. (a) The transcript will be available within thirty (30) days of service of the designation and will be filed on or before _____ .

OR

(b) For the following reason(s), the court reporter requests an extension of time of _____ days to prepare the transcript, which will be filed on or before _____

6. Completion and filing of this acknowledgment by the court reporter constitutes submission to the jurisdiction of the court for all purposes related to these appellate proceedings.

7. The undersigned court reporter certifies that the foregoing is true and correct and that a copy has been furnished by mail ( ) or hand delivery ( ) this ___ day of _____, 20 __ , to each of the parties or their counsel.

COURT REPORTER

Address:

NOTE: The foregoing acknowledgment shall be properly completed, signed by the court reporter, and filed with the clerk of the appellate court within five (5) days of service of the designations upon the court reporter. A copy shall be served on all parties or their counsel, who shall have five days to object to any requested extension of time. *See* Fla. R. App. P. 9.200(b)(1)-(3), 9.900(g).

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

March 16, 2018

CASE NO.: 2D18-1009
L.T. No.: 17-CA-421
17-MM-815

SCOTT HUMINSKI	v.	TOWN OF GILBERT, AZ, ET AL
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

The affidavit of insolvency and accompanying motion filed in this original proceeding persuade this court that petitioner is insolvent, and petitioner is accordingly declared insolvent within the meaning of chapter 57, Florida Statutes, for purposes of the filing fee associated with this petition. This determination is subject to rebuttal by respondent within twenty days.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Scott Huminski

Linda Doggett, Clerk

ls

Mary Elizabeth Kuenzel
Clerk

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,

vs. Case No. 17-MM-000815

SCOTT A. HUMINSKI,

Defendant.
_____/

REPORTER'S ACKNOWLEDGEMENT

1. The foregoing designation was served and received on November 8, 2018.

2. Satisfactory arrangements have been made for payment of the transcript cost. These financial arrangements were completed on November 8, 2018.

3. Number of trial or hearing days is 11: June 29, 2017, August 15, 2017, September 1, 2017, September 22, 2017, October 27, 2017, November 17, 2017, December 21, 2017, January 8, 2018, February 13, 2018, March 6, 2018 and March 16, 2018.

4. Estimated number of transcript pages is 150.

5. The transcription will be available within 30 days of service of the foregoing designation and will be filed on or before December 10, 2018.

6. Completion and filing of this acknowledgement by the court reporter constitutes submission to the jurisdiction of the Court for all purposes in connection with these appellate proceedings.

I HEREBY CERTIFY that the foregoing is true and correct and that a copy has been furnished by U.S. Mail/hand delivery to the Clerk of the Circuit Court; Honorable Stephen B. Russell, State Attorney, Lee County Justice Center Annex, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; Electronic Court Reporting, 1700 Monroe Street, 3rd Floor, Lee County Justice Center, Fort Myers, FL 33901; Department of Legal Affairs, Office of the Attorney General, Concourse Center #4, 3507 Frontage Road, Suite 200, Tampa, FL 33607; Honorable Mary E. Kuenzel, Clerk, Second District Court of Appeal, Post Office Drawer 327, Lakeland, FL 33802 and Anthony M. Candela, Esq., Candela Law Firm, 10312 Bloomingdale Avenue, Suite 108-170, Riverview, FL 33578-3603 this 8th day of November, 2018.

Debra A. Cail

Debra A. Cail
Merit Court Reporting, Inc.
6213 Presidential Court, Suite 100
Fort Myers, FL 33919
239.481.1300
239.481.1451 Fax

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	June 29, 2017

ARRAIGNMENT

BEFORE THE HONORABLE
ELIZABETH V. KRIER, CIRCUIT JUDGE

APPEARANCES:

For the State:

ANTHONY KUNASEK, ESQ.
Office of the State Attorney
2000 Main Street, 6th Floor
Fort Myers, FL 33901
(239) 533-1000

For the Defendant:

KEVIN J. SARLO, ESQ.
Office of the Public Defender
2000 Main Street, 3rd Floor
Fort Myers, FL 33901
(239) 533-2991

Transcription Service:

MERIT COURT REPORTING, INC.
6213 Presidential Court, Suite 100
Fort Myers, FL 33919
239.481.1300

Proceedings recorded by digital sound recording; transcript produced by transcription service.

TABLE OF CONTENTS

THE COURT: Everyone announce themselves for the record.

MR. KUNASEK: Anthony Kunasek on behalf of the State of Florida.

MR. SARLO: Kevin Sarlo from the Public Defender's Office.

THE COURT: All right. Mr. Huminski is also present before the Court.

THE DEFENDANT: Yes.

THE COURT: Okay. We're here on an order to show cause. This is essentially an arraignment proceeding today. So, I think the things that we have to do today are set court dates for various proceedings, as well as address issues of bond and/or pretrial release, am I correct?

MR. SARLO: Yes, Judge.

THE COURT: Okay. So, first thing is bond and/or pretrial release. Any arguments from anybody?

MR. KUNASEK: Judge, the State will defer to the Court with respect to that. I know there was an issue with serving him with the initial order to show cause. So, his availability may be an issue and the Court's well aware of that more than I am, so I will defer to the Court with

respect to --

THE COURT: My understanding is these proceedings there's two different ways that the State can proceed, one is with a -- a maximum of, I think, 59 days in jail count, which means there's no jury trial and then the second option is for the State to proceed as a second degree misdemeanor, I guess, with a maximum of just under six months in jail, which requires a jury trial. Does the State know how it's gonna be proceeding with this?

Haven't decided yet? Okay. Well, at some point I'm gonna need a decision. We can probably address that at case management. I mean, despite the fact that I prepared and signed the order to show cause I can't prosecute a case, so it's the State that's gotta prosecute the case. So, you guys can just tell me at case management if that's the way you want to do it.

Okay. So, when should we set case management and when should we set trial?

MR. KUNASEK: I'm out of -- I'm out of town the middle of July, otherwise I'm --

THE COURT: All right. Any preferences?

MR. SARLO: Your Honor, other than a -- I

would be out of town the end of July, otherwise I have no preference, Your Honor.

THE COURT: Okay. I would imagine the case management is only gonna take five or ten minutes.

MR. KUNASEK: Yes.

THE COURT: Okay. Do you want to wait and set the trial at that time?

MR. SARLO: Yes, Your Honor.

THE COURT: Okay. And, then, I'm assuming, also, if you have any motions that you want to file, that you can just file those and then just call my office for a time.

You're probably gonna need to call the office because my regular JAC system is, you know, I'm generally in the sill (phonetic spelling) division. I think it might be weirder for you to try to get on my regular motion calendar. So, if you have motions that need to be addressed by the Court, then you can just call my office and get hearing time. Okay.

Are they gonna assign another case number to this case? I don't know how they're gonna do that.

MR. KUNASEK: My experience with orders to

show cause in DR court, Your Honor, has led me to believe that that normally does not happen. We'll just stay under this case number.

MR. SARLO: The case number that's on the order is a civil case number.

THE COURT: Right because that's the only case number I have.

MR. SARLO: The clerk very well may ask us --

THE COURT: I know in Collier County, because I've done a couple of these proceedings in Collier, they do open a new file. So, if you want that to happen, I would think that somebody's gotta ask -- ask the Clerk to do that.

Okay. So, let's see. Middle of August is okay for everybody?

MR. KUNASEK: Yes, Your Honor.

THE DEFENDANT: No.

THE COURT: Could we do it at --

THE DEFENDANT: This case has been removed to bankruptcy court, so I'm not good with that.

THE COURT: Pardon me?

THE DEFENDANT: This case has been removed to bankruptcy court --

THE COURT: This case hasn't been removed to any place, Mr. Huminski.

THE DEFENDANT: Under bankruptcy rule 9027 --

THE COURT: Mr. Huminski, A, you're not a lawyer and, B, this case doesn't get removed to bankruptcy court. That's not how the law works. Okay. You need to --

THE DEFENDANT: I filed a bankruptcy (unintelligible).

THE COURT: Well, that's great that you filed bankruptcy, but that doesn't have anything to do. This is a criminal proceeding.

And while we're on that subject, let me just make sure that you understand your rights. You have the right to remain silent. Anything you say in this court can be used against you and it's all being recorded. You have the right to an attorney. I'm appointing an attorney to represent you. You probably need to fill out some paperwork for that with the Public Defender's Office, but I'm appointing the Public Defender to represent you in this proceeding.

This is a criminal proceeding. You can go to jail for this. You have violated -- it is alleged that you have violated court orders. It's alleged you have committed indirect criminal contempt. You can go to jail.

There's two options, as I indicated to the State. They can proceed with a non-jury proceeding, in which case the most I can sentence you to is 59 jay -- 59 days in jail if I find that you are guilty with a non-jury trial or a jury trial, which the most I can sentence you to is up to six months.

THE DEFENDANT: The protective orders mention civil, as well, and civil can be removed to bankruptcy court.

THE COURT: No, sir, you're misinformed. Nothing gets removed from this court to bankruptcy court. That doesn't happen ever.

So, you need to talk to your attorney, who I've appointed because he's the one that knows the law.

THE DEFENDANT: He doesn't know bankruptcy law.

THE COURT: Okay. This isn't bankruptcy court.

Now, one of the things that I want to see happen in this case at some point is I would very much like to see a mental health evaluation. Now, that's if, in fact, he's -- I mean, that would be something that I would consider in terms

of a plea offer. It would also be something I would consider in terms of sentencing if, in fact, Mr. Huminski is found guilty. I don't know whether that will happen. It will depend on what the evidence is in terms of what the State presents, but it might be something that might help you guys in terms of what you're doing in this case.

Now, I need to con -- okay. So, we've got -- let's do August 15th at 1:00, which is a Tuesday. Is that okay with everybody?

MR. KUNASEK: Yes, Your Honor.

MR. SARLO: Yes, Judge.

THE COURT: Okay. For case management and then from there you can tell me how you -- the State is proceeding. Also, if I need to give you hearing time at that time I can do that. I mean we -- I can schedule that.

MR. SARLO: Thank you, Your Honor.

THE COURT: Okay. But, make sure if you're gonna -- if you have motions that you want me to schedule that you have those filed.

MR. SARLO: Yes, Your Honor.

THE COURT: Okay. Now, I have to consider issues of bond and/or pretrial release. I have a

couple of concerns. Now, first of all, let me just review with you what my understanding of the law is, which is if I set a bond then I don't get to set any terms of pretrial release. If I set a pretrial release and I set terms, then I don't get to set a bond, unless, of course, he violates his terms. Is that accurate?

MR. KUNASEK: That's how I understand it.

THE COURT: Okay.

MR. SARLO: Your Honor, I think, actually, you could have a pretrial release with a bond.

THE COURT: Okay. So, I could set term -- you think I could set terms even if I set a bond?

MR. SARLO: Yes, Your Honor.

THE COURT: Okay. Let me tell you my concerns about -- about the pretrial aspects of this is that, number one, we had a great -- the sheriff's had a great deal of difficulty serving Mr. Huminski. Number two, he has repeatedly violated these orders up -- including this week. So, I'm a little concerned about that. I need to make sure that he -- and we've also -- I've also scheduled another proceeding in this case, which Mr. Huminski failed to proceed at, so I do have some concerns about his appearing before the

Court.

THE DEFENDANT: I was never served with any --

THE COURT: Okay. Sir, just, again, be careful. Remember this is a criminal proceeding.

THE DEFENDANT: I was never served.

THE COURT: Okay. Just remember that everything you're saying is --

THE DEFENDANT: That's fine.

THE COURT: -- can be recorded. Okay.

So, do you have any arguments about pre -- pretrial release or bond?

MR. SARLO: Yes, Your Honor. We would simply ask for pretrial release without a bond and with the condition that he check in somewhat regularly with a pretrial officer, perhaps once every two weeks.

THE COURT: Any thoughts?

MR. KUNASEK: Again, Judge, I'm gonna defer to the Court's decision regarding the bond status.

THE COURT: Okay. Well, I'm willing to allow pretrial release without a bond, but in addition to the requirements that you've just set forth, that he desists from violating the court orders

that have already been issued in this case, which is that he's not allowed to contact the sheriff's office, except through their counsel, he's not allowed to contact the Court's office by email. He can send a letter via U.S. mail, but that is all. And there is another defendant that he's also not allowed to contact. I have to pull up the case file to see that he's received all those orders. So, the terms and conditions of his pretrial release include that he not violate any more orders that have restrained his ability to make contact with various persons in this case.

THE DEFENDANT: Your Honor, I need a little clarification on that. Say, perhaps, I got pulled over by a sheriff's deputy and they -- or got in an accident and they asked me what happened, I cannot respond to that question according to your order.

THE COURT: Okay. If you're pulled over and police are conducting an investigation where they are speaking to you, then, of course, you can respond to them, but otherwise --

THE DEFENDANT: Your order doesn't state that.

THE COURT: Pardon me?

THE DEFENDANT: Your order doesn't state that.

THE COURT: Okay, but that, of course, hasn't happened, Mr. Huminski. You have been repeatedly violating, even after I issued the order to show cause, been repeatedly violating the Court's orders that were very specific and very clear to you.

THE DEFENDANT: They were vastly over broad, too.

THE COURT: Okay. Well, those are court orders and you are required to follow them. So, terms of pretrial release include that and, in fact, what I'll try to do here, right now, is see if we can -- okay. See if I can pull up those orders and make sure that everybody has a copy of them.

MR. SARLO: Mr. Huminski, I need to put you on notice that, now, if you do not check in with the pretrial officer or if there is an allegation that you have violated any of these orders, and we'll go over them, then your pretrial release could be revoked and then you could be -- you would be arrested and you would go in front of the judge at first appearance and then they would

decide what, if any bond would be appropriate.

THE DEFENDANT: All right.

THE COURT: So, if -- if we get another email from you -- if our office gets another email from you then you're going to be arrested.

THE DEFENDANT: I didn't see that on the --

THE COURT: Do you understand? I'm telling you right now, as a condition of your pretrial release you have to obey the orders of this court.

THE DEFENDANT: Can I get that in writing?

THE COURT: You already have it in writing.

THE DEFENDANT: That I can't email the Court?

THE COURT: Yes, you already have it in writing.

THE DEFENDANT: I thought I can't file anything with the Court.

THE COURT: You cannot contact the Court.

THE DEFENDANT: Oh, okay.

UNIDENTIFIED SPEAKER: Every two weeks check in with the pretrial officer?

THE COURT: What I'm gonna do is try to find those orders. I do have those -- let me see if I can find them.

Okay. Here's one. For some reason they

didn't add the printer when they -- okay. I'm gonna need you to print out the one from 3/20/17 and, then, there's one on 4/20/17.

UNIDENTIFIED SPEAKER: On 4/20/17 I have two (unintelligible).

THE COURT: Yes. And then there's one on 4/26/17.

All right. Well, I think that you might be correct, Mr. Huminski, in that I did order, in Paragraph 2, of my order of April 26th that you could not file anything with the Court, unless it was filed by an attorney.

All right. In addition, I am going to make it a part of -- and I'm gonna need an order from the State. I actually have some blank orders back there, if that will suffice. That if you're gonna -- you can only contact this Court's office through a licensed attorney or through your public defender.

THE DEFENDANT: I noticed I'm listed as pro se in the document you sent me in the show cause order. No, not in the show cause order, in the -- on the computer, when I looked at the --

THE COURT: That's the clerk. The clerk does that.

What I ordered -- what I ordered is that you cannot file anything in this file unless it's done by a licensed attorney and I'm further providing that you cannot the judge's office except via a licensed attorney or your public defender, who is also a licensed attorney.

THE DEFENDANT: I'd like to move for pro se co-counsel.

THE COURT: Well, you don't get one in civil. You don't get an appointed counsel in civil. You do have one in criminal and your criminal attorney can contact my office in the criminal case, which is this contempt proceeding that we're in, but he can't -- he can't represent you in the civil case that you filed.

THE DEFENDANT: I'm debating on going pro se in the criminal case, too.

THE COURT: Okay. Well, that's up to you, but you're entitled to have an attorney and you need to understand that you are not an attorney. You do not understand the rules of law, as evidenced very clearly by what you've filed and how you're proceeding in this case and I would strongly advise you against it because you need to have an attorney representing you.

THE DEFENDANT: For trial I would.

THE COURT: Well, you need to have an attorney representing you throughout these proceedings. You don't understand the law, Mr. Huminski, and an attorney does and you seriously need that kind of assistance. They go to school for it. They go to school for three years for it, then they -- then they, you know, watch other attorneys do their job in training for their job and they have -- and they've had practice in doing their job. You haven't had any of that. And these are serious charges. You could be in jail for it. So, you need to make sure that -- that --

THE DEFENDANT: One further question, to get it on the record. You will not respect the removal to United States bankruptcy court?

THE COURT: It's not -- again, evidence that you do not understand the law. It's not removed to bankruptcy court. You can file bankruptcy, it has nothing to do with a criminal proceeding.

THE DEFENDANT: Rule 9027 allows removal of any state proceeding to bankruptcy court.

THE COURT: It's not removed to bankruptcy court, okay? I might stay a civil proceeding, so

such that we couldn't proceed with a judgement against you, but you're the plaintiff in this case, Mr. Huminski. You filed this action.

THE DEFENDANT: And I can remove it.

THE COURT: You can't remove it. It doesn't work that way. You don't understand. You are not in a law -- you are not a lawyer and you are misstating the law.

THE DEFENDANT: What does bankruptcy rule 9027 allow you to do? It's about removal.

THE COURT: It does -- it's not removed to bankruptcy court and this, today, is a criminal proceeding. Criminal proceedings are definitely not removed to bankruptcy court. There is nothing that is -- that a bankruptcy court is going to do that is going to stop this criminal proceeding from --

THE DEFENDANT: It got removed on Monday, prior to today.

THE COURT: Okay. It's not removed. There's no removal.

THE DEFENDANT: That's not what the federal law says.

THE COURT: Well, I think you're misinterpreting the federal law. Bankruptcy

court can stay a civil proceeding, meaning it can stop the proceedings from going forward, but it's not removed to bankruptcy court.

THE DEFENDANT: It can remove a proceeding and it's called an adversary proceeding and it's a very common in bankruptcy court.

THE COURT: Okay. Mr. Huminski -- Mr. Huminski, you don't understand the law. Get an attorney. I asked you to get an attorney previously. I strongly recommended it. You need an attorney. So --

THE DEFENDANT: One more question.

THE COURT: I need an order that sets the case management conference, also, and we need to make sure that Mr. Huminski has a copy.

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: Pardon me?

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: You can do that, yeah. It's a terms of pretrial release case management conference.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: The printer is jammed, so (unintelligible).

THE COURT: Whatever I told you. It's not

the motion, it's the orders.

Okay. Wait a minute. This is the order on defendant, Mike Scott, and then there's one on Scribb (phonetic spelling).

UNIDENTIFIED SPEAKER: That's the one that's jammed in here.

THE COURT: Okay. And then there's one on -- so, there's one for 4/26 and there's one for 4/20. Yeah, two for 4/20, one for 4/26. Okay. You have those printed out?

Okay. So, if you guys could have a seat -- actually, why don't you just stay here and I'll get this stuff printed out for you.

UNIDENTIFIED SPEAKER: I'll make extra copies.

THE COURT: Do you want copies of all the orders, Counsel?

MR. SARLO: Yes, Your Honor.

THE COURT: Okay. And for the State, also?

MR. KUNASEK: Yes, please.

THE COURT: Okay. Let me see what's on the order to show cause. And you have a copy of the order to show cause, right?

MR. SARLO: Yes.

THE COURT: Okay. Anything else that you

need from me today?

MR. SARLO: No, Your Honor. We'll just put on the record that he enters a plea of not guilty. He reserves his fifth and sixth amendment right to (unintelligible) jury trial, if that's the way that the State decides to go.

THE DEFENDANT: I'm gonna object to jurisdiction in this court.

MR. SARLO: You've made that objection.

UNIDENTIFIED SPEAKER: I don't know if you need more on that first one, on your restrictions.

THE COURT: Now, I just need you to make a copy of -- of that.

UNIDENTIFIED SPEAKER: Just this?

THE COURT: One copy.

UNIDENTIFIED SPEAKER: One copy.

THE COURT: Yeah. And these are (unintelligible).

Here are the other copies. I just wanted to make sure Mr. Huminski had a copy, too.

MR. SARLO: You did -- you did enter an order of not guilty or a plea of not guilty, at this point, for Mr. Huminski?

THE COURT: Yes. Yes. Did you want that

reflected somewhere?

MR. SARLO: Maybe is there a minute --

THE COURT: In the minutes?

MR. SARLO: (Unintelligible).

THE COURT: Okay. Just -- yeah, just do (unintelligible) enter a plea of not guilty.

MR. KUNASEK: Additionally, Your Honor, as far as his pretrial release, I believe he'll need some kind of documentation in order to check in with pretrial. Is that reflected on the order?

THE COURT: Take a look at that order and see what --

MR. KUNASEK: Oh, it does say on pretrial release, so perhaps --

THE COURT: Okay. Is that gonna be enough right there? Take a look at that and make sure it's enough.

MR. KUNASEK: I'm not sure, Your Honor.

MR. SARLO: If it doesn't have a case number, either, I'm not sure if they'll have pushback on that.

MR. KUNASEK: 17-CA-421.

THE COURT: Yeah, 17-CA-421.

And, also, Madame Clerk, would you please check with the clerk's office because, again, in

Collier, they give -- they set up a new file. It's a little bit difficult to have a civil -- a criminal proceeding in a civil case. So, if you could check with somebody about that, maybe we can get that straightened out, too.

THE DEFENDANT: Your Honor, I'd like permission to forward the rules of the bankruptcy court to my attorney, so he can forward them to you concerning the removal.

THE COURT: I'm not a bankruptcy court judge, so if your attorney thinks that that should be done in this case, well, I'm certain he can --

THE DEFENDANT: It's a federal court, so it has jurisdiction everywhere.

THE COURT: Again, sir, this is not a bankruptcy court. You can forward them to your attorney and your attorney can decide whether or not to forward them to me.

THE DEFENDANT: All right.

THE COURT: If there's anything that's relevant that I need to consider, but unless there is a motion to stay in this case, which there's not, which would only stay the civil proceedings, then there's nothing that I have anything to do with in terms of the bankruptcy

court.

THE DEFENDANT: Well, I'm moving for a TRO against this Court in bankruptcy court.

THE COURT: Okay. Well, good luck with that.

All right. Anything else?

MR. SARLO: Nothing further, Your Honor.

THE COURT: Okay. Thank you.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

I, Brandi F. Bertoni, do hereby certify that:

The foregoing pages numbered 1-24 contain a full transcript of the proceedings in the matter described in the caption on Page 1 hereof transcribed by me to the best of my knowledge and ability from the electronic recording provided by the court.

I am not counsel for, related to, or employed by any of the parties in the above-entitled cause.

I am not financially or otherwise interested in the outcome of this case.

I am an approved transcriber for the Twentieth Judicial Circuit Court.

/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	August 15, 2017

PROCEEDINGS

BEFORE THE HONORABLE
JAMES ADAMS, COUNTY JUDGE

APPEARANCES:

For the State:

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IN PROPRIA PERSONA

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WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
None				

EXHIBITS:	IDENTIFIED	ADMITTED
None		

THE COURT: All right. You may all be seated.

Good afternoon. Are you Mr. Humanski?

THE DEFENDANT: Yes.

THE COURT: Good afternoon, sir.

THE DEFENDANT: Good afternoon.

THE COURT: We're here today, basically, for a case management conference. There was a -- I'm Judge Adams. I'll be presiding over --

THE DEFENDANT: Hi.

THE COURT: -- the case from this point on.

There was an order to show cause, I guess, that was filed at some point back. We're sort of here, sort of a status of sorts.

I guess my first question to you, as it relates to appointment of counsel, I think the Public Defender's Office may have been appointed in the past and what I'd like to do is, maybe, sort of resolve, you know, what that's going to be at this point.

Are you in a position to hire a lawyer to represent you, sir?

THE DEFENDANT: Well, I'll tell you what happened at the last hearing, Your Honor. This case was removed to federal court.

THE COURT: Okay.

THE DEFENDANT: And three days before the last hearing. I argued that this Court had no jurisdiction because it was in federal court.

THE COURT: All right.

THE DEFENDANT: My counsel didn't even understand the concept of federal removal and didn't back me up.

THE COURT: Okay. I'm sort of lost there too, but go ahead.

THE DEFENDANT: Yeah, so if somebody doesn't know bankruptcy law and removal by bankruptcy law to federal court they can't represent me honestly and ethically.

THE COURT: Okay. Let's maybe move beyond that a little bit and think about the prospect. Are you working?

THE DEFENDANT: I'm on social security disability.

THE COURT: Okay. And I assume that you get a check, what, once a month?

THE DEFENDANT: Yes, 1,457, which is above the poverty line, so I probably don't qualify for an appointed attorney.

THE COURT: I would disagree with that.

UNIDENTIFIED SPEAKER: I would disagree, as well.

THE COURT: Yeah, I would disagree with that.

THE DEFENDANT: And, okay. Well.

THE COURT: Okay. You want a lawyer to help you out?

THE DEFENDANT: Well, you know, I visited a few lawyers. I even visited Joe Viacava.

THE COURT: Okay.

THE DEFENDANT: And would have hired him, but he didn't understand --

THE COURT: He didn't understand that kind of stuff?

THE DEFENDANT: -- the removal of matters to bankruptcy court --

THE COURT: Okay.

THE DEFENDANT: -- then just depriving this court of all jurisdiction.

THE COURT: Okay. Why don't we do this, Mr. Huminski, if you will. Mr. Peckham (phonetic spelling) is back there. He can take the information that you have to help facilitate you getting a lawyer from the Public Defender's Office. They can help you resolve the issue of removal and any other issues that you may have

along the way.

THE DEFENDANT: There is also the issue of the automatic stay of bankruptcy, which was initiated on 4/28 and I'm also alleging that many, if not all, of the acts of the Court before you took over are void under the automatic stay of bankruptcy.

THE COURT: Okay. Well, I'm going to assume that those were other issues that were unrelated to this particular issue here. And let me see, what's the --

THE DEFENDANT: Oh, Your Honor --

THE COURT: Hold on one second.

THE DEFENDANT: Okay. Yeah.

THE COURT: Hold on one second, if you will.

See, you talked -- I'm looking, the order to show cause wasn't filed until June of this year. So, there were some things that went on. So, I'm -- I'm looking at it from June forward.

THE DEFENDANT: Okay.

THE COURT: So, the things that happened before that I'm not gonna worry too much about. Mr. Sarlo was representing --

THE DEFENDANT: The protective orders that are the basis of this case were issued earlier.

THE COURT: Okay.

THE DEFENDANT: So, basically, almost the whole case comes in.

THE COURT: Okay. All right. Can you -- keep in contact or at least provide Mr. Peckham the information that he needs today to facilitate you getting a lawyer from the Public Defender's Office. Then, as time goes on we'll start to talk about all the other issues that you believe to be pertinent to this (unintelligible).

THE DEFENDANT: Well, Your Honor, if this counsel doesn't know about bankruptcy and bankruptcy removal and the automatic stay of bankruptcy I don't know if anybody else at that office would know either.

THE COURT: Well, we won't know until we get them working --

THE DEFENDANT: True. Yes. You got a point there.

THE COURT: -- and start finding out about it.

Okay. So, I want you to work with Mr. Peckham to fill out that paperwork, so the Public Defender's Office can help you out in the case, all right?

THE DEFENDANT: And another thing is the protective order prevents me from having zero contact with the LCSO. I live in Bonita Springs.

THE COURT: Okay.

THE DEFENDANT: The only law enforcement agency with local jurisdiction in Bonita Springs is LCSO.

THE COURT: Okay.

THE DEFENDANT: So, I can't report a crime, if I get pulled over in a car or have an accident and an LCSO officer asks me something I've gotta, I can't talk to you.

THE COURT: Okay.

THE DEFENDANT: It's outrageously over broad and vague under the United States Constitution, especially the First Amendment, the orders that have been issued in this case.

THE COURT: We will work on that over time.

THE DEFENDANT: Okay. But until then I -- I have to be like this concerning everything related to the LCSO. It doesn't make sense. In fact, I had a little conversation with her and then I realized that she was LCSO, so I committed a crime just then by talking to this deputy according to the plain language of the protective

order.

THE COURT: I don't think she's gonna file a complaint against you.

THE DEFENDANT: Well, nobody filed a complaint against me for this case. It was Judge -- the judge who started this whole thing.

THE COURT: Okay. I understand. Okay.

THE DEFENDANT: She -- there's no victims, it was just Judge Krier.

THE COURT: All right. What's the court date that we're gonna give him?

UNIDENTIFIED SPEAKER: You have a docket sounding on (unintelligible).

THE COURT: Why don't you put it on the docket sounding for, like August 29th?

THE DEFENDANT: And, Your Honor, I have one more --

THE COURT: Just a second.

Is that my docket sounding, August 29th?

UNIDENTIFIED SPEAKER: That is.

THE COURT: Okay. August 29th is gonna be his court date.

UNIDENTIFIED SPEAKER: I'm sorry. August 29th is your trial date. (Unintelligible).

THE COURT: September 1st is gonna be next

court date. That'll be in courtroom, probably, 1A.

UNIDENTIFIED SPEAKER: It is in 1A.

THE COURT: Okay. Yes, sir?

THE DEFENDANT: Yes, I have an objection to that because --

THE COURT: Which one, the court date?

THE DEFENDANT: No, actually, to you presiding over this case.

THE COURT: Okay. What's your objection?

THE DEFENDANT: My objection is that the notice of re -- order of recusal was never filed in the docket. It doesn't exist.

THE COURT: Okay.

THE DEFENDANT: I was never served with it.

THE COURT: Okay.

THE DEFENDANT: The administrative judge never assigned anybody to the case after the recusal.

THE COURT: That's me. I'm the administrative county judge.

THE DEFENDANT: Oh, you're the administrative judge?

THE COURT: Yes, sir.

THE DEFENDANT: Oh, okay. But there was no

order. Usually there's an order and it gets docketed.

THE COURT: There is somewhere. I know I prepared it.

THE DEFENDANT: It never made it into the docket, that's why I'm saying there's no jurisdiction right now even.

THE COURT: Okay. It's -- it's somewhere -- you know, sometimes because dockets -- or documents are filed electronically they may not appear for a couple days or so, but if it's not we'll make sure that it gets in.

THE DEFENDANT: It appeared in my civil case like three days afterwards.

THE COURT: And that's -- that's about a good timeframe.

THE DEFENDANT: And it's been two weeks now.

THE COURT: Well, the order or disqualification from Judge Krier may have come a lot further on than the order of reassignment to me.

THE DEFENDANT: No, they were at the same time. She recused on 8/1 in the civil matter and in this matter.

THE COURT: Okay. Well, I'm suggesting to

you that the order appointing me to preside over the case was probably done in the past few days.

THE DEFENDANT: Could I get a copy of it?

THE COURT: Yes, sir, as soon as it's docketed we'll -- we'll find it and give -- Mr. Sarlo -- Mr. Sarlo, you want to pipe up today? You're sitting there very --

MR. SARLO: Well, I am not appointed yet, Your Honor.

THE COURT: Okay. You want to sort of chime in or would you rather not?

MR. SARLO: Mr. Huminski has a right to express his mind.

THE COURT: Okay. All right. The documents will catch up with themselves --

THE DEFENDANT: I'm not sure where it is.

THE COURT: It's somewhere. The order appointing me to preside over the case is somewhere in the works.

THE DEFENDANT: Okay. My other objection would be that the arraignment was held three days after the entire case was removed to federal court.

THE COURT: Okay.

THE DEFENDANT: So -- and I -- I appeared

before the federal court a week ago.

THE COURT: In front of which judge?

THE DEFENDANT: Delano -- Delano.

THE COURT: Okay.

THE DEFENDANT: Caryl -- Caryl Delano.

THE COURT: All right.

THE DEFENDANT: And she said everything that this court did while she had jurisdiction is void.

THE COURT: Okay.

THE DEFENDANT: And, so, that means the arraignment is void.

THE COURT: Okay. All right.

THE DEFENDANT: Pursuant to the federal judge.

THE COURT: That's something that you're gonna have to take up with the -- with the -- your lawyers, once they are officially appointed.

THE DEFENDANT: But I'll probably be pro se for most of the time, so I'm taking it up now --

THE COURT: Okay.

THE DEFENDANT: -- basically.

THE COURT: Okay. All right. And --

THE DEFENDANT: And I have formal motions filed for all this.

THE COURT: Okay. I do see you have several that are filed that are in here.

THE DEFENDANT: And, also, I have a motion pending for ADA accommodations --

THE COURT: Okay.

THE DEFENDANT: -- which I think should get priority.

THE COURT: Okay. All right. Okay.

Next court date's gonna be September 1st.

THE DEFENDANT: All right.

THE COURT: All right. Have a good day, sir.

MR. KUNASEK: Judge, what time?

THE COURT: At 8:30 in courtroom 1A.

THE DEFENDANT: And, one more thing, Judge. May I point out that the State's Attorney had zero opinion as to the jurisdiction of this court when the case was removed to federal court. Totally silent. So, they did not oppose --

THE COURT: Do you have zero opinion?

MR. KUNASEK: Judge, I did remain si -- I didn't argue that the court lost jurisdiction.

THE COURT: Okay.

MR. KUNASEK: In fact, I think I said that the Court didn't lose jurisdiction on this misdemeanor --

THE COURT: Okay.

MR. KUNASEK: -- or the case that we're here for, 17 -- or, excuse me. Yes. 17-MM-815.

THE COURT: Okay.

THE DEFENDANT: Which --

MR. KUNASEK: The Court still has jurisdiction in this courthouse.

THE COURT: Okay.

MR. KUNASEK: In the state courthouse.

THE DEFENDANT: Your Honor, that case that he's referencing began on June 30th. The hearing where the arraignment was was on June 29th. There was no criminal case when we had that hearing.

THE COURT: Okay.

All right. Your lawyers will help you out.

THE DEFENDANT: Thank you.

THE COURT: Have a good day, sir.

THE DEFENDANT: You too.

THE COURT: All right.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

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/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	September 1, 2017

PROCEEDINGS

BEFORE THE HONORABLE
JAMES ADAMS, COUNTY JUDGE

APPEARANCES:

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IN PROPRIA PERSONA

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None		

THE COURT: Huminski.

(Whereupon, the audio was turned off momentarily.)

MR. SARLO: -- Sarlo here with Mr. Huminski.

THE COURT: Are here with.

MR. SARLO: Your Honor, we did file a motion to strike in this case.

THE COURT: That's not set for today.

MR. SARLO: I was just confirming Your Honor will hear that on the 11th.

THE COURT: Yeah. Yes, sir.

Mr. Huminski, raise your right hand, sir. Do you -- do you swear or affirm the information you tell me this morning is the truth, the whole truth and nothing but the truth?

THE DEFENDANT: Yes.

(Whereupon, the defendant was duly sworn by the Court.)

THE COURT: Put your hand down. Last time we were in court I asked you some questions about your ability to hire a lawyer or your desire to have a lawyer in there. We sort of left the discussion with the idea that you were gonna fill out an application in pretrial services with Mr. Peckham (phonetic spelling) and I think you went

back to the office and you declined to fill out the application for the Public Defender. Is that a correct statement?

THE DEFENDANT: Yes.

THE COURT: Okay. Is it your intention to represent yourself or is it your intention to have someone from the Public Defender's Office assist you in the process?

THE DEFENDANT: I was thinking that a hybrid type of representation where we both could participate.

THE COURT: You want to help out a little bit along the way, but you want a lawyer to help you at the same times?

THE DEFENDANT: Right.

THE COURT: You understand that there is an application fee for the Public Defender's Office that you do not have to pay in advance, but it will be taken care of at the end of your case and if the Public Defender ultimately represents you on the case there may be at least another $50 or so tacked on -- that will be added on at the conclusion of your case. Do you understand that?

THE DEFENDANT: Yes, that would be fine.

THE COURT: Okay.

THE DEFENDANT: I also note that several motions have been stricken based upon the representation by the --

THE COURT: Yes. Yes, sir.

THE DEFENDANT: So, that would prejudice me at this point.

THE COURT: Well, not necessarily. It just may be a matter of scheduling of the timing of the hearing of those particular motions. If the -- if you, after having consulted with the Public Defender, have some discussions about that, then we will revisit those issues. They can do something that might be able to reinstitute those motions a little bit later, on down the road. But, since I had intended to rep -- appoint the Public Defender's Office to rep -- represent you, those motions filed by you, in a pro se capacity, when you were represented by an attorney, should have been stricken, so that's what I did in there.

THE DEFENDANT: All right.

THE COURT: I'm not saying that they can't be heard a little bit later on, down the road.

THE DEFENDANT: Sure. Yeah.

THE COURT: Now, you mentioned that you have

a pension, but are not otherwise working.

THE DEFENDANT: Right.

THE COURT: And the amount of your pension is roughly $1,200-$1,400 per month?

THE DEFENDANT: 1,457.

THE COURT: Okay. All right. What other assets do you own?

THE DEFENDANT: A home.

THE COURT: And are you paying a mortgage on it or are you --

THE DEFENDANT: Fully paid for.

THE COURT: Fully paid for. So, you have that as an asset.

What other types of (unintelligible) do you have?

THE DEFENDANT: None, really.

THE COURT: Okay.

THE DEFENDANT: Just living expenses, that's all.

THE COURT: Okay. All right. I want you to --

THE DEFENDANT: I would -- go ahead.

THE COURT: Anything else you want me to know?

THE DEFENDANT: Yes. I thought, when you

appointed the defender that that was in response to my motion for ADA accommodations or partially in response to my motion for ADA accommodations.

THE COURT: I'm not sure, specifically, what it is that you're referring to with regards to that.

THE DEFENDANT: There's a motion filed.

THE COURT: Okay. I'm not seeing that, so I want to ask that you keep in contact with whomever represents you from the Public Defender's Office. You know, not withstanding what you've told me, I still want you to go to the third floor and do what I asked you to do last time. Do you think you can do that for me today?

THE DEFENDANT: Fill out the form?

THE COURT: Yes, sir.

THE DEFENDANT: Oh, okay. Yeah.

THE COURT: Are you just giving me lip service this time?

THE DEFENDANT: No. I'd also like to point out, Your Honor, that this case was in the circuit court until recusal --

THE COURT: Yes, sir.

THE DEFENDANT: -- on 8/1.

THE COURT: Yes, sir.

THE DEFENDANT: And the circuit court has no jurisdiction over misdemeanors.

THE COURT: Right. That's why it's here.

THE DEFENDANT: Right, but the charging document and the arraignment took place in circuit court, where there was no jurisdiction to hold those events.

THE COURT: Well, the -- the circuit court judges are, what I'll say, crosses ordered or certified. There's an order that the chief judge can appoint county judges to as circuit judges and vice versa. So, that is in place. That's an administrative order Judge McHugh has in place. So, you may want to --

THE DEFENDANT: Is that on a case by case basis?

THE COURT: No, it's not necessary. It's done for a six month period of time.

THE DEFENDANT: Right.

THE COURT: Not for any particular defendant or person.

THE DEFENDANT: Okay. Also, I'll add that every single document I received until 8/1 was captioned in the circuit court and signed in

Judge Krier's capacity as a circuit court judge, not acting county judge.

THE COURT: Okay.

THE DEFENDANT: So, it seems to be there might be a jurisdictional problem there.

THE COURT: Okay. Well, just to correct that. Any procedural deficiency that you may perceive at this particular time, you're here based on an order to show cause. I don't want to put words in your mouth. Do you -- are you entering a plea of either guilty or not guilty to that charge?

THE DEFENDANT: Not guilty.

THE COURT: Okay. All right.

Mr. Kunasek?

MR. KUNASEK: I was just gonna indicate, Judge, that he was formally arraigned before Judge Krier, where she had entered a plea of not guilty for him --

THE COURT: Okay.

MR. KUNASEK: -- after advising of his right -- of his right to have an attorney and advising him of the order to show cause and that happened several weeks ago.

THE COURT: Okay. All right.

MR. KUNASEK: He has subsequently filed motions to challenge that arraignment, I believe, but we're not -- we're not hearing any of the motions today?

THE COURT: Correct.

THE DEFENDANT: I'd also like to point out that at the 6/29 hearing, in the minutes from that hearing --

THE COURT: Is that in front of Judge Krier.

THE DEFENDANT: Judge Krier, yeah.

It seems he is set to review how the State is proceeding with the case and at that point we can schedule future hearings. Also to be discussed, transfer of the case from civil to criminal.

THE COURT: Okay.

THE DEFENDANT: So, at that point in time the case was still civil.

THE COURT: All right.

THE DEFENDANT: So -- and I don't think the State's attorney did any -- took any steps to transfer the case from civil to criminal as stated -- as required by Judge Krier's order.

THE COURT: Okay. All right. Anything else on that.

MR. KUNASEK: I will say, Judge, that I was

to, at the next court hearing, announce whether or not we were going forward in a non-jury capacity, knowing that our maximum penalty would be limited, whereas, if we were going with a jury trial, we would be able to go -- where the maximum penalty would be higher.

So, at this point, Judge, we would announce that we're going to go forward in a non-jury capacity, which would limit the Court, in the event the Court finds Mr. Huminski guilty and in contempt of Court up to six months in the county jail.

THE COURT: Okay. As opposed to a year?

MR. KUNASEK: Correct.

THE COURT: Okay. All right.

THE DEFENDANT: That -- that still doesn't address the transfer from, as Judge Krier said, from civil to criminal court.

THE COURT: Okay. All right. That may be somewhat of a misnomer of sorts in there.

THE DEFENDANT: I've seen other cases that -- when the prosecuted is a felony and the felony gets -- goes away for some reason and there's only misdemeanors left --

THE COURT: Yes, sir.

THE DEFENDANT: -- it seems like the State's attorney has to file an information in the county court instead of just doing some kind of transfer.

THE COURT: That's -- those are felony reductions. I've seen that on occasion --

THE DEFENDANT: Yeah.

THE COURT: -- at the same time and they are handled differently, depending upon the nature of the charge and, you know, if Mr. Kunasek believes there to be a procedural irregularity, as it -- as it holds to then and now, I'm sure he'll resolve that prior to any anticipated disposition or scheduling of the case (unintelligible).

THE DEFENDANT: Right. Right. Okay. I noticed that was sort of a question mark in this case.

THE COURT: Okay. Where's your next stop after you leave here?

THE DEFENDANT: Home.

THE COURT: Third floor.

THE DEFENDANT: Oh, third floor. Yes. Third floor, then home.

THE COURT: All right. Next court date's gonna be September 22nd. All right.

THE DEFENDANT: All right. I thought it was at 11.

MR. SARLO: That would be for the hearing date.

THE COURT: (Unintelligible) for this. For this. For these types of proceedings. Status as it relates to this --

THE DEFENDANT: Okay.

THE COURT: -- that's something separate altogether.

THE DEFENDANT: Right. Right. Right.

MR. SARLO: Like we discussed --

THE DEFENDANT: That's a motion hearing.

MR. SARLO: -- if you want more time to file motions we are going to go on to another docket sounding.

THE COURT: And the 11 hearing, I understand, had to do with the order as it relates to the Public Defender's representation for you. So, if -- if -- that may very well go away, depending upon what happens today or subsequently on down the road.

THE DEFENDANT: And one more thing. Going back to my argument of last time, since I pulled up this order saying that the case would be

transferred from civil to criminal --

THE COURT: Yes, sir.

THE DEFENDANT: -- there -- that was 6/29. 6/26 the case was removed to federal court.

THE COURT: Okay.

THE DEFENDANT: So, since the judge considered it civil on 6/29 that was all moved to federal court. And it was removed for about a month and then it was remanded back around 8/1.

THE COURT: All right.

THE DEFENDANT: So, any and all acts in that timeframe were without -- totally without jurisdiction because they were in the federal court.

THE COURT: Right.

THE DEFENDANT: So, that's another irregularity with regard to this case.

THE COURT: We will readdress them as the case progresses.

THE DEFENDANT: All righty. Thank you.

THE COURT: Have a good day, sir.

You need to sign for your court date, also.

THE DEFENDANT: All right.

THE COURT: Good luck to you.

MR. KUNASEK: Judge, just for clarification.

We're gonna keep the 11th on the date in the event that Mr. Huminski, for some reason, fails to go to the third floor.

THE COURT: He's gonna go to the third floor. Right?

MR. KUNASEK: And if he does --

THE DEFENDANT: Yes.

MR. KUNASEK: -- if he does that, that 11th --

THE COURT: Will become moot. Yes, sir.

MR. KUNASEK: And we'll be here on the 22nd?

THE COURT: Yes, sir. Okay.

THE DEFENDANT: All right.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

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/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	September 22, 2017

PROCEEDINGS

BEFORE THE HONORABLE
JAMES ADAMS, COUNTY JUDGE

APPEARANCES:

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For the Defendant:

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None				

EXHIBITS:	IDENTIFIED	ADMITTED
None		

THE COURT: Huminski.

MR. KUNASEK: Good morning, Judge. Anthony Kunasek on behalf of the State of Florida.

MR. SARLO: And Kevin Sarlo on behalf of Mr. Huminski.

THE COURT: Yes.

MR. SARLO: Good morning, Judge.

THE COURT: Good morning.

MR. SARLO: Your Honor, this case is here for a docket sound.

THE COURT: Okay.

MR. SARLO: We'd ask for another docket sound date with a continued waiver.

THE COURT: All right. Continued to 10/24 with a waiver.

MR. SARLO: And mister --

THE COURT: I'm sorry. It's 10/27 with a waiver.

MR. SARLO: And Mr. Huminski wanted to address the Court.

THE COURT: Not today. Just continue it on to the next court date.

MR. SARLO: We have to respect the judge's decision. It's his courtroom, sir.

THE DEFENDANT: Just one sentence. I would -

-

THE COURT: Talk to Mr. Sarlo. He's gonna talk to you about your case.

THE DEFENDANT: Could he -- just tell what happened today.

MR. SARLO: We can inform him through other means, sir, but (unintelligible) courtroom.

THE DEFENDANT: All right. Yup.

THE COURT: Okay.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

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/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	October 27, 2017

PROCEEDINGS

BEFORE THE HONORABLE
JAMES ADAMS, COUNTY JUDGE

APPEARANCES:

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None		

THE COURT: Huminski. Scott Huminski.

MR. SARLO: Mr. Huminski is present and approaching.

Your Honor --

THE COURT: Good morning, sir.

THE DEFENDANT: Good morning, Your Honor.

MR. SARLO: I --

THE COURT: You want a continuance?

MR. SARLO: Well, actually, I have a conflict of interest here I wanted to file in open court. I have an order and a motion here.

THE COURT: Okay. All right. We're gonna -- I want you to set it for hearing and we'll proceed from there.

MR. SARLO: Yeah, we were gonna ask for a continuance, as far as that goes.

I think Mr. Huminski wanted to address the Court. I have advised him not to, but he wants to.

THE COURT: Set 11/17 as his time.

MR. SARLO: Okay.

THE COURT: I wish to set that down -- notice him.

MR. SARLO: Notice?

THE COURT: Yeah.

MR. SARLO: Oh, actually make a hearing for the --

THE COURT: Yes, sir. Yes, sir.

MR. SARLO: Okay. You've got that.

THE COURT: Right. 11/17.

THE DEFENDANT: A hearing for the withdrawal?

THE COURT: Yes, sir.

THE DEFENDANT: Okay. And --

THE COURT: We'll see you on that date, Mr. Huminski.

MR. SARLO: Okay. So, you probably shouldn't talk then.

THE DEFENDANT: I just have one more question. I filed a notice of pro se appearance of co-counsel --

THE COURT: Okay.

THE DEFENDANT: -- on 10/9.

THE COURT: But you -- you're not a lawyer, Mr. Huminski. So, you gotta wait --

THE DEFENDANT: I know.

THE COURT: -- just wait for your court date. 11/17.

THE DEFENDANT: Okay. 17th --

THE COURT: Yes, sir.

THE DEFENDANT: -- of November?

THE COURT: Yes, sir.

THE DEFENDANT: Okay. Very good. Okay.

MR. SARLO: So, we'll stay in touch.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

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/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	November 17, 2017

PROCEEDINGS

BEFORE THE HONORABLE
JAMES ADAMS, COUNTY JUDGE

APPEARANCES:

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None		

MR. MILLER: Zach Miller, Regional Counsel, on behalf of Scott Huminski.

THE COURT: okay.

MR. MILLER: Can we approach?

THE COURT: Yeah.

(Whereupon, a sidebar conference was held and heard as follows.)

THE COURT: It's unfortunate Mr. Huminski's not here.

MR. MILLER: (Unintelligible).

THE COURT: Oh, is he gonna show up?

MR. MILLER: No.

THE COURT: He's not gonna show up?

MR. MILLER: No. He called me and told me he's not coming.

THE COURT: That's perfect. All right.

MR. MILLER: (Unintelligible).

THE COURT: What's -- what's -- overall it's gonna be the disposition.

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: Okay.

UNIDENTIFIED SPEAKER: Either by mail or (unintelligible).

THE COURT: And he doesn't go back to his -- okay.

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: Okay. Can you sell him on that?

MR. MILLER: Maybe. I'll certainly try.

MR. KUNASEK: Since the last -- since Monday he's probably filed (unintelligible) motions. (Unintelligible) intelligent conversation with him (unintelligible). I think we're -- we might be close (unintelligible).

THE COURT: Okay. If that's what you can come up with I'm okay with it.

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: You want me to just continue this to the January -- sorry, December 21st trial date -- or docket sounding?

MR. MILLER: Docket sounding.

MR. KUNASEK: That's fine. Thank you.

THE COURT: Okay. Set it 12/21 docket sounding with a continued waiver.

Have a good day.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

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/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	December 21, 2017

PROCEEDINGS

BEFORE THE HONORABLE
JAMES ADAMS, COUNTY JUDGE

APPEARANCES:

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THE COURT: Okay. Let's do Scott Huminski.

MR. KUNASEK: Good morning, Judge. Anthony Kunasek on behalf of the State of Florida. This is case number 17-815 MM. Mr. Huminski is present in the courtroom.

THE COURT: Yes, sir. Is the State ready?

MR. KUNASEK: Judge, yes. We'd like to have it set for a hearing or trial.

THE COURT: Okay.

MR. MILLER: Your Honor, can we approach?

THE COURT: Yes, sir.

MR. MILLER: Okay.

(Whereupon, a bench conference was held and heard as follows.)

MR. MILLER: I filed a new motion to withdraw. I have a really good reason, I believe, and we need to get off because there's an adverse relationship to this defendant. He sent an email to my boss saying that I've been lying to him and that -- offering (unintelligible). He also filed a motion with (unintelligible) to force us to represent him on a civil case. I have that motion right here. It's been filed. I also have the order. I was hoping (unintelligible).

THE COURT: Okay. Let me see what you've got.

MR. MILLER: That's the order and the motion's here.

THE COURT: Anything from the State?

MR. KUNASEK: I'm not sure (unintelligible). I don't want to seem like (unintelligible).

THE COURT: Okay. Let's -- let's set it for hearing. I will attempt to have a hearing date prior to the -- you want it set for trial?

Let's put it on the -- I mean, are you working on this case? You've been working on the case.

MR. MILLER: Yes, Your Honor.

THE COURT: Okay.

MR. MILLER: You know, the thing is, I haven't been doing anything (unintelligible).

THE COURT: Well. Well, let me ask you this. From your prospective, are you ready to go to trial? Notwithstanding what he may think?

MR. MILLER: I'm uncomfortable with the charges (unintelligible). I mean, first of all, my office is very adamant --

THE COURT: Let's set aside that altogether, all right?

MR. MILLER: Just, I'm sick of all -- you know --

THE COURT: Let's set aside all that.

MR. MILLER: Okay.

THE COURT: It's a simple question. A simple question.

MR. MILLER: He asked me to do --

THE COURT: No, I don't want to know what he wants you to do. In your legal ability, you as his attorney, are you ready for trial? Notwithstanding -- notwithstanding what he --

MR. MILLER: The answer would have to be no.

THE COURT: Okay. Why not?

MR. MILLER: Because there's motions for depositions, there's --

THE COURT: I haven't seen a motion for a -- to take a dep --

MR. MILLER: I haven't filed it.

THE COURT: Okay. And -- and that may be part of the issue he has.

MR. MILLER: And it's hard to do work when our office believes we have a conflict of interests.

THE COURT: If you're accused of not representing the last thing you can do is to not

do things you need to do. Fair?

MR. MILLER: Yeah, I suppose that's fair.

THE COURT: Okay.

MR. MILLER: So, therefore, (unintelligible) there's gonna be a slew of (unintelligible) legal motions, I hope you understand, being filed before this Court.

THE COURT: I hope not by you. What do you mean I won't understand?

MR. MILLER: Because I'm being instructed by my client to do so.

THE COURT: Okay. Well, you know, like I said, you're the -- you're the attorney on the case. Let's -- let's set it for the January 8th date. You -- both of you will be notified properly sometime today to give you some hearing time, probably that first week in January, so we can flush out this and see where you are. All right? Okay. Just make yourself available.

MR. MILLER: Okay. When -- when will we (unintelligible).

THE COURT: You're going to get notification from my office today of time and -- and it'll just be making a separate (unintelligible) for time. It'll be during the first week in January.

MR. MILLER: Absolutely.

THE COURT: All right.

MR. MILLER: And then for the rest of my cases, can I have the first or second --

THE COURT: Yeah. Yes. Yes.

(Whereupon, the sidebar conference ended.)

THE DEFENDANT: Your Honor, I have something to add to the recusal --

THE COURT: Yes, sir.

THE DEFENDANT: -- my attorney. The other day I pressed him to answer a question saying what should we do here? Should I obey the circuit order of Judge Krier --

THE COURT: Okay.

THE DEFENDANT: -- and not attend, because it prohibits my attendance at this proceeding.

THE COURT: Not really. Not really. That's been taken care of by subsequent order.

THE DEFENDANT: Not in the circuit court.

THE COURT: Okay.

THE DEFENDANT: The circuit court order --

THE COURT: Well, they've divested themselves of jurisdiction at this point, so the orders that I signed relative to your case are the warrants that you should be attending to.

THE DEFENDANT: I don't think they overrule the circuit court orders of Judge Krier.

THE COURT: Sir, the circuit orders -- the circuit court orders of Judge Krier have sort of been dissolved into this case. So, any subsequent orders addressing similar issues that I've issued are the ones that you should be concerned about.

THE DEFENDANT: That's not evident on the record in the circuit court case --

THE COURT: Okay. Well --

THE DEFENDANT: -- that those records are ineffective --

THE COURT: Okay.

THE DEFENDANT: -- at this point. So --

THE COURT: Okay. Continue --

THE DEFENDANT: -- basically --

THE COURT: -- continue to talk -- Mr. Huminski, continue to talk to Mr. Miller. We have another hearing in January. You'll get notice similar to the attorneys, so we'll see you in January, okay?

THE DEFENDANT: And the other option I was speaking with attorney was if I show up here then I could be charged with a crime.

THE COURT: Okay.

THE DEFENDANT: If I don't show up I could be charged with contempt of Judge Krier's orders, so.

THE COURT: Okay. Well, there is a hearing that will be set in January. My direction to you is to appear at the hearing in January. We're gonna give you two dates. One will be a trial date. I think January 8th is when we're gonna talk about doing that. And the other hearing will be set the week before and we'll address some other issues prior to that. You are requested to be here, at my direction, for the hearing that will be set during the first week of January, as well as the January 8th court date.

MR. MILLER: And, Your Honor, I think part of the issue is that he's also having hearings in his appeal case.

THE COURT: Okay.

MR. MILLER: And he's asking me for advice on what to do in that civil appeal case.

THE COURT: Okay.

MR. MILLER: And I -- I can't give him that advice.

THE COURT: That's fine.

THE DEFENDANT: it's not a civil appeal, it's a criminal appeal because this case lingered in the circuit court for about four months.

THE COURT: Okay.

THE DEFENDANT: So, it's not a civil case at all. It's a hybrid civil/criminal case.

THE COURT: Okay. All right. We'll see you in January. Happy New Year.

THE DEFENDANT: Okay. Happy New Year. Merry Christmas. And --

THE COURT: Thank you. That's all today.

THE DEFENDANT: Okay. Thank you.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

I, Brandi F. Bertoni, do hereby certify that:

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/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	January 8, 2018

PROCEEDINGS

BEFORE THE HONORABLE
JAMES ADAMS, COUNTY JUDGE

APPEARANCES:

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EXHIBITS:	IDENTIFIED	ADMITTED
None		

UNIDENTIFIED SPEAKER: He's on his way in.

MR. MILLER: Zack Miller, Regional Counsel on behalf of Mr. Huminski.

THE COURT: Okay. You ready for trial?

MR. MILLER: Your Honor, no. I have a notice for hearing, a motion to withdraw.

THE COURT: All right. We're not gonna do it right now. Just hold on. Let me get through the docket.

MR. MILLER: I see.

THE COURT: Okay.

(Whereupon, the Court moved on to other matters, to return to this matter later in the docket.)

THE COURT: Mr. Huminski.

MR. KUNASEK: Judge, this is case number 17-815 MM, State of Florida versus Scott Huminski. Anthony Kunasek on behalf of the State.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Good morning, sir.

MR. MILLER: Good morning, Your Honor.

I have a packet of authority to present to the Court.

THE COURT: Okay. All right. I'm listening.

MR. MILLER: And this is a motion -- this is

-- it says Regional Counsel's amended motion to withdraw. It should say Regional Counsel's second amended motion to withdraw.

The reasons for this motion to withdraw are that, Your Honor, I contacted the Florida Bar Attorney ethics hotline and asked them for their opinion on what I should do with this case. They told me verification number [redacted], that I should move to withdraw from this case pursuant to Florida Rules of Professional Conduct 4.17, which I included in that packet.

And, furthermore, any further divulgence of information regarding the reason for this motion would involve infamously divulging information protected by lawyer client confidentiality and I gave you some case law on that. Young versus the State, 189 So. 3d 956, from the 2nd DCA, 2016.

Under current law Section 27.5303 Section 1A allows for a limited inquiry into the withdrawal motion caused by representation of multiple defendants whose interests are diverse, but section 27.5303 expressed limits of the inquiry to those matters that are not confidential. So, in that case the Assistant Public Defender laid out the legal basis of the conflict and the

certification, provided proof that he had contacted the Florida Bar's conflict hotline and established that he had been diligent in certifying conflict. There is no suggestion on this record that the trial court disbelieved or had any reason to believe any of these representations.

Furthermore, the trial court departed from the essential requirements of the law by inquiring as to attorney client privileged information as to the nature of the conflict. It was required -- as the trial court was required to grant the motion to withdraw, so that Mr. Young would not be forced to proceed to trial with an attorney who is ethically conflicted. So, in this case Mr. Huminski has a right to not have to proceed to trial with Regional Counsel as his attorney because we are ethically conflicted in this matter.

One of the reasons for this conflict that is not protected by confidentiality has to -- can be demonstrated by one of the things that he filed with this Court on 12/29/2017. I included it in the packet, it's his motion to disqualify defense counsel and notice of civil claims of legal

malpractice and federal civil rights violations regarding Regional Counsel. So, if you look on the second page of that motion Mr. Huminski writes and files with the Court that notice is given that Huminski is bringing federal civil rights claims and legal malpractice claims in the U.S. District Court against the director of Regional Counsel and myself.

Furthermore, Your Honor, Mr. Huminski has presented to me from Attorney General Pam Bondi acknowledging that she has received an ethics complaint against Regional Counsel and myself. So, Your Honor, for these reasons we are moving this Court to grant our motion to withdraw.

THE COURT: Okay.

THE DEFENDANT: Your Honor, I concur in joint.

THE COURT: Okay.

MR. KUNASEK: Judge, I did get a copy of everything that defense counsel represented. I have a copy of the case that he recited on and a copy of his motion.

I'm not sure what our position is, other than we certainly don't want the case to get continued, but if there's a conflict there's a

conflict.

THE COURT: Okay. All right. Okay. I will grant your request to withdraw from -- from representation of Mr. Huminski in this particular case.

MR. MILLER: Thanks, Your Honor. I have an order for you today.

THE COURT: Okay. All right.

MR. KUNASEK: Judge, it's my understanding that the law does not require the Court to continue to appoint attorneys for Mr. Huminski if Mr. Huminski is the basis of the -- or is causing the conflicts. And it seems to me, based on the information that is before us, that Mr. Huminski is causing these conflicts.

THE DEFENDANT: I would say that there is --

THE COURT: Just hold on.

THE DEFENDANT: Okay.

MR. KUNASEK: So, I'm throwing that out there that I don't think it's -- I don't believe the Court is required to continue to appoint counsel.

THE COURT: Okay.

MR. MILLER: Your Honor, there is also information, which is protected by attorney client privilege, so all of the information

regarding the basis for this conflict is not before the Court.

THE COURT: Well, notwithstanding any other information that may exist out there, I think the fact that Mr. Huminski has served a notice of a claim of legal malpractice and a federal civil rights violation against Regional Counsel, I think, in and of itself, is a sufficient basis to allow for counsel to withdraw from further representation from Mr. Huminski. So, with that being said, I will do that.

Coming to the next issue, Mr. Huminski, sir, are you in a position to represent yourself? Are you ready to proceed with trial?

THE DEFENDANT: Oh, no. I would like an attorney appointed.

THE COURT: Okay. And --

THE DEFENDANT: I would like to add one other thing. I -- as far as the State's attorney goes, I filed papers indicating that -- well, not even papers. I'm a party to Russel versus Waterman Broadcasting and the State's attorney is suing NBC2. Now I'm part of that case, so that draws into question the propriety of the State's attorney.

THE COURT: How are you a party to the case that Mr. Russel has filed against --

THE DEFENDANT: I'd move to intervene -- or I'm filing move -- move -- or I'm filing to move to intervene, plus, I've also filed correspondence --

THE COURT: I guess, my question, notwithstanding the fact that you're filing a motion to intervene, how are you otherwise involved in the claim that Mr. Russel has against Waterman Broadcasting?

THE DEFENDANT: I have a lot of information on corruption in the State's attorney's office.

THE COURT: Okay.

THE DEFENDANT: And I will be called as a witness, apparently, from my discussions with defense attorneys.

THE COURT: Which -- which defense attorney?

THE DEFENDANT: I -- I don't know which one it was. Somebody called me up.

THE COURT: Okay.

THE DEFENDANT: And I filed numerous filings concerning corruption in the State's attorney's office, so.

THE COURT: Okay. Okay. Here's a couple

things, Mr. Huminski. First, I'm not going to appoint you another attorney to represent you, all right.

And, second, I guess, my question then -- and second, I'm not going to entertain an issue involving recusal of the State Attorney's Office from consideration of a case that you're not a party to, but are seeking to voluntarily, sort of, interject yourself. And I don't know, based upon the information I have at this point, if you are, in fact, going to be called as a witness, but are doing anything other than interjecting yourself into that particular case. So, I'm not going to entertain an issue in terms of recusal from Mr. Russel's office from prosecuting you on this particular case.

That brings me to the next issue of are you going to represent yourself in this case or are you going to hire a lawyer to represent you in this case?

THE DEFENDANT: I would like an appointment.

THE COURT: I'm not going to appoint a lawyer to represent you. All right.

THE DEFENDANT: I thought that you already found that I was --

THE COURT: I did.

THE DEFENDANT: -- financially --

THE COURT: I did, but you can't continue to put yourself in a situation of causing conflicts that makes it not legally permissible for the lawyer that's appointed for you at public eff -- expense. I was gonna say offense. Expense. To constantly cause them to withdraw from further representation of you in the case.

THE DEFENDANT: Yes, well, I think the reason why the recusals have been is because there is an intrinsic corruption within the State's attorney's department.

THE COURT: What's that got to do with the lawyers appointed to represent you? They don't work for the State Attorney.

THE DEFENDANT: Well, because if to defend me has to expose the corruption of the courts and if that is done then the other clients who might say I don't care about the corruption of the courts, I just want to plead and get this over with. So, (unintelligible) those clients if I -- if they represent me fully and properly, you know, because --

THE COURT: Okay.

THE DEFENDANT: -- my lawyer can't do -- on one hand say courts are corrupt, State's attorney is corrupt, but we're gonna represent Huminski and say that, but, then, on the other hand, all their other clients are gonna say, I don't want you to say any of that, I just want to plead out and do whatever my probation --

THE COURT: Well, my expectation of the lawyers is that they provide a defense that's appropriate for each individual person that they represent and sometimes those -- a defense for one client may not be a defense for another client. You know, there's -- there's no -- it's rarely that there's two individuals whose cases are exactly the same, so how they represent one is not necessarily indicative of how they might otherwise represent another client.

THE DEFENDANT: I want --

THE COURT: So --

THE DEFENDANT: Go ahead. Sorry.

THE COURT: So, are you ready for trial at this point?

THE DEFENDANT: Well, here's the problem.

THE COURT: Okay.

THE DEFENDANT: On 6/5 Judge Krier --

THE COURT: That would be June of year. June of 2017. We're in 2018.

THE DEFENDANT: Exactly.

THE COURT: Okay. Now, I know you have an issue with procedural issue of what Judge Krier may have done that you perceive as being procedurally incorrect, but we're sort of beyond that.

THE DEFENDANT: No, no. Well, I'm saying that there was that one, but then there was another order on 6/30 in this case.

Now, what happened was --

THE COURT: Are you ready for trial, Mr. Huminski?

THE DEFENDANT: I just want to explain this to you just to -- for two minutes. The order of 6/5 of Judge Krier was printed out on 6/30 by somebody, I don't know who.

THE COURT: Okay.

THE DEFENDANT: And on that order it was modified and written in with the docket number for this court and then filed in this as an original and you cannot modify court orders and then refile them with no knowledge of the judge. And, so, there is no charging information in this

case. The only charging information would be that motion to show cause, which the one filed in this case is pure fraud.

THE COURT: Okay.

THE DEFENDANT: Because they took the 6/5 ruling with Judge Krier's signature, printed it out, somebody hand wrote a docket number on it, making it seem like, oh, this is a ruling in this case, which it never was, and this is what I'm getting prosecuted on. It's pure fraud.

THE COURT: Okay. Are you -- are you ready for trial?

THE DEFENDANT: Well, no. I would like an attorney appointed.

THE COURT: Okay. I'm not gonna appoint an attorney to represent you.

THE DEFENDANT: Okay. Well, I'm not ready for trial.

THE COURT: Okay. How much time do you need to get ready?

THE DEFENDANT: I'd say 90 days.

THE COURT: Okay. Why don't we try February 13th? All right. This case has been around for a while. This has been going on since June of last year, 2017, as you indicated. It's now January

'18.

THE DEFENDANT: Yes, there is an extreme amount of docket manipulation in this case.

THE COURT: Not on my docket.

THE DEFENDANT: What?

THE COURT: Not here.

THE DEFENDANT: Well, on September 22nd there was a recusal of Judge Krier filed, after I notified you of the problem with the -- that there was no recusal filed. Then --

THE COURT: Okay. February 13th. That's your next court date. That's your trial date, sir.

THE DEFENDANT: And can I just say one more thing?

THE COURT: February 13th.

THE DEFENDANT: Okay. Thank you.

THE COURT: You're welcome. That was one more thing.

THE DEFENDANT: Okay. We'll deal with it then.

THE COURT: Yes, sir.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

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/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	February 13, 2018

PROCEEDINGS

BEFORE THE HONORABLE
JAMES ADAMS, COUNTY JUDGE

APPEARANCES:

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IN PROPRIA PERSONA

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None		

THE COURT: Scott Huminski.

MR. KUNASEK: Anthony Kunasek on behalf of the State, Judge.

THE COURT: Mr. Huminski, are you ready for trial, sir?

THE DEFENDANT: No.

THE COURT: Okay. How much time do you think you're gonna need before you're ready?

THE DEFENDANT: Well, since I was stripped of counsel on 1/8 I've contacted ten attorneys and they all said that 30 days wasn't enough time for them.

THE COURT: Okay.

THE DEFENDANT: So, if it wasn't enough time for them it certainly isn't enough to me. I would like to hire counsel, but no counsel will take this case with these deadlines. They need more than 30 days to prepare.

THE COURT: Okay. Well, I'll tell you what, Mr. Huminski. I will continue your case until March 6th, but I want you to work on getting a lawyer and if a lawyer comes in and files a notice of appearance we'll talk with them about giving you time to resolve your case, all right?

THE DEFENDANT: Okay.

THE COURT: So, right now we're talking March 6th.

THE DEFENDANT: And I have one other issue. I was asked by a deputy sheriff outside my name and if I was represented.

THE COURT: Yes, sir.

THE DEFENDANT: And I had to tell them under Judge Krier's orders --

THE COURT: Okay.

THE DEFENDANT: -- I could not answer their questions.

THE COURT: Okay. That's -- that's been modified to allow you to identify yourself for court related purposes.

THE DEFENDANT: Not by Judge Krier or not by the circuit court.

THE COURT: She's no longer on this case. The case has been assigned to me, so the order that I signed supersedes the prior no contact provisions as it relates to law enforcement.

THE DEFENDANT: I spoke with an attorney about that and he said a circuit court --

THE COURT: Tell the lawyer to come in and tell me that, okay?

THE DEFENDANT: Okay.

THE COURT: Okay. Thank you, sir.

THE DEFENDANT: Okay.

THE COURT: Sign for your court date, March 6th.

THE DEFENDANT: March 6th. Okay.

MR. KUNASEK: Judge, what time is that?

THE COURT: That's at 8:30 in the morning.

MR. KUNASEK: Thank you.

THE COURT: Yes, sir.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

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/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	March 6, 2018

PROCEEDINGS

BEFORE THE HONORABLE
JAMES ADAMS, COUNTY JUDGE

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None		

THE COURT: Huminski.

MR. KUNASEK: Good morning, Judge. Anthony Kunasek on behalf of the State of Florida. This is case number --

THE DEFENDANT: Good morning, Judge.

THE COURT: Good morning, sir.

MR. KUNASEK: 17-MM-815.

We're ready.

THE COURT: Okay. Mr. Huminski, are you ready, sir?

THE DEFENDANT: I have two things to say.

THE COURT: Yes, sir.

THE DEFENDANT: Judge McHugh vacated the two orders that allegedly formed the basis for this case.

THE COURT: Okay.

THE DEFENDANT: And, another thing, there's a motion pending now that once you deny it it'll allow direct appeal to the Florida Supreme Court because it's a judicial assignment motion --

THE COURT: Okay.

THE DEFENDANT: -- which the Supreme Court has exclusive jurisdiction over.

THE COURT: Okay.

THE DEFENDANT: Other than that, I assert my

Fifth Amendment rights.

THE COURT: Okay. All right, Mr. Huminski, I'm going to hand you -- Mr. Kunasek, you may not have a copy of this yet, but I want you both to take a look at it. My understanding is that Mr. Huminski filed another affidavit of indigency for appointment of the Public Defender's Office. I've taken a look at it. I'm not going to reappoint the Public Defender's Office to represent you. They were -- originally filed a motion to withdraw from your case because of the nature of the conflict between you and them.

Subsequent to that, Regional Counsel was appointed to represent you, as a result of the Public Defender's conflict. There were situations which I perceive as being your antagonistic -- antagonism towards them that caused them to withdraw from your case. I am not going to continue to appoint lawyers at public expense to represent you. I have stricken the order declaring you to be indigent for purposes of having access to a lawyer at public expense.

So, at this point I guess I need to find out from you if you are ready for trial.

THE DEFENDANT: I assert my fifth amendment

rights.

THE COURT: Okay. All right. We'll set it --

MR. KUNASEK: Judge, I would like it set this afternoon if that's possible.

THE COURT: Okay. Cannot do it this afternoon. My goal is to set it for next -- next Friday -- next Friday morning.

MR. KUNASEK: Okay.

THE COURT: All right.

THE DEFENDANT: Objection. I -- I can't hold a trial if I'm asserting my Fifth Amendment rights.

THE COURT: Okay. That's fine. And that would be, I'm gonna say, March 16th at 8 -- 8:45, back in this courtroom. All right. Sign for your court date, sir.

MR. KUNASEK: Thank you, Judge.

THE COURT: And, Mr. Kunasek, just to be sure all -- has there been discovery provided to Mr. Huminski along the way?

MR. KUNASEK: There isn't any -- yes, whatever's going to be used is at his disposal. It's in the court file and we've also filed a judicial notice and that was provided to Mr.

Huminski.

THE COURT: Okay. All right. We'll see you next week.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

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/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 17-MM-000815
vs.	Lee County Justice Center 1700 Monroe Street
SCOTT A. HUMINSKI,	Fort Myers, FL 33901
Defendant.	March 16, 2018

PROCEEDINGS

BEFORE THE HONORABLE
JAMES ADAMS, COUNTY JUDGE

APPEARANCES:

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THE COURT: Huminski.

MR. KUNASEK: Good morning, Judge.

THE COURT: Good morning, sir.

MR. KUNASEK: Anthony Kunasek on behalf of the State of Florida. We're here for State of Florida versus Scott Huminski, case number 17-815 MM.

Mr. Huminski is present in the courtroom.

THE COURT: Okay.

THE DEFENDANT: Good morning, Judge.

THE COURT: Good morning, sir.

Mr. Huminski, are you prepared to go to trial today, sir?

THE DEFENDANT: I have some issues to go through prior.

THE COURT: Okay. But -- okay, but my question to you is are you ready to proceed to trial today, notwithstanding what other issues you may have?

THE DEFENDANT: No, I believe I have the right to counsel because the circuit court appointed counsel, overruling your ruling that I had no right to counsel.

THE COURT: I think circuit court appointed counsel for you for the appellant case, not

necessarily for the trial case. I would make a distinction between that. Is there -- if you would look at the case number on that, I think the -- the appointment of counsel is for the appellant issue, not for the trial issue. That's my understanding of what's going on.

So, are you ready for trial or otherwise?

THE DEFENDANT: No, I'm not.

THE COURT: Okay. Why not?

THE DEFENDANT: Well, there's pretrial motions pending that haven't been ruled upon.

THE COURT: Okay. I think all the -- all the issues that -- every motion that you have submitted in there is an order signed for those particular issues.

THE DEFENDANT: Even the ones I filed yesterday?

THE COURT: I don't have one that's filed yesterday. Do you know what the nature of the motion is?

THE DEFENDANT: I put in about three or four. I can't recall off hand, but even if they do get denied, apparently I have 10 to 14 days to file for rehearing of those motions.

THE COURT: Okay.

THE DEFENDANT: So, I would like those motions heard.

THE COURT: Do you have -- do you have copies of them?

THE DEFENDANT: No, I don't.

THE COURT: Have you provided copies to Mr. Kunasek?

THE DEFENDANT: Yes, I did, online.

THE COURT: Okay. Did you get copies of new motions that have not been previously ruled upon?

MR. KUNASEK: Judge, honestly, I have gotten -- I continue to get copied on pleadings --

THE COURT: Okay.

MR. KUNASEK: -- and it's difficult for me to keep up, but I did receive things yesterday.

THE COURT: Okay. Do you what the nature -- nature of the motions were?

MR. KUNASEK: Most of them were repetitive in motions that have been filed in the past. The only one that caught my eye, that I think was filed yesterday, was there might have been another motion to recuse.

THE COURT: Okay. All right. Do you have a copy of it by chance?

THE DEFENDANT: Also, I'd like --

THE COURT: Just -- just hold on.

THE DEFENDANT: Excuse me.

MR. KUNASEK: Of course, I didn't -- no, Judge. I don't have it.

THE COURT: Okay.

THE DEFENDANT: I have one other point that I'd like to point out. The Florida Supreme Court has taken this case on appeal -- on interlocutory appeal and cases that are on interlocutory appeal cannot reach final judgement.

THE COURT: Have -- have you got an order from the Florida Supreme Court?

THE DEFENDANT: It's filed in the case.

THE COURT: See, that's not my question. Have you gotten an order back from the Supreme Court saying they're going to take review of the case?

THE DEFENDANT: I have a letter of acknowledgment of a new case.

THE COURT: Okay. And that's simply what the clerk does at the Supreme Court. It does not necessarily mean that the Court has accepted jurisdiction of the case.

Do you have anything that would suggest that the Florida Supreme Court has accepted

jurisdiction and are willing to hear the case under merits?

THE DEFENDANT: Not yet. I don't think so.

THE COURT: Okay. All right.

THE DEFENDANT: And -- and I guess, that's just -- that's about it. I would like for those hearings to be heard and I would like the statutory time to move to reconsider if they're denied --

THE COURT: Okay.

THE DEFENDANT: -- from yesterday.

THE COURT: Okay. What are the nature of the motions that you filed yesterday?

THE DEFENDANT: I can't remember.

THE COURT: Okay. Well, if you can't remember how are you going to present them?

THE DEFENDANT: In writing.

THE COURT: No, no, no. Well, I'm assuming that you say you filed them yesterday, you filed them as a writing, correct? Something in written form?

THE DEFENDANT: Yes.

THE COURT: And what are the issues in the motions that you filed?

THE DEFENDANT: Well, one of the issues was

that both the circuit court and the district court of appeals, once they received my notice of appeal to the Florida Supreme Court, both certified those papers and transferred them to the Supreme Court, however the same notice of appeal to this court filed in the Supreme Court was not filed to Florida Supreme Court, which I thought was a bit biased and prejudiced, as this Court was the only Court that failed to file that motion with the Florida Supreme Court.

THE COURT: Okay. Well, I haven't filed anything anywhere outside of county court as it relates to this particular case. And I don't know if the State has filed anything that would ask another Court to review any rulings that -- that I've made with regards to this particular case. So, I'm not sure what you're talking about in that regard.

THE DEFENDANT: Well, the district court of appeals -- the Second District took my motion, which was a -- well, not motion, notice of appeal -- to the Florida Supreme Court under their exclusive jurisdiction and said, oh, this is for the Florida Supreme Court, filed it -- certified it, filed it at the Supreme Court. The circuit

court took a very, very similar notice of appeal, also certified it and filed it to the Florida Supreme Court and this Court took it and did nothing with it. I think it said transfer to the MM and CA judges, which they don't decide Florida Supreme Court appeals.

THE COURT: I would agree with you on that.

THE DEFENDANT: So, it seems like I'm being treated differently in this court than in the circuit court or the district court of appeals for some reason.

THE COURT: Okay.

THE DEFENDANT: And that's what my motion to disqualify is based upon.

And I had two other motions that I really can't recall, those were the last two of the day. So, I would really have to --

THE COURT: Well, I guess I would have assumed that if you had motions that you believed to be outstanding and not ruled on that you would have at least brought them with you today or at least, more importantly, remembered exactly what they were.

THE DEFENDANT: I don't think it's legal for me to bring my PC in, is it?

THE COURT: Yes, sir.

THE DEFENDANT: It is?

THE COURT: Yes, sir.

THE DEFENDANT: Oh, I thought they won't let me, at the screeners, bring a PC in. No? Yes? I don't know.

THE COURT: Okay.

THE DEFENDANT: I thought that was the rule.

THE COURT: Well, you have -- I mean, most of the -- the motions that I've seen you file in the case have been on paper, they've not been -- and I guess you start out on the computer. They're -- they're printed out for review. So, I don't know why you would not have taken the same steps to at least, one, remember what they were, and, second, to bring them to court today and be prepared for. This case was set for trial almost ten days ago.

THE DEFENDANT: I don't have a printer.

THE COURT: Okay.

THE DEFENDANT: I just do everything online.

THE COURT: Okay. But you can't remember what your motions were.

THE DEFENDANT: I have PTSD. I have generalized anxiety disorder.

THE COURT: Okay.

THE DEFENDANT: I'm disabled and my memory is not as good as your memory --

THE COURT: Okay.

THE DEFENDANT: -- or anybody else's memory. So, I -- I would rely on my disability.

THE COURT: Okay. Yes, sir.

MR. KUNASEK: Judge, I don't have hard copies, but I do have the ability to look them up and see what those were that were filed yesterday, if the Court wishes for me to do so.

THE COURT: Okay. Okay, because they're not in the court's file, so far. They're probably in the portal, if they're there, but we don't have the ability to find them right now.

MR. KUNASEK: Okay.

THE DEFENDANT: They're probably in the que.

THE COURT: Yeah.

THE DEFENDANT: Yeah.

MR. KUNASEK: So, did you wish me to?

THE COURT: I'd like to know what they are.

MR. KUNASEK: One is a motion to disqualify presiding judge.

THE COURT: Okay. And does the motion state any particular grounds in there?

And do you have the ability to send those to the clerk, so that they may be printed out?

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: Okay.

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: Okay. All right.

MR. KUNASEK: Judge, with the help of my administrative assistant, she can forward them to the --

THE COURT: Sending more technical people?

MR. KUNASEK: Yes. I believe there were five.

THE COURT: Okay.

THE DEFENDANT: Sounds about right.

THE COURT: Okay.

THE DEFENDANT: And, Your Honor, in either case --

THE COURT: Just hold on.

THE DEFENDANT: Okay. Sorry. Yup.

MR. KUNASEK: Judge, may I ask what Madame Clerk's last name is, so we can get it on email?

THE COURT: It's S. Mathis, M-A-T-H-I-S. SMathis@LeeClerk.org.

MR. KUNASEK: Thank you.

(Whereupon, a conversation was held off the

record.)

THE COURT: So, when I see changed detective after you click on it it'll bring up new documents?

THE CLERK: What's that?

THE COURT: It says change (unintelligible). It says click on refresh to see new documents.

THE CLERK: Yes. Yes.

THE COURT: So, if I click on that it should --

THE CLERK: So, that should get you in (unintelligible).

THE COURT: It should -- it should refresh.

THE CLERK: And it may get you this one. (Unintelligible).

One's not a motion. One's a (unintelligible).

THE COURT: Okay.

THE CLERK: I'm printing that one now.

There should be one more coming.

(Unintelligible).

THE COURT: Okay.

THE CLERK: Waiting on 453. I don't have 453 yet. I only have 450, 451 and 452. As soon as I get 453 I'll get it to you.

THE COURT: Okay. Are these the ones that've been sent to you by the State?

THE CLERK: No.

THE COURT: These are the ones you pulled up directly from the portal?

THE CLERK: Yes, (unintelligible) right now.

THE COURT: Okay. I have three of them. I'm not sure -- the one I have -- one says notice, consent of the State to Fourth Amendment appointment. One is a notice of Judge Krier's refusal to serve papers/orders. The third is a motion to disqualify presiding judge. Those are the three that I have right now.

I'm able to look and see two other filings, one on the 13th and one on the 14th, but that's not yesterday. Both are --

MR. KUNASEK: Judge, I thought we sent six or seven to the clerk.

THE CLERK: I don't have anything --

THE COURT: Yeah, they haven't -- probably just haven't gotten here yet, even though it's just --

(Unintelligible). Okay. It went away. (Unintelligible).

THE CLERK: (Unintelligible). And I still

don't have any emails.

MR. KUNASEK: They haven't come through yet?

THE COURT: No. S-M-A-T-H-I-S?

UNIDENTIFIED SPEAKER: Yeah.

THE COURT: @LeeClerk.org.

UNIDENTIFIED SPEAKER: Yup.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: We can try and access this printer here.

THE COURT: I'm trying to figure out, how do I go back? Is it best that -- like the first one under the file, then I clicked on it and it's --

THE CLERK: Right. And you have to click on more items and it takes you back up to the top and then you scroll back (unintelligible).

THE COURT: I'm trying to undo.

THE CLERK: You're trying to undo that? You can't undo that. You could go out of it and then go back in and it starts you over at the (unintelligible).

THE COURT: Okay. All right. I'll do that. You have to shut down altogether?

THE CLERK: No, no. If you close out of his case and then you open it back up again it should take you to the first one under (unintelligible).

THE COURT: Okay. Got it.

Got an email?

THE CLERK: I have one.

THE COURT: One email's come through so far.

MR. KUNASEK: I don't know what the holdup is.

THE CLERK: I have one, four, six. Seven. (unintelligible). Okay. You've got motion to (unintelligible) by presiding judge, correct?

THE COURT: Yes.

THE CLERK: Okay. So, you don't need that. Two. (Unintelligible).

THE COURT: Got it.

THE CLERK: Motion to compel, you don't have that?

THE COURT: I do not.

THE CLERK: Okay.

MR. KUNASEK: Judge, we can't -- we have the ability to pull it up on our system and show you from the computer screen.

THE COURT: Yeah, we have the motion to compel. I think four -- yeah, four have come through so far. We're just working on the other two, I guess.

MR. KUNASEK: Okay.

THE CLERK: (Unintelligible). Four. And that's the consent. We've got that.

THE COURT: And we can -- we can talk about some of these as they come in --

Mr. KUNASEK: Okay.

THE COURT: -- Mr. Huminski.

Mr. Huminski, one of the motions that I see is -- is entitled motion to compel Judge Adams to allow the Florida Supreme Court to exercise exclusive jurisdiction and to compel Judge Adams to appoint fourth amendment counsel, per 18 AP 0003.

One, just to talk about that, in general, I do not have the ability to allow the Supreme Court to exercise exclusive jurisdiction over the case. The jurisdiction of the Supreme Court is based upon rules and statutes. I can't make them accept jurisdiction. I can't make them hear a particular case if it's not their jurisdiction. Normally cases sort of work their way through the system by separate appeals. It's particularly rare in circumstances that a case goes directly to the Supreme Court. Normally a case that originates in county courts normally gets appealed to the circuit court.

There are rare circumstances in which a direct appeal from county court may go to the second district court of appeal from Lee County and it's, to my knowledge, there has never been a case that has gone directly from a -- a county court case directly to the Supreme Court. Normally, those cases sort of work their way through the appellant courts and if there happens to be an issue that becomes ripe for the Supreme Court's consideration, then they would take it up, but, then, again, that's only under a limited set of circumstances and not something that they just automatically accept.

THE DEFENDANT: Can I explain?

THE COURT: Yes, sir.

THE DEFENDANT: Yes, the Supreme Court has exclusive jurisdiction over judicial assignments and has exclusive jurisdiction on rule making and rule clarification. In this case a county case was transferred -- I mean, a circuit case was transferred to county court, which is not in any rule, no statute, no rule, no law, no authority allows that. So, in this particular case that assignment from circuit to county is in the exclusive jurisdiction of the Florida Supreme

Court, as well as any role that may have been applied. And I'm -- I assert there's no rule and that it was a procedure seeking a rule. So, the Supreme Court, would then, again, have to clarify the rules or create a new rule to allow a transfer from the circuit court to county.

THE COURT: Is it your position that that is not something that is addressed in the rules of judicial administration and it's up to the chief judge and/or his assignees to make that determination, as opposed to the Supreme Court of the state of Florida making assignments of cases in each individual county within the state of Florida?

THE DEFENDANT: It's my position that that's not allowed at all.

THE COURT: Okay.

THE DEFENDANT: Judicial assignments are certainly allowed and the county court judge can contemporaneously be assigned to a circuit court case no longer than six months, but there's no such thing that exists as a transfer from circuit to county. That's why I believe this Court has no jurisdiction and, in fact, the case still remains in county court and this case violates

double jeopardy because it could be prosecuted in both places and the circuit court was never divested of jurisdiction by any order.

THE COURT: Okay. All right. Anything from the State on that issue?

MR. KUNASEK: No, Judge.

THE COURT: All right. Mr. Huminski, on the issue of -- your motion to allow the Supreme Court to exercise exclusive jurisdiction as to the matters that we discussed in terms of appointment of -- of judges and reassignment of cases, I'm going to deny that motion.

Your -- your one motion, as it relates to notice of Judge Krier's refusal to serve papers or orders, does the State have any position on that one way or another?

MR. KUNASEK: Can I just reread it, Judge?

THE COURT: Yes, sir.

MR. KUNASEK: What was it titled?

THE COURT: It's notice of Judge Krier's refusal to serve papers/orders.

THE DEFENDANT: There's an attachment to that.

THE COURT: All right. And there's -- there's an attachment of an order signed by Judge

Krier -- Krier stating order denying plaintiff's motion to dismiss. The order and adjudged portion reads, the motion is denied. Plaintiff has filed a bankruptcy case. There is an automatic stay in the civil case (not in the related criminal case) and then it says once the bankruptcy case has been dealt with the Court may dismiss this case. Done and ordered. It goes back to July 18th, 2017. Signed by Judge Krier.

THE DEFENDANT: The service part is the most critical part of that motion. It says parties are to go to the internet to get copies of this order.

THE COURT: Okay.

THE DEFENDANT: Showing the exact procedure that I find is a problem in this case is that I was never served with anything.

THE COURT: Okay. But that's the --

MR. KUNASEK: I don't have a position -- the State doesn't have a position on that, Judge.

THE COURT: Okay. All right. Okay. I don't -- okay. Mr. Huminski, I guess I'm not going to rule on that at all. All right.

Your next motion is a motion to notice a consent of the State to fourth amendment

appointment. It reads that, you know, now comes Scott Huminski, and notices as above because the State has not filed opposition in 18-AP-0003 to the appointment of counsel for Huminski, thereby consenting to representation in light of the absence of a Nelson/Faretta Hearing, the position of the State is constitutional.

Does the State have any position? I'm sorry. Mr. Huminski, is there anything else you wish to add to that, sir?

THE DEFENDANT: Just that there was no Faretta Hearing, which is required to strip someone of counsel, like I was. It's Faretta versus California. And that's been adopted by the Florida Supreme Court as a standard in Florida, as well. And it's sort of like when you take a plea agreement, it goes through a specific colloquy with the defendant saying, you know, you understand you're giving up the right to attorney, etcetera, etcetera, just as -- similar to a plea agreement.

THE COURT: Okay. Anything from the State on that issue?

MR. KUNASEK: No, Judge.

THE COURT: All right. Mr. Huminski, on that

issue I didn't look at it necessarily as you saying I don't want a lawyer. I looked at your actions as being antagonistic toward all the lawyers that were appointed before you. And as I stated previously, the Public Defender's office was originally appointed to represent you. There were issues that arose between their representation of you their representation and your interaction with them that caused them to withdraw from continued representation of you in that case.

Subsequent to that, Regional Counsel was appointed to represent you in the case. Mr. Miller came in on Regional Counsel's behalf and during the course of that representation I saw filings that indicated that it was your intention to file suits and hearings against (unintelligible) and, if I recall correctly, both in a personal capacity and as -- in a capacity as the head person for Regional Counsel. The relationship between you and the lawyers for Regional Counsel became very antagonistic to the point where they no longer continued -- wanted to continue to represent you.

Based upon that and the prior instance in

which you had had with lawyers from the Public Defender's Office, both of which were appointed at public expense and it did not appear as if you were going to allow them to represent you and do their job. It was -- it was my impression that you were going to continue to act in a manner that would antagonize the lawyers that were appointed to represent you and we were not going to continue down that road at public expense. Therefore, I have declined to continue to represent counsel to you.

THE DEFENDANT: May I respond?

THE COURT: Yes, sir.

THE DEFENDANT: Both conflict counsel and public defender were let off the case on their own motions for conflict of interest, if you look at the record.

THE COURT: Right. Issues -- conflicts that you created.

THE DEFENDANT: And may I also say that mass murderers, like Charlie Manson, etcetera, have problems with counsel, yet, usually they have tables full of counsel.

THE COURT: Okay.

THE DEFENDANT: So, I think I'm not Charlie

Manson, so I should get the same appointment mass murderers get.

THE COURT: Okay. Well, I don't know what the relationship between Mr. Manson may have been with his counsel. I'm only familiar with your relationship with both the lawyers from the Public Defender's Office and Regional Counsel and my decision is based simply upon that, not what some person, out of state, in a prior hearing may have -- how he or she may have interacted with their counsel.

THE DEFENDANT: Your Honor, may I also say that defendants have been in various courts throughout the country, sometimes have been gagged and tied to their chairs and still had court appointed counsel.

THE COURT: You're not suggesting that I do that to you, are you?

THE DEFENDANT: No, but I'm saying --

THE COURT: Okay.

THE DEFENDANT: -- those people certainly could not get along with their counsel, so I don't think my conduct approaches that.

THE COURT: I would -- I would agree with you on that, but in instances that I've been aware,

primarily those have been instances where the person has been disruptive in court and there has been the desire to maintain some type of courtroom decorum as it relates to ongoing proceedings and certainly I don't view those instances in which they may otherwise have issues with the person who is representing them.

All right. The other motion I have here is a motion that I disquali -- disqualify myself. I have read it. I find it to be legally insuf -- insufficient. I will follow up with that by written order as soon as I am able to get to a computer and do that.

Ask (unintelligible) -- ask her to be in contact with Amanda Sefert (phonetic spelling). Ask her to take a look at it and just submit an order to me over today. All right. And just let her know that I told that I ruled it to be legally insufficient.

UNIDENTIFIED SPEAKER: Okay.

THE COURT: All right. The other issue I have is a notice of appeal and it says consolidate it. It has, I believe, this case number, 17-MM-815 and case number 17-C-8421. It is a notice of appeal parens consolidate to the

Florida Supreme Court judicial appointment/rule making exclusive jurisdiction appeal notice of indigency in the court below and request for appointment of counsel and appeal and motion to stay criminal trial and collateral appeals and motion to hold appeal in advance while Huminski's address is unknown.

Does the State have any position on this at all?

MR. KUNASEK: Judge, the State has a -- has a difficult time deciphering exactly what Mr. Huminski is suggesting. I don't think any notice of appeal would affect this Court's ability to go forward on the contempt proceeding. He has filed several notices of appeal. I don't think that, pursuant to the rules of appellant procedure, effect this Court's ability to go forward.

THE COURT: Okay. All right. Mr. Huminski, is there anything you wish to add on that issue, sir?

THE DEFENDANT: Yeah, I do, Your Honor. I don't know the number, but it prevents any case from going to final judgement while an interlocutory appeal is pending. I've cited it in several motions and there's case law, as well,

from the Florida Supreme Court, citing that any final judgment issued while there's an interlocutory appeal pending, which there currently, obviously, is, is illegal nullity. So, if we go forward with the trial it can't reach final judgement.

THE COURT: Okay. All right.

THE DEFENDANT: And I believe my -- one of my motions is entitled -- the word forbid is in it. I don't know if you can do a search on that, but there is an up route -- two Supreme Court cases that I cite stating that any final judgments are legal nullities, void and basically, we've gotta do it all over again. So, I think this might be a bit of a waste of time.

THE COURT: Okay. Well, let's hope not.

THE DEFENDANT: I hope not.

I think the prosecutor probably has that motion if he just searches forbid under his -- in his directory he could pull it up for you and give you the two cases. It was two condo associations were parties to those cases.

THE COURT: There's nothing he can -- (unintelligible). I will just ask those who come in who know a sequence of things.

MR. KUNASEK: Judge, if I may, just to respond.

THE COURT: Yes, sir.

MR. KUNASEK: Except those are civil cases. This is a criminal proceeding. The defendant is limited to the extent of when he has the ability to appeal something during the pendency of a case and this is not one of those situations. So, the -- so, the defendant's assertion or relying on that case and prohibition has no impact on this criminal proceeding, where his right to appeal during the pendency of the Court's orders or rulings is extremely limited, if not -- he doesn't any -- typically don't have any positions or ability to appeal. Therefore, again, I think the Court can go forward.

THE COURT: All right. Mr. Huminski, I'm going to deny your request to stay this particular case pending appeals. I do see you have the motion that's challenging the -- the assignment and other issues before the Supreme Court. Again, I have seen in the file where there's a letter from the Supreme Court acknowledging receipt of the documents. I have not seen anything that suggests that the Supreme

Court has accepted jurisdiction of the case and are willing to hear it as of right now. So, at this point I'm gonna suggest that we might be, otherwise, ready for trial.

Is there an offer to Mr. Huminski in this particular case?

MR. KUNASEK: No, Judge.

THE COURT: Okay. Does the State wish to make an offer to Mr. Huminski in this particular case for a -- a resolution, if he were to enter a plea?

MR. KUNASEK: No.

THE COURT: Okay. All right. Mr. Huminski, are you ready for trial otherwise, sir?

THE DEFENDANT: I'm asserting my fourth amendment right to counsel and I'm asserting my fifth amendment right to remain silent.

THE COURT: Okay. All right. Is the State prepared to call its witnesses?

MR. KUNASEK: Judge, we are. We just need -- I can proceed and they're gonna need two minutes to get here.

THE COURT: Okay. All right.

MR. KUNASEK: So, we can start that if the Court wishes.

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: Don't need one. Don't need it.

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: Yeah. Uh-huh. All right.

THE DEFENDANT: Before trial starts, Your Honor. That (unintelligible) I mentioned as no distinction whether it's criminal or civil. It's -- no case can go to final judgment while an interlocutory appeal is pending.

THE COURT: Well, in criminal cases we don't have, necessarily, what's called final judgments. Final judgements, and I won't necessarily say it's a term of art, but you know, typically, you have final judgments that are in civil cases more than criminal cases.

THE DEFENDANT: Wouldn't it be a conviction?

THE COURT: Well, final judgements in civil cases are not convictions. There are what I will concede are judgements, of sort, in criminal cases, and that's when someone either enters a plea or might otherwise be found guilty and the judgement is basically the disposition of the case telling what the outcome was otherwise.

THE DEFENDANT: Okay. I didn't do any research on that, so I don't know.

THE COURT: Okay.

THE DEFENDANT: I'll take your word for it.

THE COURT: Is there anything preliminarily that you wish to start out with?

MR. KUNASEK: Judge, just that we did file a notice of intent to seek compulsory judicial notice, under 90.202, 90.203 with respect to the civil court case, file number 17-CA-421.

THE COURT: Okay. And I'm assuming you sent that to Mr. Huminski at the same time?

MR. KUNASEK: Yes. I don't know if the Court wishes for me to make a brief opening. I know the Court has some sense of the --

THE COURT: At -- at your discretion, if you wish.

MR. KUNASEK: I may as well --

THE COURT: Okay.

MR. KUNASEK: -- since we're waiting on a witness.

Your Honor, as you may be aware, this case started -- this contempt proceeding started out of a situation where Mr. Huminski was the plaintiff in a civil lawsuit titled Huminski versus Town of Gilbert, Arizona, et. al, case number 17-CA-421. Judge Krier or Krier was the

judge presiding over that civil case. In April -- April 18th of 2017 there were motions filed by the defendants to dismiss and at that point in time the judge made specific findings that Mr. Huminski was a vexatious litigant, pursuant to statute, that he was not to file any more pro se pleadings. He was a plaintiff proceeding pro se, without lawyer, and also, prohibited him from filing any more pro se pleadings from that day forward. Mr. Huminski was present in the courtroom.

The very next day the judge filed some orders dismissing the cases, reflecting the minute -- reflecting the pronouncements in court the defendant filed pro se pleadings. There was, then, a motion by one of the defense -- defendants to file a mo -- there was a motion for contempt filed by one of the defendants. And the defendant continued to file pro se pleadings asking the Court to recuse herself, a motion to vacate the Court's order and several other motions.

On April 26th the Court filed an order to show cause for a date in May. The defendant did not show to court on that particular day and was not

served with the order to show cause. On June 5th the Court's order to show cause was, again, filed with a proof of service, serving Mr. Huminski on June 13th of the order to show cause for an arraignment on June 29th. And on that date Mr. Huminski showed up. Mr. Huminski was arraigned on the contempt proceeding. He was appointed counsel and a written plea of not guilty was entered on his behalf.

In the interim Mr. Huminski continued to file pro se pleadings and the Court file reflects that. He also filed a notice removing the civil case to the U.S. bankruptcy court. After the arraignment he -- Mr. Huminski was, again, advised by the judge to not file pro se pleadings. Pleadings can be filed by a licensed Florida bar attorney and there were filings after that, which reflect, again, his inability to follow the orders of the Court.

THE COURT: Okay.

MR. KUNASEK: So, I'm -- I don't know if my witness is here, but I'm prepared to --

THE COURT: Okay. I see people walking in the back, but before we get there, Mr. Huminski, would you like -- similar to what the State has

done, do you wish to make an opening statement?

THE DEFENDANT: I assert my fifth amendment right.

THE COURT: Okay. All right.

Is the State ready to proceed with its first witness?

MR. KUNASEK: Yes, Judge. We would call Brenda Horton.

THE COURT: If you just want to raise your right hand, ma'am.

THE CLERK: Do you solemnly swear or affirm the testimony you give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

(Whereupon, the witness was duly sworn by the Clerk.)

THE COURT: All right. Take the witness stand right here.

You may proceed.

MR. KUNASEK: Thank you, Judge.

Thereupon,

BRENDA HORTON,

a witness for the State of Florida, upon having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KUNASEK:

Q. Good morning.

A. Good morning.

Q. Could you please state your full name for us?

A. Brenda K. Horton.

Q. And how do you spell your last name?

A. H-O-R-T-O-N.

Q. And how are you employed, Ms. Horton?

A. I work for the clerk of courts.

Q. And how long have you worked for the clerk of courts?

A. Two years.

Q. Where were you working back in April of last year, 2017?

A. I was working with the clerk's office and I was a clerk for Judge Krier.

Q. And were you a courtroom clerk?

A. Yes, sir.

Q. So, what does that mean?

A. That means whenever she -- or the judges have hearings or trials we go in and we take the minutes of what the judges rule.

Q. And the minutes are what?

A. The minutes are on a sheet of paper that make the decision -- document the decisions of what she has ruled on, whether a motion was granted, denied.

Q. And was Judge Krier handling a civil docket in April of 2017?

A. Yes, sir.

Q. Are you familiar with the case of Scott Huminski versus Town of Gilbert, Arizona?

A. Yes, sir.

Q. And on the -- are there actual, physical minute sheets you can -- you fill out by computer?

A. We print them up and then we have them scanned onto the cases.

Q. Okay. And are there places there to represent who was present during certain proceedings?

A. Yes, we document who was present in the courtroom.

MR. KUNASEK: May I approach the witness, Judge?

THE COURT: You may.

MR. KUNASEK: I'm gonna show Mr. Huminski

State's Exhibit Number 1, if he wishes to look at it.

Would you like to look at it?

Mr. Huminski's not looking at it, Judge.

THE COURT: I saw him shake his head in the negative, which suggests that he's not gonna partake in reviewing the document.

BY MR. KUNASEK:

Q. Ms. Horton, I'm handing you State's Exhibit 1. I'd ask you to flip through it and let me know if you recognize those documents.

A. Yes, I prepared these documents.

Q. And are those minute sheets?

A. Yes, these are what we call minute sheets. Correct.

Q. And what date are those minute sheets from?

A. The first one, on top, is April 18th, 2017. April -- the second one is also April 18th, 2017. Third one, April 18th, 2017. And that would be it.

Q. And which -- what case are they all pertaining to?

A. They are proceeding on Huminski, Scott versus Town of Gilbert, Arizona. Would you like the case number?

Q. Yes, please.

A. Case number 17-CA-000421.

Q. Thank you. And on those minute sheets did you reflect whether or not Mr. Huminski was present during that proceeding?

A. Yes, I did.

Q. And did you document that he was, in fact, present?

A. He was present. Correct.

Q. And on the minute sheet do you actually type out what is being pronounced in court by the judge?

A. Correct, yes, I do.

Q. And do you see Mr. Huminski in the courtroom, here, this morning?

A. Yes, I do.

Q. Could you please point to him and describe something he's wearing?

A. The gentleman in the other table and he has sunglasses hanging off of his shirt with a long sleeve shirt, black with a cream colored design -- print.

MR. KUNASEK: Let the record reflect the witness identified Mr. Huminski.

THE COURT: The record shall so reflect.

BY MR. KUNASEK:

Q. And is the courtroom that we're discussing --

where you were the clerk for Judge Krier, was that located in Lee County, Florida?

A. Yes, sir.

Q. So, does State's Exhibit 1 accurately reflect the original minute sheets that you filled out regarding the court proceeding on April 18th, 2017?

A. Yes, they do.

Q. And, in fact, do you see a certification on those documents?

A. Yes, I do.

MR. KUNASEK: At this time I would move State's Exhibit 1 into evidence.

THE COURT: Mr. Huminski, do you have any objection to the introduction of that document?

THE DEFENDANT: I assert my fifth amendment right.

THE COURT: All right. I'll accept the documents into evidence.

(Whereupon, State's Exhibit 1 was admitted into evidence.)

MR. KUNASEK: Okay. May I approach?

THE COURT: Yes, sir.

(Unintelligible).

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: Just ask her (unintelligible)

Huminski.

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: If she can (unintelligible). Yeah.

MR. KUNASEK: Judge, I don't believe -- well, let me just ask Ms. Horton a couple more questions, if I may.

BY MS. KUNASEK:

Q. Ms. Horton, would you be familiar with any of the pleadings that get filed in a case that your judge -- the judge you clerk for -- is presiding over?

A. Yes, I review them before the hearings.

MR. KUNASEK: I'm gonna approach again, Judge or may I approach again?

THE COURT: Yes, sir.

MR. KUNASEK: I'm gonna show Mr. Huminski State's Exhibit -- State's Exhibits 2 through 20.

Mr. Huminski would you like to look through these?

THE DEFENDANT: I assert my fourth and fifth amendment rights.

THE COURT: All right. I'll take that as a no.

BY MR. KUNASEK:

Q. Ms. Horton, if you would, take your time and go through those documents and when you're finished let me -- let me know.

A. I do recognize -- I'm almost done.

Q. Okay. Take your time.

A. I do recognize these documents as being on the case.

Q. Okay. And, so, are those documents that you recognize as being made part of the court file?

A. Correct. Yes.

Q. In the case number that you gave us earlier, 17-CA-000421?

A. Yes, sir.

Q. And do those appear to be an accurate reflection of the original documents that are in the court file?

A. Yes, sir.

Q. And are those a cert -- and are those certified copies?

A. Yes. They appear all to be certified copies.

MR. KUNASEK: At this time the State would move State's Exhibits 2 through 20 into evidence.

THE COURT: Mr. Huminski, do you have any objection to State's Exhibits 2 through 20.

THE DEFENDANT: I assert my fourth and fifth amendment rights.

THE COURT: All right. I will note that. I will allow the introduction of State's Exhibits 2 through 20.

(Whereupon, State's Exhibits 2 through 20 were admitted into evidence.)

MR. KUNASEK: Thank you, Judge.

BY MR. KUNASEK:

Q. Ms. Horton, are you familiar with the way in which parties can file pleadings in civil cases?

A. Not exactly. I see once they get onto the cases and I know there is a procedure that they can do it on the internet and come to the clerk's office, yes.

Q. Okay. And do some of the documents that you've just looked through and that are now in evidence, are they represented coming from Mr. Scott Huminski?

A. Yes, sir.

Q. And is that by way of electronic signature?

A. Yes, sir.

MR. KUNASEK: May I approach?

THE COURT: You may.

MR. KUNASEK: I don't have any further

questions of this witness, Your Honor.

THE COURT: Mr. Huminski, do you have any questions of Ms. Horton?

THE DEFENDANT: I assert my fourth and fifth amendment rights.

THE COURT: All right. I take that as a no. You may step down, ma'am.

THE WITNESS: Thank you.

THE COURT: You're welcome.

MR. KUNASEK: Thank you.

THE COURT: Do you have any other witnesses?

MR. KUNASEK: I do, Judge. The State would call Mr. Richard White.

THE CLERK: Do you solemnly swear or affirm the testimony you give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

(Whereupon, the witness was duly sworn by the Clerk.)

THE COURT: Mr. White, right over here, sir.

THE WITNESS: Thank you, sir.

THE COURT: Good morning.

Thereupon,

RICHARD WHITE

a witness for the State of Florida, upon having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KUNASEK:

Q. Good morning.

A. Good morning.

Q. Could you please state your full name and spell your last name for us?

A. Richard Tarek White (phonetic spelling), W-H-I-T-E.

Q. And how are you employed?

A. I'm employed by the Lee County Sheriff's Office as a fugitive warrants detective and I'm currently fully assigned or full time assigned to the U.S. Marshals.

Q. So, would one of your duties be serving court paperwork or documentation upon individuals?

A. It can be, yes.

MR. KUNASEK: May I approach the witness, Judge?

THE COURT: You may.

MR. KUNASEK: I'm showing Mr. Huminski what's

already in evidence as State's Exhibit 12. Would you like to look at it, sir?

THE DEFENDANT: Fourth and fifth amendment rights.

THE COURT: I'll -- let the record reflect that each of the instances in which the State has approached Mr. Huminski to look at the documents he's not looked at them, but, simply has asserted his fourth and fifth amendment rights. I'll take that as his desire not to see the documents.

You may, otherwise, proceed, Mr. Kunasek.

MR. KUNASEK: Thank you.

BY MR. KUNASEK:

Q. Mr. White, I'm giving you what's already in evidence as State's Exhibit 12 and ask if you would take a look at that. Are you able to recognize that?

A. I am, sir.

Q. And how is it that you're able to recognize it?

A. My signature's on the bottom and my -- my five digits I.D. number.

Q. And is that a court document, so to speak?

A. It is ordered -- order to show cause, yeah.

Q. Do you recall your involvement with respect to that court document?

A. I do. Because I'm assigned to the U.S. Marshals I work out of the federal courthouse and I was asked by he civil department to serve this paper because they understood that Mr. Huminski was turning up for a federal court appearance at approximately 9 a.m. on the morning of June 13th.

Q. So, did you, in fact, come into contact with Mr. Huminski on that date?

A. I did. I was waiting in the lobby and he showed up at approximately quarter to, ten to nine.

Q. A.m.?

A. A.m.

Q. And did you, in fact, serve him with a cop -- with a copy of what's reflected in State's Exhibit 12?

A. I did.

Q. Do you see the person in the courtroom that you actually handed a copy to?

A. I do, sir.

Q. Could you please point to him and describe an article of clothing?

A. He's -- he's there sitting with the dark slacks and gray pattern shirt.

MR. KUNASEK: Let the record reflect the witness identified Mr. Huminski.

THE COURT: Described differently by witnesses, but the record shall so reflect.

MR. KUNASEK: Thank you.

BY MR. KUNASEK:

Q. So, you referred earlier to documenting on State's Exhibit 12 that you, in fact, served Mr. Huminski?

A. That's correct.

Q. And that's in your handwriting?

A. It is.

Q. Did he make any comments to you after or while you were serving that document?

A. No.

MR. KUNASEK: I don't have any further questions. Oh. Yeah, I don't have any further questions.

THE COURT: Mr. Huminski, do you have any questions for Mr. White?

THE DEFENDANT: I'll make an exception in this case.

CROSS EXAMINATION

BY THE DEFENDANT:

Q. Mr. White, how many pages did you serve on that day?

A. I believe it was like two or three. I can't

remember exactly (unintelligible).

Q. And could you look at the document and indicate if there are attachments to that paper?

A. There are attachments to this one.

Q. There are?

A. Yeah.

Q. How many pages of attachments?

A. Three total. There's two attachments and the front page, so all in all there's three pages in my hand.

Q. Are there any exhibits listed if you read that carefully? It refers to exhibits. See exhibit A, see exhibit B, etcetera, etcetera.

A. Yeah, it mentions exhibits.

Q. And did you serve those exhibits?

A. I don't think so. I just served these in front of me here.

THE DEFENDANT: Exactly. Thank you.

MR. KUNASEK: Just to follow up, Judge.

REDIRECT EXAMINATION

BY MR. KUNASEK:

Q. Did the service of this occur in Lee County, Florida?

A. It did.

MR. KUNASEK: No further questions.

THE COURT: Okay. Any other questions.

THE DEFENDANT: I assert my fourth and fifth amendment rights.

THE COURT: So noted.

That's all.

MR. KUNASEK: Thank you.

May I approach the witness?

THE COURT: Yes, sir.

Your next witness?

MR. KUNASEK: Judge, I don't have any further witnesses.

I have all the exhibits I'll tender to the Court.

Just one moment, Judge, if I may.

Nothing further, Judge.

THE COURT: All right. Does State rest?

MR. KUNASEK: Yes.

THE COURT: All right. Mr. Huminski, is there anything that you wish to present at this time?

THE DEFENDANT: I assert my fourth and fifth amendment rights.

THE COURT: All right. Any motions you'd like to make?

THE DEFENDANT: I'd like to make a motion for

a mistrial because service has not been proved. In fact, there was 120 pages that should have been served and State's own witness only served three. So, there's been no proper service in this case.

THE COURT: All right. Anything from the State?

MR. KUNASEK: Just a summation.

THE COURT: On the -- on his motion to dismiss.

MR. KUNASEK: Judge, I don't believe that that's relevant --

THE COURT: Okay.

MR. KUNASEK: -- the service of the attachments. Mr. Huminski was on notice that he was not to file any more pro se pleadings from the date April 18th, 2017. And, again, that's reflected -- that language is reflected in the order to show cause that he was personally served with.

THE COURT: Okay. All right.

THE DEFENDANT: Your Honor, jurisdiction is achieved though ser -- personal jurisdiction is achieved through proper service, which hasn't taken place by the State's own witness.

THE COURT: Okay. All right. Take the -- Mr. White's statements of him having served you with the documents has been sufficient to obtain jurisdiction as it relates to the order to show cause. I will deny your motion as it relates to that. And I also deny your motion to otherwise dismiss.

Is there any evidence that you would like to present, yourself?

THE DEFENDANT: No, just the sentencing phase.

THE COURT: Okay. I take it you're not going to present any evidence?

THE DEFENDANT: I'm asserting my fourth and fifth amendment rights.

THE COURT: Okay. All right. Does the State wish to do a summation?

MR. KUNASEK: Yes, Judge, briefly. Basically, it's my opening just reiterated to some degree. On April 18th, 2017 Mr. Huminski was standing in the court when the judge made certain pronouncements, those were reflected in State's Exhibit 1, where the clerk said she took the minutes of the proceeding, wherein the Court found Mr. Huminski to be a vexatious litigant and

that he was not to file any more pro se pleadings and that he could file pleadings with a licensed Florida bar attorney. And Mr. Huminski was present.

Mr. Huminski, then, proceeded to file pro se pleadings subsequent to that hearing and the Court generated an order to show cause for Mr. Huminski. That order to show cause was specifically served on Mr. Huminski on June 13th. So, in the event Mr. Huminski didn't quite understand the orders and instructions that the Court pronounced in court on the 18th, he actually received a written copy of the order to show cause and in that written copy it says that he was specifically ordered that any further pleadings be signed by a licensed attorney representing the plaintiff, specifically ordered not to file any additional documents or materials of any nature with the Court, unless filed -- unless the file was signed by an attorney and specifically provided that an order to show cause might be entered.

He, then, proceeded to file pleadings subsequent to that, according to the court file, which the Court took judicial notice of, which is

part of State's Exhibits 1 through 20.

It's clear that the defendant wasn't listening and adhering to the Court's order. The Court had the authority to put that restriction on Mr. Huminski based on her finding that he was a vexatious litigant. The case law supports that and Mr. Huminski has filed hundreds of documents.

THE DEFENDANT: Your Honor, I have one more motion to dismiss.

THE COURT: Okay. Okay. Before we get to that, do you wish to respond in terms of a summation of sorts?

THE DEFENDANT: No, I will assert my fourth and fifth amendment rights. I do have a motion to dismiss, though.

THE COURT: All right. What is that?

THE DEFENDANT: Okay. As the Court noticed, I filed maybe 100 documents or motions in this case and according to the judge's ruling on those documents I'm basically a legal moron because I failed on every single motion and someone who can't even file a motion to dismiss based on reading case law is certainly not competent to represent themselves in trial. So, I think, basically, the long history of me filing motions

that you consider absolutely outrageous and stupid or whatever, I'm not putting words in -- or moronic -- shows that I did not have the capability to engage in a way more complex task of representing myself at trial. So, I'd dismiss on those grounds.

THE COURT: All right. Anything from the State?

MR. KUNASEK: Judge, I would just ask that you take your personal observations of Mr. Huminski, since your interactions with him in this particular case. The things that are reflected in the court file clearly show that Mr. Huminski has an understanding of the civil world and criminal arena, to the extent that he knows the participants, he knows the roles of the participants, he certainly has the ability to assist with his lawyer, so competency is not an issue in this particular incident.

THE COURT: Mr. Huminski, your -- your filings, even though you have characterized them as stupid, moronic or -- or whatever, I've not really considered them as such, simply considered you as a pro se litigant, you know, filing many motions in the case, some of which are in

contravention of the order that Judge Krier had previously put in place. Based upon that I will find you guilty of the charge -- the contempt charge.

I'm gonna place you on probation for a period of six months, require you to pay court costs, per schedule, $50 cost of prosecution and a fine in the amount of $500. Also, as a condition of the probation that, you know, any future filings that you have are to be under the signature of a licensed attorney.

All right. That will be all.

Report to probation. It's on the third floor today. The fines and costs and monetary obligations imposed may be converted to community service hours at the rate of $10 per hour. You have five months to take care of the obligations.

THE DEFENDANT: Your Honor --

THE COURT: Just -- just -- just hold on.

THE DEFENDANT: Yeah.

THE COURT: I'm also going to give you a suspended sentence of 45 days, provided you not otherwise violate the terms and conditions of your probation.

All right.

MR. KUNASEK: Judge, may I ask for another special condition of probation? That he is not to communicate via email with any of the participants involved in this -- in the civil proceeding, including the criminal proceeding. As if the Court can tell from the State's exhibits, he often times will send email blasts including 300 people. So, I would ask that that immediately cease and desist with respect to communication, third party or direct or indirect.

THE COURT: Mr. Huminski?

THE DEFENDANT: If he could be more specific in that. That's kind of a migration thing and the first amendment requires that any such orders impacting speech be narrowly tailored to a specific governmental interest. So, if he -- if he can narrowly tailor it that would be nice, instead of just saying don't email anyone.

THE COURT: I think he's talking about the parties who are -- and I'm going to assume that are involved -- and I don't know, for lack -- I'll say that -- you know, what's going on with the town of Gilbert, Arizona and how they are related, to some extent, to Lee County.

MR. KUNASEK: I don't believe -- well,

they're related to the extent that they were brought in as a defendant in this -- Mr. Huminski's case.

THE COURT: Okay.

THE DEFENDANT: That extends the Court's jurisdiction nationwide, I think, that request.

THE COURT: What's the other issue that you have, Mr. Huminski?

THE DEFENDANT: I don't -- did I mention one?

THE COURT: You did.

THE DEFENDANT: Oh, for sentencing, well, I guess I'll skip it.

THE COURT: Okay. I'll add in the additional condition of probation that he is not to communicate with the other individuals in the other case, also, as requested by the State.

THE DEFENDANT: Okay.

THE COURT: All right. That'll be all today.

And, Mr. Huminski, probation's on the third floor. If you go up one floor and continue to walk that way, you'll sort of run into them.

THE DEFENDANT: All right.

THE COURT: All right. Have a good day, sir.

THE DEFENDANT: Okay. Thank you.

UNIDENTIFIED SPEAKER: (Unintelligible).

THE COURT: Yeah. Both.

MR. KUNASEK: Did you adjudicate him, Judge?

THE COURT: Yes.

Just hold on for your paperwork.

(End of recording.)

STATE OF FLORIDA

TWENTIETH JUDICIAL CIRCUIT

I, Brandi F. Bertoni, do hereby certify that:

The foregoing pages numbered 1-60 contain a full transcript of the proceedings in the matter described in the caption on Page 1 hereof transcribed by me to the best of my knowledge and ability from the electronic recording provided by the court.

I am not counsel for, related to, or employed by any of the parties in the above-entitled cause.

I am not financially or otherwise interested in the outcome of this case.

I am an approved transcriber for the Twentieth Judicial Circuit Court.

/s/ Brandi F. Bertoni

Brandi F. Bertoni

November 14, 2018

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 18, 2018

CASE NO.: 2D18-3856
L.T. No.: 17-CA-421,
17-MM-815

SCOTT HUMINSKI	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition for writ of prohibition is denied.

Petitioner's motion for appointment of counsel and to waive filing fee is denied. Petitioner's emergency motion to stay arrest warrant is denied. Petitioner's motion to stay order of conviction is denied.

VILLANTI, LUCAS, and ROTHSTEIN-YOUAKIM, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa Scott Huminski Linda Doggett, Clerk

td

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

ORDER NOW FINAL

DEC 06 2018

Clerk, Second District
Court of Appeal

CERTIFICATE OF CLERK

STATE OF FLORIDA,
COUNTY OF LEE

I, LINDA DOGGETT, Clerk of Court, In and For Lee County, Florida DO HEREBY CERTIFY that the foregoing record inclusive contain a true and correct copy of the case of:

State of Florida
vs
Huminski, Scott A

and a true and correct recital and inclusion of all such copies of official imaged documents and proceedings in said cause as they appear from the records and files of my office that have been included in said record pursuant to Florida Rules of Appellate Procedures.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court at Fort Myers, Lee County, Florida on December 21, 2018.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the record on appeal in the above styled case has been mailed to:

State Attorney

Anthony M. Candela Esq.

LINDA DOGGETT
Clerk of Court

By: Lori Slisz
Deputy Clerk
(239) 533-2856
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