

COURT OF APPEALS

STATE OF ARIZONA

DIVISION TWO

THE STATE OF ARIZONA, ex rel.
M. LANDO VOYLES, PINAL COUNTY
ATTORNEY,

Petitioner,

v.

2 CA-SA 2014-0050
Department A

THE HONORABLE PETER J. CAHILL,
JUDGE OF THE ARIZONA SUPERIOR
COURT,

Pinal County Cause No.
CR201201764

Respondent,

and

RICHARD T. WILSON,

Real Party in Interest.

RESPONSE TO PETITION FOR SPECIAL ACTION

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Real Party in Interest Richard Wilson, through undersigned counsel, hereby responds to the State of Arizona's petition for special action and requests this Court decline jurisdiction of the petition, or alternatively deny relief, for the reasons stated herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. ISSUE FOR REVIEW:

Whether the Respondent Judge engaged in an abuse of discretion, when after numerous motions and an evidentiary hearing, the Court ordered the Pinal County Attorney disqualified from the further prosecution of Richard Wilson and directed that the case be assigned another prosecutor.

II. JURISDICTIONAL STATEMENT

The prosecutor provides the correct law regarding when it is appropriate for the Court to accept jurisdiction in a special action. It argues only three are applicable, however. Petitioner's Memorandum (PM), pp. 1-3. First it alleges that the decision it is attempting to get reversed is a "purely legal question." Second, it argues it has "no equally plain, speedy or adequate remedy by appeal." *Id.*

For its third argument the state urges another factor the courts sometimes take into consideration, although it is not delineated in rule 3 (*infra*). It urges that this issue is one of "statewide importance." *Id.*

For these propositions it relies on Rules 1, 3, 4 and 7 of the Arizona Rules of Procedure for Special Actions. The real issue, however, arises from rule 3, which states what questions may be raised in a special action. They are the *only* questions which may be raised.

- a. Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or
- b. Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or
- c. Whether a determination was arbitrary and capricious or an abuse of discretion.

The focus of the state's argument is "c," *i.e.*, the trial court abused its discretion by disqualifying the *entire* Pinal County Attorney's Office (PCAO) from participating in the prosecution of real party in interest, Richard Wilson. PM, p.3 [Statement of the Issue].

A court cannot abuse its discretion, however, if factual issues are presented to it, and it decides the credibility and value of the testimony and evidence. It is only when the court "erred in its application of the law or when the record does not substantially support its decision" that the appellate courts will step in

through a special action. **Villapando v. Reagan**, 211 Ariz. 305, ¶1, 121 P.3d 172 (App. 2005).

All of the cases cited at PM, p.1 were clearly cases of undisputed facts and, therefore, pure questions of law. **State v. Kearney**, 206 Ariz. 547, ¶12, 81 P.3d 338 (App. 2003) [the relevant facts were "undisputed"]; **State ex rel. Romley v. Rayes**, 206 Ariz. 58, ¶ 5, 75 P3d 148 (App. 2003) [interpretation of a new bail law]; **Raney v. Lindberg**, 206 Ariz. 193, ¶ 5, 76 P.3d 867 (App. 2003) ["undisputed facts"]; **State ex rel. Hance v. Arizona Bd. Of Pardons and Paroles**, 178 Ariz. 591, 595, 875 P.2d 824,828 (App. 1983)[pure question of law, no disputed facts].

This case is not a pure question of law, nor is it an unusual occurrence causing it to be of statewide importance. Disqualifying an entire law firm may not happen frequently, it does happen.¹ After an evidentiary hearing, the judge decides the credibility and the value of witness testimony, and makes a decision. In this case it was to disqualify an entire law "firm," *i.e.*, PCAO. The conduct of the attorneys and personnel at PCAO during the relevant periods of time are set forth

¹ While it does not happen often, it certainly happens because of the ethical rule governing conflicts of interest. *See, e.g., Henriksen v. Great American Savings & Loan*, 11 Cal.App.4th 109, 14 Cal.Rptr.184 (1992). This case poses a different ethical issue: interference in the attorney-client relationship.

in the factual portion of this pleading and the factual findings of the trial court in its minute entry of July 8, 2014.²

Thus, the jurisdictional question for this Court is *not* whether it is being presented with a pure question of law – because it isn't – but whether the decision of the trial court, based upon the evidence presented at the hearing on May 6 and 8, 2014 sufficiently substantiated its decision. *Villapando, supra*.

III. MATERIAL FACTS:

The Pinal County Attorney M. Lando Voyles stated in a press release on July 30, 2013 the following “a routine records check thwarts accused murderer getting victim's medical records.” He continued, “[i]n this case, the victim's rights were violated and the motion and records were sealed to cover the defense attorney's tracks.” [See Reporter’s Transcript pages 34-35, 37, 92 included in Exhibit Number 2 as well Exhibit Number 4 admitted at hearing of (5/6/2014) included in Real Party in Interest Appendix Exhibit 1-hereinafter RPI App].³

Mr. Voyles went further in his statement to the public. He said “Arizona law gives prosecutors the duty and authority to protect rights of victims,” the

² It was appalling and unethical, and there has been no remorse shown for that conduct. Instead, they come to this Court, seeking to avoid the consequences of their contempt for court orders, judges and defense counsel.

³ The exhibits admitted at the evidentiary hearing and which are essential to a fair consideration of this matter are not included with the transcript of the hearing. Real Party in Interest has copied and included the relevant exhibits in his Appendix as Exhibit 1.

confidential court documents were sealed by the judge to “cover the defense attorney’s tracks.” [See R.T. page 37, RPI App 1, Casa Grande Dispatch article, Wednesday August 7, 2013 admitted as Exhibit Number 5 at hearing].

However, on May 6, 2014 the Pinal County Attorney's office (PCAO) conceded that the victim’s rights provisions of the Arizona Constitution and laws do not apply to this case because the "victim" was incarcerated in the Department of Corrections. [R.T. pages 10-11 (5/6/2014)] The discovery being sought by *ex parte* motion, and ordered disclosed under seal, was not protected under the Victims Bill of Rights.

Mr. Voyles did not clarify his statements in a press release or to the media after he was "schooled" in how the law defined a "victim." Instead, one of his prosecutors made this concession in open court. [R.T. page 10 (5/6/2014)]

The documents Mr. Voyles was referring to in his statements to the media were confidential court documents, under seal by order of the Court. In his press release Mr. Voyles himself acknowledged that he knew that his office did not have legal authority to view the documents, but that discovery of the “request and order was the result of a "permissions issue" in the records system of the Clerk of the Superior Court, which was supposed to "block all lawyers from opening pleadings sealed by a court order.” [RPI App 1, Exhibit Number 4 at

hearing]. Indeed, there was evidence at the hearing Mr. Voyles sent his press release to the clerk of the court asking for his comments before issuing it. [R.T. pages 71-74 (5/6/2014)]

Mr. Voyles, by his press release, acknowledged accessing sealed court documents. His misconduct went further, nonetheless, and he filed, thereafter, motions under the Arizona victim's rights law which he knew were improper. [Petitioner's Appendix B, State's Motion to Stay the Court's Ruling Regarding Disclosure of Victim's Medical Records and RPI App 3, State's Motion for Expedited Ruling.] He also directed his press information officer to e-mail the assigned judge the evening of August 7, 2013, after business hours, that the newspaper would be running a "correction in tomorrow's print edition to clear up an incorrect statement." [R.T. page 37, RPI App 1, E-mail from Pinal County Attorney Press Information Officer to the Hon. Joseph R. Georgini admitted as Exhibit Number 6 at hearing] The information officer claimed that the words "the documents were sealed by the judge" were not Mr. Voyles words. However, Mr. Voyles has never disputed using the words that the Court entered the order "to cover the defense attorney's tracks."

These matters were all of record before the Respondent Judge. In fact, a motion to strike the improper communication between Mr. Voyles through his

non-lawyer information officer to the assigned judge was the subject of a timely filed motion for sanctions. [See RPI App 3, Motion to Strike Improper Communications with Court and for Sanctions] The motion was filed and served on the Pinal County Attorney on August 8, 2013. No response to this motion was ever filed by PCAO.

The failure to respond to a motion can be considered an admission of the facts contained within the pleading. See Rule 35.1 of the Arizona Rules of Criminal Procedure. PCAO's petition for special action, however, never mentions the motion nor does it include it in the record before this Court. This is, undoubtedly, due to the incriminating factors described above regarding the head of PCAO, and the fact that the Pinal County Attorney argues to this reviewing court that the errors below were those of former staff attorneys and should not be attributable to him or the supervisors in his office, and the argument that the Respondent Judge Cahill abused his discretion in disqualifying the office.

Nowhere within the petition for special action does the Pinal County Attorney dispute the following facts.

The Pinal County Attorney wrongfully accessed confidential court documents under seal on July 18, 2013. After accessing them, the county attorney went back and printed the documents approximately an hour later. [R.T.

pages 127-132 (5/6/2014) and RPI App 1, exhibits 12 and 13 admitted at hearing] The confidential court documents accessed and printed by the County Attorney, however, were filed *ex parte* by the defense, pursuant to Rule 15.9 of the Arizona Rules of Criminal Procedure, and the order sealing the records was signed by the assigned judge.

The attorney in the office receiving the documents, Greg Hazard, knew that documents given to him by paralegal Tari Parish were confidential and that he did not have authorization to access them. [R.T. page 11 (5/8/2014)] Nevertheless, he brought them to the attention of his supervisors, Attorney Matt Long, Chief Deputy Pinal County Attorney Richard Wintory, supervising appellate bureau chief Ron Harris as well as the County Attorney himself, Mr. Voyles. [R.T. pages 12-17 (5-8-2014)] At no time thereafter did the county attorneys notify the Court or opposing counsel that they had illegally accessed the documents. Instead, they immediately drafted motions, seeking to have the *ex parte* motion and sealed order vacated, under the mistaken belief that the motion and order violated Arizona victim rights provisions. The entire County Attorney's Office, at the highest supervisory levels, and over a five day period, reviewed the documents and participated in the attempt to have them set aside. [R.T. pages 12, 18-19, 27,

29-30 (5/8/2014) and Petitioner's Appendix B, Motion to Stay Trial Court's Ruling and RPI App 3, Request for Expedited Ruling]

Mr. Hazard testified at the evidentiary hearing before the Respondent Judge, on May 8, 2014 that his assistant accessed the confidential motion and order, that he knew the motion had been filed by the Defendant and that the Court had granted the motion and ordered that the motion and order be sealed. He also testified that he met and discussed the matter with the Richard Wintory and Tari Parish in Richard Wintory's office on Friday July 19, 2013. [R.T. page 11 (05/08/2014)].

The prosecutor indicated that both he and his assistant were aware that the documents were confidential and that the assistant knew what the term "*ex parte*" meant. [R.T. page 11 (5/8/2014)] When asked if the assistant's testimony was accurate and that he was angry when she came to him with the documents, he responded that he was "shocked and appalled." The following exchange occurred:

THE COURT: Hold on just a second. Let's make sure we understand what you were shocked and appalled at. I assume you were shocked and being appalled at someone viewing a sealed document; is that correct?

THE WITNESS: No.

[R.T. page 12 (5/8/2014)]

The record reflects that the prosecutor discussed the confidential documents with his direct supervisor Matt Long, as well as with the Chief Deputy County Attorney Richard Wintory. [R.T. page 12 (5/8/2014)] In fact, the assigned attorney said that Richard Wintory had the confidential document “in his hand” as he discussed the matter with him. [Id.]

The prosecutor indicated he discussed the confidential documents with two non-lawyer assistants in the Pinal County Attorney’s Office, with his supervisors Matt Long and the chief Deputy Richard Wintory and with fellow prosecutor Jason Easterday. [R.T. pages 14-16 (5/8/2014)] He discussed it with the appellate division bureau chief Ron Harris at the direction of Richard Wintory. [R.T. page 17 (5/8/2014)] However, he never informed the assigned judge or his staff. [R.T. page 13 (5/8/2014)] He did not notify the clerk of the Superior Court. [R.T. page 16 (5/8/2014)] He notified no one in the Pinal County Superior Court [R.T. page 16 (5/8/2014)] or the Pinal County Superior Court Administration. [R.T. page 16 (5/8/2014)] The attorney never mentioned it to opposing counsel. [R.T. page 19(5/8/2014)]

The assigned attorney testified at the hearing:

Q. You believed Judge Georgini had executed an illegal order in violation of the Judicial Code of Conduct?

A. Well --

Q. Isn't that correct?

A. Yes. It was an unlawful ex-parte communication, yes .

[R.T. page 34 (5/8/2014)].

The Pinal County attorney now suggests that the Court abused its discretion because supervisors from the Pinal County Attorney's office did not testify at the evidentiary hearing. PM p.17 "Without hearing any evidence of the policies or procedures of the office or taking testimony from any person in the office with policy making authority"] This is disturbing.

When the fact that the prosecutor had accessed confidential documents was first revealed on July 23, 2013, Counsel for the Defense immediately raised the matter before the Court. [See Reporter's Transcript of 7/23/13, not included in the record submitted by Petitioner.] On July 23, 2013, Defense Counsel specifically noted "we are going to have to brief this. We're going to have to have an evidentiary hearing to see what happened." [R.T. page 4 (7/23/13)]. The prosecutor at the hearing responded "I wasn't given any information on the Wilson case." [R.T. page 5 (7-23-13)]. Defense Counsel filed the motion on August 2, 2013. [Petitioner's Appendix Exhibit C]

On September 10, 2013, Defense Counsel wrote the prosecutor that he intended to call the assigned attorney, the paralegal, the County Attorney and the

County Attorney's public information officer as witnesses at the evidentiary hearing to be held by the assigned Judge Joseph Georgini in December. [RPI App 1, Exhibit 8 e-mail to Greg Hazard admitted at hearing]

The trial court indicated that it would set all outstanding motions for a contested evidentiary hearing and a two day evidentiary hearing was scheduled for December 12-13, 2013.

On October 8, 2013 the Court directed counsel to get a new date for evidentiary hearing on all outstanding issues. [RPI App 4, Minute Entry of 10/8/2013]. The Hearing was reset for December 20, 2013.

The Defendant served the witnesses including Mr. Hazard and Mr. Voyles prior to the new hearing date. The prosecutor moved to quash the subpoenas. Prior to the hearing but before time for response the assigned judge, the Hon. Judge Georgini recused himself and the matter was transferred to the Hon. Boyd T. Johnson. [RPI App 5, Minute Entry of 12/13/2013].

The evidentiary hearing was reset for January 24, 2014 and again the witnesses were subpoenaed. The State, the day before the scheduled evidentiary hearing again moved to quash the Defense subpoenas. [RPI App 6]. The Defense filed a response the following day at the hearing. [RPI App 7] At the hearing of scheduled for January 24, 2014, Counsel for the defense made a detailed offer of

proof along with submitting documents that the defense intended to introduce as evidence at the hearing. [R.T. pages 4-27 (01/24/2014)].

Now, the Pinal County Attorney suggests that the Respondent Judge abused his discretion in not hearing the testimony of Lando Voyles or his supervisors at the evidentiary hearing, but neglects to mention that it was upon *the prosecutor's* motion that the defense subpoenas for the witnesses were quashed. [RPI App 8, Order of 4/15/2014] The prosecutor now argues those witnesses should have testified but neglected to include in the Court's order in the special action record.

On May 4, 2014, two days before the evidentiary hearing, the State filed a supplemental memorandum on the motions that had been previously filed by the defense in August of 2013. [RPI App 9] The Defense filed a Response the following day. [RPI App 10] Neither of these pleadings were included by the petitioner in their record for special action relief.

While the prosecutor now faults the Court for not taking the testimony of the supervising attorneys at the Pinal County Attorney's Office, the prosecutor fails to mention that, at the evidentiary hearing on May 6, 2014, the Respondent Judge specifically told the prosecutor that should she dispute the defense

allegations as to what persons employed at the county attorney's office would testify to at the hearing she could call or allow the witnesses to testify:

THE COURT: * * *Ms. Eazer, we interrupted you. Over the break I was thinking about your suggestion that perhaps instead of talking about getting testimony, maybe we should just get the testimony. And in that regard, keep in mind in light of my ruling with regard to the subpoenas to your office, I'm likely to assume it's true the suggestions made by Defendant about what your office did or didn't do. So if you need to contradict that, that's fine, but otherwise that will be our record.

MS. EAZER: And I'm sorry, Judge, I --

THE COURT: Well, what I've done is I told the Defense that I would not allow them until at least the trial started, subpoenaing your associates in the office and start examining them about what they did and what they didn't do, even if it's past tense. But by making that ruling, I ought not to give you both a shield and a sword, so I'm likely to assume that what the Defense says that your office did, that is this Ms. Parish and this Mr. Hazard looking at things that were filed, and then they have some understanding of what happened next from these exhibits. So if you think that's wrong, then maybe we need to take testimony from your office.

[R.T. page 47 line 8 through page 48 line 4 (05/06/2014)] Notwithstanding the Court's offer and explanation, the prosecutor only wanted to call Mr. Wintory's legal assistant, Ms. Parish. [Id.]

At the prosecutor's request, Ms. Parish testified that she accessed the confidential court documents [R.T. page 101-102 (5/6/2014)] and went to Mr.

Hazard about those documents. [R.T. page 104 (5/6/2014)] She testified she told him they were *ex parte* documents, but does not remember whether she printed confidential documents out before speaking with him. [R.T. page 112 (5/6/2014)]. After speaking with Mr. Hazard, he requested that she print out a copy of the judge's sealed order. [Id.] Ms. Parrish said the order she printed and provided to Mr. Hazard indicated it was sealed. [Id.] Mr. Hazard did not mention anything to his assistant about the order being confidential, and he did not inform her that the document should not have been accessed. [Id.] Mr. Hazard was visibly angry at defense counsel. [Id.]

Ms. Parish indicated she discussed the confidential motion and order with PCAO supervisor Matt Long. [RT page 113 lines 18- 25 (05/06/2014)] And, she discussed it with appellate bureau chief Ron Harris. [R.T. page 117-118 (5/6/2014)]

After the prosecutor presented Ms. Parish, the Defense renewed the request to call attorney Hazard, and the other attorney's with the Pinal County Attorney's Office. [R.T. page 122 at lines 5-9 (5/6/2014)]. The Court in light of the evidence presented allowed the Defense to call Mr. Hazard. [R.T. page 147 lines 10-12 (5/6/2014)].

Mr. Hazard indicated he received the *ex parte* motion but claims he did not see the Court's order sealing the matters until the following day. [R.T. pages 9-10 (5/8/2014)] He indicated he discussed the confidential motion and order with his supervisor Matt Long, Chief Deputy Richard Wintory, [R.T. pages 12-13 (5/8/2014)] and Attorney Jason Easterday. [R.T. page 14 (5/8/2014)] The prosecutor never checked with anyone in the clerk's office to determine whether the documents were sealed. [R.T. page 33 (5-8-2014)]. He didn't check with anyone at the Court to see if it was sealed. [Id.] He never checked with anyone outside the county attorney's office to determine whether the document was sealed. [R.T. page 34 (5/8/2014)]. He never contacted the State Bar for an informal ethics opinion. [R.T. page 35 (5/8/2014)].

The prosecutor stated he was approached by Ms. Parish who had the documents on July 18, 2013 at 4:00 p.m. [R.T page 40 (5/8/2014)]. He indicated that he knew the documents had been printed out from a computer. [Id.] He knew they were filed as *ex parte* documents. [Id.] He knew that they were from the case of State v. Richard Wilson. [Id.] He indicated that he did not actually read the order from the judge sealing the documents until the next day. [Id.]

At the conclusion of Mr. Hazard's testimony the defense renewed the request to call the additional attorneys, Richard Wintory, Matt Long, Ron Harris

and Jason Easterday. [R.T page 42 (5/8/2014)] Again the prosecutor opposed the request. [R.T. pages 42-43 (5/8/2014)]

It is simply baffling and certainly inappropriate, that the prosecutor now seeking special action relief is arguing the Respondent Judge abused his discretion by not allowing the State to call witnesses the prosecutor actively opposed testifying at the hearing. [R.T. pages 42-43 (5/8/2014)]

The Court allowed the parties to file supplemental memorandum after the evidentiary hearing. The Defense filed a supplemental memorandum on May 19, 2014. [RPI App 11] The State filed a Response. [RPI App 12] And, the Defense filed a reply. [RPI App 13] None of these were included in the record before this Court.

The petitioner suggests that this matter is “a pure question of law with undisputed facts.” However, the state spends more time arguing a contorted version of the facts than addressing questions of law. In fact, the Respondent Judge issued a nine page minute entry, of which five are devoted to his factual findings. [Petitioner’s Appendix A]

The State does not dispute that the Respondent Judge has the authority to order the prosecutor disqualified and another prosecutor appointed. In fact the petitioner suggests that if the Court disqualified Mr. Hazard from prosecuting the

case, the court would have been acting well within its legal discretion. Rather, what the petitioner suggests is that because in this case (1) there is a looming trial date, (2) this case is a capital case, (3) the lead prosecutor wasn't in the office when the violation of confidential motion and order occurred (4) the Clerk of the Superior Court has instituted reforms to prevent the county attorney from accessing sealed court documents and (5) the defendant cannot prove how the prosecutor's improper and unethical conduct caused actual prejudice to his defense, that therefore, the order disqualifying the entire PCAO is an abuse of discretion.

In the intervening five weeks after the Court order complained of, the Pinal County Attorney has not taken any action to obtain outside counsel to prosecute. Indeed in the request for stay filed in the trial court after the petition for special action had already been filed, the petitioner indicates that the delay was not in obtaining outside counsel to prosecute this case but rather in obtaining outside counsel to represent members of their office in a State Bar inquiry and consulting with that counsel prior to seeking this special action petition. [RPI App 14, State's Motion For Stay at page 2 paragraph 3 (8/13/2014)]

IV. LAW AND ARGUMENTS

Respondent did not abuse his discretion when after review and consideration of the pleadings and the evidence including the testimony and exhibits admitted at the evidentiary hearing made a determination of the weight of the evidence and credibility of the witnesses and ordered the Pinal County Attorney disqualified.

The state's interference with the relationship between the defense attorney and his client is a clear violation of the Sixth Amendment of the United States Constitution and Art. 2, §§ 3, 4 and 24 of the Arizona Constitution. In this case, not only has the state violated these constitutional principles, but it has violated a myriad of ethical rules. Then, with audacity, it has turned to this court with the indefensible position that the Respondent Judge has "abused" his "discretion" in disqualifying the entire PCAO.

A defendant's right to counsel includes protection from improper intrusions by the prosecutor or other government agents into the attorney-client relationship, and the strategy of the defense. *See, State v. Pecard*, 196 Ariz. 371, ¶27, 998 P.2d 453 (App. 1999). *See, also, State v. Latigue*, 108 Ariz. 521, 502 P.2d 1340 (1972) . The defendant bears the initial burden of establishing the intrusion, but the state bears the burden of demonstrating that the defendant was not (or will not, in the future) be prejudiced by that interference. *State v. Moody*, 208 Ariz. 424, ¶ 77, 94 P.3d 1119 (2004); *Latigue*, 108 Ariz. at 523, 507 P.2d at 1342.

In this case, the Respondent Judge found that the staff of the PCAO, "including high level supervisory staff," accessed, read and distributed documents that had been sealed by order of the court. Minute Entry (ME), 7/8/14, pp. 1-3. The *ex parte* motion, which was accessed had been filed pursuant to Rule 15.9(b), which was amended in 2002, by the Arizona Supreme Court, so the defense could conduct an investigation without alerting the state to what it was the defense was investigating, *i.e.*, the defense's strategy for defense or mitigation. ***Morehart v. Barton***, 226 Ariz. 510, ¶ 11, 250 P.3d 1139 (2011). Reading these documents was a blatant violation of this protection.

The Respondent Judge further found that the documents were clearly marked "ex parte" and "sealed," based on the testimony of the paralegal who first accessed them. ME, p. 3-4. There followed numerous violations of the court order by her, Mr. Hazard, Mr. Long, Mr. Wintory (Chief Deputy of PCAO), and ultimately Mr. Voyles. Voyles and Wintory continue to have supervisory responsibility over the newly assigned deputy, Ms. Eazer. *Id.*, p.4.

The Respondent Judge was righteously outraged, by the finding that Mr. Hazard cavalierly "saw no problem in his office's disregarding the court order sealing this motion and order," and that "on the contrary his focus was on the

'ethical violations' and shortcomings of others, including defense counsel." *Id.*, p.

5.

In a scathing condemnation of the conduct of the PCAO, the Respondent Judge found "that if the lawyers involved in these events were presented with a similar choice, whether or not to comply with lawful orders of the court, Mr. Voyles, Mr. Wintory(*each still in the office*), and Mr. Easterday would act consistent with their actions here. They, not the courts would decide whether Clerk's records can be reviewed; they would decide whether or not to comply with court orders if in their opinion the judge had made a 'bad call'; that where they believed that defense counsel was wrong, they were then free to do whatever they wanted." *Id.*, p. 6. The Respondent Judge went on to set forth the applicable law and standards to apply to this kind of an intrusion into the attorney-client relationship, as well as the intentional and unabashed unethical conduct, and came to a sound, intelligent decision based upon the evidence he'd heard: the entire PCAO had to be disqualified. *Id.*, pp. 6-9

That PCAO is seeking a special action in this Court is stunning. These attorneys should be hanging their heads in shame, and hoping that the State Bar doesn't become involved. The Ethical Rules they violated include 1.1 (competent representation -- they were unaware of or disregarded the basic definition of

"victim" set out in the Arizona Constitution, the VBR and the criminal rules), 3.1 (requiring a non-frivolous and good faith basis in law and fact for an argument), 3.3 (candor to the court), 3.4 (unlawfully obstructing another party's access to evidence), 3.5 (attempt to influence a judge, in this case by a damning press release), 3.6 and 3.8(f) (disseminating extrajudicial statements by means of public communications), 4.4, 5.1, 5.2 and 5.3 (promptly notifying a sender when receiving a document which he knows was inadvertently accessed; supervisory duties over other lawyers and employees and educating both to what they've done wrong). Then there are the "catch alls," ER 8.4 (a), (c) and (d).

This special action presents no issue of "pure law." This is a case where the facts were paramount, the Respondent Judge heard them all in an evidentiary hearing, was presented with pleadings containing the relevant law, and where he came to a logical and well reasoned decision. There was no abuse of discretion, and nothing for this Court to remedy.

CONCLUSION AND REQUESTS

Mr. Wilson submits that the Petitioner has failed to present any reason for this Court to exercise the discretionary and extraordinary authority of a special action. He therefore requests that the Court deny jurisdiction and relief.

Dated this ___ day of August, 2014.

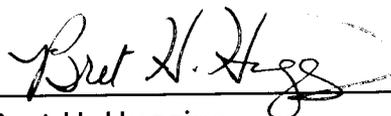
Dated this 21st day of August, 2014.

A handwritten signature in black ink, reading "Bret H. Huggins", written over a horizontal line. The signature is cursive and includes a long, sweeping underline that extends to the right.

Bret H. Huggins
Counsel for Real Party in Interest

CERTIFICATE OF COMPLIANCE

Bret H. Huggins, Counsel for Real Party in Interest Richard Wilson, certifies that in accordance with the Arizona Rules of Procedure for Special Actions 7(e), the Real Party in Interest's Response to the Petition for Special Action is double spaced, uses proportionately spaced Calibri 14 point type, and has a word count of 5,084 words.

A handwritten signature in black ink, reading "Bret H. Huggins", written over a horizontal line.

Bret H. Huggins

Counsel for Real Party in Interest