

Patrick Fox
[REDACTED]
Burnaby, BC V5G 1T3
604-[REDACTED]
Pro Se

**IN THE MUNICIPAL COURT
IN AND FOR THE TOWN OF SAHUARITA**

Patrick Fox,
Appellant

v.

Desiree Capuano,
Appellee

Case No.: CV2015-00024

**Appellant's Response to Appellee's Motion to
Correct or Modify the Record on Appeal**

Judge Avilez

Appellant Patrick Fox respectfully submits his response, opposing Appellee's request to add new evidence and exhibits to the record on appeal.

MEMORANDUM OF POINTS AND AUTHORITIES

Appellant timely filed his Notice of Appeal and Designation of Record in this matter back in December 2015. Appellee chose to wait 3 months before filing this motion, on the eve of her deadline for filing her Appellee's Memorandum – unnecessarily delaying the appeal process.

The documents Appellee is now requesting be added to the record were not disclosed to Appellant prior to, or after the hearing in this matter. Therefore, Appellant could not have had the opportunity to challenge their authenticity or to prepare any manner of defense relating to them.

Appellee's Proposed Exhibit 1

1. Appellee is misguided in her assertion that her proposed “Exhibit 1”, “Findings and Order

1 After Hearing”, shows that “there was no matter pending between” her and Appellant at the
2 time she filed her petition for an order of protection in this court. The proposed exhibit is
3 merely a non-final order pertaining to a specific request to modify an existing child custody
4 order within that action. The proposed exhibit *does not* state that the order is final, or that the
5 action, overall, has been disposed.

6 In fact, in addition to the specific matter of child custody, there are at least two other specific
7 matters in that same action which had been commenced prior to Appellee filing her petition
8 for an order of protection, and have not yet been disposed:

- 9 1. A petition for dissolution of marriage, filed by Appellant on 11-28-2012 (Ex. 1); and
- 10 2. An order to show cause for child support, filed by Appellant on 09-11-2012 (Ex. 2).

11 The docket history of that action (Ex. 3), shows that there has never been a final order issued
12 in that proceeding, nor have there been any “motions to reopen” - because the action has
13 never been disposed or “finalized” as alleged by Appellee.

- 14 2. In addition to the aforementioned child custody, child support, and dissolution of marriage
15 proceedings before the Los Angeles Superior Court, there was also, at the time Appellee filed
16 her petition for an order of protection, a pending action before the Maricopa County Superior
17 Court, for Appellee's petition for annulment of marriage to Appellant. A final order in that
18 matter was not entered until 08-04-2015 (Ex. 4) – *after* Appellee had filed her petition for an
19 order of protection in this court. Therefore, even if the California action *had* been previously
20 disposed, there would still be the matter of the pending Arizona family court proceeding.
- 21 3. A.R.S. § 13-3602(P) provides in relevant part, “A municipal court...shall not issue an order of
22 protection if it *appears from the petition* that an action...is pending between the parties”

(emphasis added). That wording of the statute clearly hinges on “appears from the petition”, not on whether or not there is *actually* a pending action. In the current matter, Appellee's petition clearly stated there were two such actions pending. Therefore, Appellee's proposed “Exhibit 1” has no evidentiary significance to this appeal.

Appellee's Proposed Exhibits 2 and 3

4. Appellee now claims that she had the stated documents in her possession at the hearing, referred to them several times, and intended for the documents to become part of the record. However, Appellee did not refer to any of the documents with any amount of specificity which would be able to identify the individual documents – she merely made vague and ambiguous references to “documents” which she “had”. Moreover, Appellee deliberately chose *not* to submit the documents as evidence. Her current request to add those documents to the record amounts to nothing more than an attempt to “take a second bite of the apple” - which is expressly *not* what the appeal process is intended for. If this court were to allow Appellee to add exhibits to the record at this point, then it would only be reasonable to also allow Appellant to add Appellee's numerous Sahuarita Police Department reports, wherein both Appellee and her fiance, James Pendleton, admit Appellant has never threatened them (Ex. 5).
5. Appellee's proposed “Exhibit 2” includes the email purportedly from Appellant to Appellee, wherein she alleged Appellant said he would shoot her. That allegation was the entirety of Appellee's claim of domestic violence against Appellant. However, a plain reading of Appellant's statements in that email, “...let me be absolutely clear on this point: I would never deliberately cause you physical harm...”, clearly shows there was no actual threat made.

Appellee deliberately chose to not provide the court that email because it would clearly contradict her allegation that Appellant had threatened her.

6. Public statements made by Appellant, on a publicly accessible website, and intended to be received by the general public – not specifically by Appellee, do not meet the “directed at a specific person” requirement of the statutory definition of harassment as provided by A.R.S. § 13-2921(E). Therefore, the printouts of the contents of the website do not establish any prior acts of harassment, are not relevant to this matter, and their addition to the record should be denied.

Appellee's Proposed Exhibit 4

7. Appellee's proposed Exhibit 4 consists of content from the website maintained by Appellant which was published long after the hearing in the matter was held, and Appellant's appeal memorandum was filed with this court. It cannot, possibly, be considered part of the record on appeal because it did not even exist until long after this matter was disposed of in the Municipal Court, and the deadline for Appellee to file her appeal memorandum had expired.
8. Appellee is incorrect in her application of A.R.S. § 13-2916. Within that statute, subsection (E) defines "electronic communication" exclusively as “a wire line, cable, wireless or cellular telephone call, a text message, an instant message or electronic mail”. It expressly does not include statements published, and intended to be read by the general public, on a publicly accessible website. It specifically requires a direct communication from one party to another.
9. The fact that the proposed exhibit is public speech, intended to be received by the general public – not specifically by Appellee, and that Appellee would have to deliberately go to the website in order to be “subjected to it” means that it cannot amount to harassment as defined

1 by A.R.S. §13-2921(E). Therefore, the proposed exhibit has no relevance to this proceeding
2 or this appeal.
3

4 **CONCLUSION**

5 Appellee had every opportunity to submit the proposed exhibits on the record at any time prior to the
6 court's ruling on December 16, 2015, but she chose not to. Instead, she chose to wait until the very
7 end of the deadline to file her appeal memorandum in order to unnecessarily delay the appeal
8 process. The purpose of an appeal is to review a lower court's ruling for errors of law – it is not to
9 allow the parties to take a second bite of the apple by adding supposed evidence they had in their
10 possession before the trial court made it's ruling, but chose not to. This is just another of many
11 attempts by Appellee to circumvent the well established rules and procedures of the courts, because
12 she refused to follow the court's rules in the first place (by filing her petition in the Municipal Court
13 when it should have been filed in the Superior Court).
14

Dated April 3rd, 2016.

Patrick Fox

CERTIFICATE OF MAILING

I CERTIFY that I mailed a copy of this Memorandum to the Sahuarita Municipal Court.

Date: April 3, 2016

By: _____
Patrick Fox, Appellant

Exhibit 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Richard Riess Lincoln St. Carson, CA 90745 TELEPHONE NO.: 310- FAX NO. (Optional): E-MAIL ADDRESS (Optional): richardriess@gmail.com ATTORNEY FOR (Name): Richard Riess		FOR COURT USE ONLY ORIGINAL FILED NOV 28 2012 LOS ANGELES SUPERIOR COURT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 200 W. Compton Blvd. MAILING ADDRESS: 200 W. Compton Blvd. CITY AND ZIP CODE: Compton, CA 90220 BRANCH NAME: South Central District		
MARRIAGE OF PETITIONER: Richard Riess RESPONDENT: Desiree Capuano		
PETITION FOR <input checked="" type="checkbox"/> Dissolution of Marriage <input type="checkbox"/> Legal Separation <input type="checkbox"/> Nullity of Marriage		CASE NUMBER: TD035397
<input type="checkbox"/> AMENDED		

1. RESIDENCE (Dissolution only) ☒ Petitioner ☐ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition for Dissolution of Marriage*.

2. STATISTICAL FACTS

a. Date of marriage: August 29, 2000
 b. Date of separation: October 2, 2001

c. Time from date of marriage to date of separation (specify):
 Years: 1 Months: 2

3. DECLARATION REGARDING MINOR CHILDREN (include children of this relationship born prior to or during the marriage or adopted during the marriage):

a. ☐ There are no minor children.
 b. ☐ The minor children are:

Child's name

Birthdate

Age

Sex

☐ Continued on Attachment 3b.

c. If there are minor children of the Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.

d. ☐ A completed voluntary declaration of paternity regarding minor children born to the Petitioner and Respondent prior to the marriage is attached.

4. SEPARATE PROPERTY

Petitioner requests that the assets and debts listed ☐ in *Property Declaration* (form FL-160) ☐ in Attachment 4 ☐ below be confirmed as separate property.

Item

Confirm to

NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child or spousal support.

MARRIAGE OF (last name, first name of parties):

Richard Riess

Desiree Capuano

CASE NUMBER:

TD035397

5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN

- a. ☒ There are no such assets or debts subject to disposition by the court in this proceeding.
b. ☐ All such assets and debts are listed ☐ in *Property Declaration* (form FL-160) ☐ in Attachment 5b.
☐ below (specify):

6. Petitioner requests

- a. ☒ dissolution of the marriage based on
(1) ☒ irreconcilable differences. (Fam. Code, § 2310(a).)
(2) ☐ incurable insanity. (Fam. Code, § 2310(b).)
b. ☐ legal separation of the parties based on
(1) ☐ irreconcilable differences. (Fam. Code, § 2310(a).)
(2) ☐ incurable insanity. (Fam. Code, § 2310(b).)
c. ☐ nullity of void marriage based on
(1) ☐ incestuous marriage. (Fam. Code, § 2200.)
(2) ☐ bigamous marriage. (Fam. Code, § 2201.)
d. ☐ nullity of voidable marriage based on
(1) ☐ petitioner's age at time of marriage. (Fam. Code, § 2210(a).)
(2) ☐ prior existing marriage. (Fam. Code, § 2210(b).)
(3) ☐ unsound mind. (Fam. Code, § 2210(c).)
(4) ☐ fraud. (Fam. Code, § 2210(d).)
(5) ☐ force. (Fam. Code, § 2210(e).)
(6) ☐ physical incapacity. (Fam. Code, § 2210(f).)

7. Petitioner requests that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

- | | Petitioner | Respondent | Joint | Other |
|--|--------------------------|--------------------------|--------------------------|--------------------------|
| a. Legal custody of children to | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Physical custody of children to | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Child visitation be granted to | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
- As requested in form: ☐ FL-311 ☐ FL-312 ☐ FL-341(C) ☐ FL-341(D) ☐ FL-341(E) ☐ Attachment 7c.
- d. ☐ Determination of parentage of any children born to the Petitioner and Respondent prior to the marriage.
e. Attorney fees and costs payable by
f. Spousal support payable to (earnings assignment will be issued)
g. ☐ Terminate the court's jurisdiction (ability) to award spousal support to Respondent.
h. ☐ Property rights be determined.
i. ☐ Petitioner's former name be restored to (specify):
j. ☐ Other (specify):

☐ Continued on Attachment 7j.

8. **Child support**—If there are minor children born to or adopted by the Petitioner and Respondent before or during this marriage, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party. An earnings assignment may be issued without further notice. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

9. I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

Richard Riess

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

Date:

11-24-12

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR PETITIONER)

NOTICE: Dissolution or legal separation may automatically cancel the rights of a spouse under the other spouse's will, trust, retirement plan, power of attorney, pay on death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a spouse as beneficiary of the other spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your spouse or a court order (see Family Code sections 231–235).

Exhibit 2

FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Richard Riess
 Lincoln St.
 Carson, CA 90745

TELEPHONE NO.: 310- FAX NO. (Optional):

E-MAIL ADDRESS (Optional): richardriess@gmail.com

ATTORNEY FOR (Name): Richard Riess

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles

STREET ADDRESS: 200 W. Compton Blvd.

MAILING ADDRESS: 200 W. Compton Blvd.

CITY AND ZIP CODE: Compton, CA 90220

BRANCH NAME: South Central District

PETITIONER/PLAINTIFF: Richard Riess

RESPONDENT/DEFENDANT: Desiree Capuano

ORDER TO SHOW CAUSE

☐ Child Custody☒ Child Support☐ Attorney Fees and Costs☐ MODIFICATION☐ Visitation☐ Spousal Support☐ Injunctive Order☐ Other (specify):

ORIGINAL FILED
 SEP 11 2012
 LOS ANGELES
 SUPERIOR COURT

CASE NUMBER:

TD 035397

1. TO (name): Desiree Capuano

2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS TO GIVE ANY LEGAL REASON WHY THE RELIEF SOUGHT IN THE ATTACHED APPLICATION SHOULD NOT BE GRANTED. If child custody or visitation is an issue in this proceeding, Family Code section 3170 requires mediation before or concurrently with the hearing listed below.

a. Date: 1/11/13 Time: 8AM ☐ Dept.: M ☐ Room: 1211

b. The address of the court is ☐ same as noted above ☐ other (specify):

c. ☐ The parties are ordered to attend custody mediation services as follows:

3. THE COURT FURTHER ORDERS that a completed *Application for Order and Supporting Declaration* (form FL-310), a **blank Responsive Declaration** (form FL-320), and the following documents be served with this order:

- a. (1) ☐ Completed *Income and Expense Declaration* (form FL-150) and a **blank Income and Expense Declaration**
 (2) ☐ Completed *Financial Statement (Simplified)* (form FL-155) and a **blank Financial Statement (Simplified)**
 (3) ☐ Completed *Property Declaration* (form FL-160) and a **blank Property Declaration**
 (4) ☐ Points and authorities
 (5) ☐ Other (specify):

b. ☐ Time for ☐ service ☐ hearing is shortened. Service must be on or before (date):

Any responsive declaration must be served on or before (date):

c. ☐ You are ordered to comply with the temporary orders attached.

d. ☐ Other (specify):

STEPHEN M. LOWRY

Date:

SEP 12 2012

JUDICIAL OFFICER

NOTICE: If you have children from this relationship, the court is required to order payment of child support based on the incomes of both parents. The amount of child support can be large. It normally continues until the child is 18. You should supply the court with information about your finances. Otherwise, the child support order will be based on the information supplied by the other parent.

You do not have to pay any fee to file declarations in response to this order to show cause (including a completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) that will show your finances). In the absence of an order shortening time, the original of the responsive declaration must be filed with the court and a copy served on the other party at least nine court days before the hearing date. Add five calendar days if you serve by mail within California. (See Code of Civil Procedure 1005 for other situations.) To determine court and calendar days, go to www.courtinfo.ca.gov/selfhelp/courtcalendars/.



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courtinfo.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Response* (Form MC-410). (Civil Code, § 54.8.)

Page 1 of 1

Exhibit 3

Case Summary

Case Number: TD035397
RICHARD RIESS VS DESIREE CAPUANO

Filing Date: 09/29/2011
Case Type: Petition-Cust. & Support of Minor (General Jurisdiction)
Status: Pending

Future Hearings

None

[Documents Filed](#) | [Proceeding Information](#)

Parties

CAPUANO DESIREE - FORMER Respondent in Pro Per

CAPUANO DESIREE - Respondent

CAPUANO DESIREE - Respondent In Pro Per

KARAPETIAN HENRIK - FORMER Attorney for Respondent

LOZANO HORACIO - FORMER Attorney for Petitioner

REISS RICHARD - Petitioner In Pro Per

RIESS RICHARD - Petitioner

RIESS RICHARD - FORMER Petitioner in Pro Per

[Case Information](#) | [Party Information](#) | [Proceeding Information](#)

Documents Filed (Filing dates listed in descending order)

Click on any of the below link(s) to see documents filed on or before the date indicated:

[10/21/2013](#) [02/14/2012](#)

03/21/2016 Proof of Service
Filed by Respondent

02/25/2016 Reply
Filed by Petitioner

02/25/2016 Notice-Ruling
Filed by Respondent

01/14/2016 Proof of Service ((Certificate of Service: Pima Co., AZ))
Filed by Petitioner

01/11/2016 Proof of Service-Mail

01/11/2016 Responsive Declaration

11/20/2015 Request-Modification
Filed by Petitioner

10/05/2015 Responsive Declaration

Filed by Petitioner

09/25/2015 Responsive Declaration
Filed by Petitioner

09/03/2015 Request-Modification
Filed by Respondent

05/11/2015 Declaration
Filed by Respondent

05/11/2015 Proof of Service-Mail
Filed by Respondent

05/11/2015 Notice-Change of Address
Filed by Respondent

08/01/2014 Order - And Finding After Hearing
Filed by Respondent

07/14/2014 Proof of Service-Mail
Filed by Respondent

07/14/2014 Declaration
Filed by Respondent

05/05/2014 Substitution of Attorney
Filed by Petitioner

04/24/2014 Substitution of Attorney
Filed by Petitioner

04/07/2014 Order - And Finding After Hearing

04/07/2014 Notice
Filed by Petitioner

01/27/2014 Proof of Service-Mail
Filed by Respondent

01/27/2014 Stipulation & Order

01/27/2014 Declaration-Income & Expense
Filed by Respondent

12/16/2013 Notice-Trial

12/04/2013 Declaration-Income & Expense
Filed by Petitioner

12/02/2013 Request-Trial Setting
Filed by Petitioner

11/05/2013 Notice-Ruling
Filed by Petitioner

10/23/2013 Proof of Service-Mail
Filed by Respondent

Click on any of the below link(s) to see documents filed on or before the date indicated:
[TOP](#) [10/21/2013](#) [02/14/2012](#)

10/21/2013 Responsive Declaration
Filed by Respondent

10/15/2013 Proof of Service-Mail
Filed by Petitioner

10/08/2013 Substitution of Attorney
Filed by Petitioner

10/08/2013 Application-Ex Parte
Filed by Petitioner

07/19/2013 Notice-Change of Address
Filed by Respondent

07/19/2013 Proof of Service-Mail
Filed by Respondent

03/14/2013 Proof of Service-Mail
Filed by Petitioner

03/13/2013 Declaration
Filed by Petitioner

03/01/2013 Order - And Finding After Hearing
Filed by Respondent

02/21/2013 Notice-Change of Address
Filed by Petitioner

01/30/2013 Responsive Decl-OSC/MOTION
Filed by Petitioner

01/28/2013 Proof of Service-Mail
Filed by Respondent

01/23/2013 Declaration
Filed by Petitioner

01/16/2013 Application-Ex Parte
Filed by Respondent

01/09/2013 Declaration
Filed by Petitioner

01/09/2013 Request-Continuance
Filed by Petitioner

01/09/2013 Notice-Change of Address
Filed by Petitioner

12/17/2012 Proof of Service-Mail
Filed by Petitioner

11/28/2012 Application-Ex Parte
Filed by Petitioner

10/23/2012 Proof of Service-Mail
Filed by Petitioner

09/11/2012 Order-Court Fee Waiver
Filed by Petitioner

09/11/2012 Declaration
Filed by Petitioner

09/11/2012 Request- Waive Court Fees
Filed by Petitioner

09/11/2012 Request-Custody, Support, etc
Filed by Petitioner

02/28/2012 Proof of Service-Mail
Filed by Respondent

02/28/2012 Proof of Service
Filed by Respondent

02/28/2012 Response
Filed by Respondent

02/24/2012 Proof of Service-Mail
Filed by Petitioner

02/21/2012 Responsive Decl-OSC/MOTION
Filed by Respondent

Click on any of the below link(s) to see documents filed on or before the date indicated:

[TOP](#) [10/21/2013](#) [02/14/2012](#)

02/14/2012 Declaration
Filed by Petitioner

02/14/2012 Declaration (CHILD VISITATION SCHEDULE)
Filed by Petitioner

02/14/2012 Application-Ex Parte
Filed by Petitioner

02/07/2012 Substitution of Attorney
Filed by Respondent

02/03/2012 OSC-Modification
Filed by Petitioner

02/03/2012 Declaration (VISITATION SCHEDULE)
Filed by Petitioner

02/01/2012 Proof of Service-Mail
Filed by Petitioner

01/20/2012 Proof of Service-Mail
Filed by Respondent

01/20/2012 Responsive Decl-OSC/MOTION
Filed by Respondent

01/20/2012 Declaration-Income & Expense
Filed by Respondent

01/12/2012 Proof of Service-Mail
Filed by Petitioner

01/06/2012 Proof of Service-Mail
Filed by Petitioner

01/03/2012 Declaration-Income & Expense
Filed by Petitioner

01/03/2012 Order-Show Cause
Filed by Petitioner

12/30/2011 Request (SUPPORTING PROOF OF CITIZENSHIP)
Filed by Petitioner

12/30/2011 Declaration (SUBMIT CITIZENSHIP DOCUMENTS)
Filed by Petitioner

12/20/2011 Proof of Service-Mail
Filed by Petitioner

12/08/2011 Order-After Hearing
Filed by Petitioner

11/18/2011 Response
Filed by Respondent

11/18/2011 Responsive Decl-OSC/MOTION
Filed by Respondent

11/18/2011 Proof of Service
Filed by Respondent

11/18/2011 Substitution of Attorney
Filed by Respondent

11/18/2011 Declaration-Uniform Custody Minor'
Filed by Respondent

11/01/2011 Proof of Service-Mail
Filed by Petitioner

11/01/2011 Verification of Completion
Filed by Petitioner

11/01/2011 Notice-Acknowledgement of Receipt
Filed by Petitioner

10/18/2011 Declaration-Re Notice- Given
Filed by Petitioner

10/18/2011 Application-Ex Parte

10/04/2011 OSC-Custody and/or Visitation
Filed by Petitioner

10/04/2011 Declaration-Uniform Custody Minor'
Filed by Petitioner

09/29/2011 Summons-Family Law
Filed by Petitioner

09/29/2011 Petition
Filed by Petitioner

09/29/2011 Request- Waive Court Fees
Filed by Petitioner

09/29/2011 Order-Court Fee Waiver
Filed by Petitioner

09/29/2011 Declaration-Uniform Custody Minor'
Filed by Petitioner

Click on any of the below link(s) to see documents filed on or before the date indicated:

[TOP](#) [10/21/2013](#) [02/14/2012](#)

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Proceedings Held (Proceeding dates listed in descending order)

03/28/2016 at 08:30 AM in Department SCM, Lowry, Stephen, Presiding
Request-Modification Custody/Visit - **Held-Order made**

03/07/2016 at 13:30 PM in Department SCM, Lowry, Stephen, Presiding
Non-Calendar Matter - **Completed**

01/25/2016 at 08:30 AM in Department SCM, Lowry, Stephen, Presiding
Request-Modification Custody/Visit - **Continued-Court's own motion**

07/21/2014 at 08:00 AM in Department SCM, Lowry, Stephen, Presiding
OSC-Review - **Held-Order made**

03/07/2014 at 11:00 AM in Department SCM, Lowry, Stephen, Presiding
Hearing-Child Custody Evaluation - **Held-Continued-Court's Motion**

01/27/2014 at 08:00 AM in Department SCM, Lowry, Stephen, Presiding
Conference-Trial Setting - **Held-Trial date set**

10/08/2013 at 08:00 AM in Department SCM, Lowry, Stephen, Presiding
Application-Ex-Parte & Order - **Granted-In part**

03/20/2013 at 08:30 AM in Department SCM, Lowry, Stephen, Presiding
OSC-Order to Show Cause - **Not held-No appearances**

03/12/2013 at 13:30 PM in Department SCM, Lowry, Stephen, Presiding
OSC-Custody, Visit, Child Support (SFE vacated from 03/13/13 and reset for 03/20/13) - **Held-Order made**

02/06/2013 at 08:30 AM in Department SCM, Lowry, Stephen, Presiding
OSC-Custody and/or Visitation - **Held-Order made**

01/16/2013 at 08:30 AM in Department SCM, Lowry, Stephen, Presiding
Request-Ex Parte - **Granted**

01/11/2013 at 08:00 AM in Department SCM, Lowry, Stephen, Presiding
Request-Re Child Support - **Continued-by Plaintiff/Petitioner**

09/14/2012 at 08:30 AM in Department SCM, Lowry, Stephen, Presiding
Nunc Pro Tunc Order - **Completed**

09/07/2012 at 08:00 AM in Department SCM, Lowry, Stephen, Presiding
OSC -Re Child Support - **Held-Continued Evidentiary Hrg**

03/07/2012 at 08:00 AM in Department SCM, Lowry, Stephen, Presiding
OSC -Re Child Support - **Held-Continued**

02/21/2012 at 08:00 AM in Department SCM, Lowry, Stephen, Presiding
OSC-Order to Show Cause - **Continued-Court's own motion**

02/14/2012 at 08:00 AM in Department SCM, Lowry, Stephen, Presiding
Ex Parte - OSC - **Granted-Order made**

12/06/2011 at 22:55 PM in Department SCM, Lowry, Stephen, Presiding
OSC-Custody and/or Visitation - **Held-Order made**

11/08/2011 at 08:00 AM in Department SCM, Lowry, Stephen, Presiding
Ex Parte - OSC - **Held-Continued**

10/18/2011 at 08:00 AM in Department SCM, Lowry, Stephen, Presiding
Ex Parte - OSC - **Held-Continued**

[Case Information](#) | [Party Information](#) | [Documents Filed](#) | [Proceeding Information](#)

Exhibit 4

FILED
AUG 04 2015 1:41 PM
MICHAEL K. JEANES, Clerk
By V. Alvarado, Deputy

Desiree Y. Capuano
315 W Valencia Rd #23014
Tucson, AZ 85734
(480) 455-2086
Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

In Re the Marriage of:

DESIREE Y. CAPUANO,
Petitioner,

v.

RICHARD S. RIESS,
Respondent.

No. FC 2011-093719

**DEFAULT DECREE OF ANNULMENT
OF NON-COVENANT MARRIAGE**

This case has come before this court for a final Decree of Annulment of a Non-Covenant Marriage in accordance with the Court's Orders dated May 20, 2015, and June 17, 2015. The court has taken all necessary testimony needed to enter a Decree or has determined that testimony is not needed to enter the final Decree.

THE COURT FINDS:

1. **Jurisdiction:** This Court acquired jurisdiction over the parties on August 29, 2014, by Petitioner/Wife having filed a Petition for Annulment of a Non-Covenant Marriage. Respondent/Husband was served with this action on or about February 24, 2015. Respondent has failed to enter his appearance.

2. Where it has the legal power and where it is applicable to the facts of this case, this Court has considered, approved, and made orders relating to issues of the division of the property and/or debts.

1 3. The provisions of this Decree are fair and reasonable under the circumstances and in the
2 best interests of the parties, and the division of property and debt is fair and equitable.

3 4. **90-Day Requirement:** At the time this action was filed, the Petitioner and/or the
4 Respondent had lived in Arizona for more than 90 days, or had lived in Arizona while a member of the
5 United States Armed Forces for more than 90 days.

6 5. **Conciliation Court:** The conciliation provisions of A.R.S. §25-381.09 either have been
7 met or do not apply.

8 6. **Non-Covenant Marriage:** The parties were married on August 26, 2000, in Las Vegas,
9 Nevada. The parties **do not** have a covenant marriage as described in A.R.S §25-901.

10 7. **Grounds for Annulment.** There is an impediment rendering the marriage void. The
11 requirements of A.R.S. §25-301 have been met as the marriage was occasioned by Husband having
12 committed bigamy, fraud and misrepresentation having been legally married to another person at the
13 time he entered into this marriage with Petitioner/Wife and is still legally married to another person.

14 8. **Spousal Maintenance.** Neither party is entitled to an award of spousal maintenance in
15 accordance with A.R.S. §25-319.

16 9. **Children:** There is one minor child common to the parties: Gabriel T. Riess, age 14.
17 This Court has no jurisdiction over the minor child as there are current orders currently in effect dated
18 March 7, 2014, relating to custody, parenting time and child support in the State of California, County of
19 Los Angeles, under Case No. TD 035397, wherein Wife has been awarded sole physical and legal
20 custody of the minor child. Wife is not now pregnant.

21 10. **Protective Orders:** There are no Orders of Protection in effect.

22 11. **Community Property and Debt:** The parties have lived separate and apart since
23 October 2001, and there is no community property or community debt to be divided.
24

1 12. **Sole and Separate Property and Debt.** Each party should retain all of their separate and
2 personal property in their possession since they separated in October 2001. Each party should pay all
3 debts they have individually incurred in their respective names and hold the other harmless there from
4 since they separated in October 2001.
5

6 **THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

7 A. **Annulment of Marriage:** The marriage of the parties is hereby declared null and void
8 and each party is restored to the status of a single person.
9

10 B. **Spousal Maintenance:** Neither party is entitled to receive spousal support from the
11 other, now or at anytime in the future. Each party irrevocably waives any claim against the other in this
12 regard.
13

14 C. **Community Property and Debts.** The Court affirms that there is no community
15 property or debt to be divided.
16

17 D. **Legal Decision-Making [Custody].** The Court affirms that California has jurisdiction
18 over the minor child as reflected in the Orders currently in effect dated March 7, 2014, relating to
19 custody, parenting time and child support in the State of California, County of Los Angeles, under Case
20 No. TD 035397, in which Wife has been awarded sole physical and legal custody of the minor child.
21

22 E. **Sole and Separate Personal Property.** The parties are reaffirmed all sole and separate
23 property they have acquired since they began living separate and apart in October 2001.
24

25 F. **Separate Debt.** The parties are reaffirmed all sole and separate debt they have incurred
26 in their names only and shall be responsible for all debt they have incurred in their names only since they
27 began living separate and apart in October 2001. Husband is ordered to pay all debts unknown to Wife.
28 Wife is ordered to pay all debts unknown to Husband.

G. Attorneys' Fees: Each party shall pay their attorneys' fees and legal costs incurred in these proceedings.

H. Entry of Decree: Pursuant to Rule 81, Arizona Rules of Family Law Procedure, the final judgment/decree is settled, approved and signed by the court and shall be entered by the Clerk as a permanent Decree of Annulment of the parties of this marriage.

DATED: AUG 04 2015

Michael Marshall
JUDGE OF THE SUPERIOR COURT

Commissioner Michael S. Mandell

Exhibit 5



Sahuarita Police Department

Detail Incident Report for S15070464

Incident: S15070464

Nature: HARASSMENT

Location: Sahuarita PD Beat 1

Offense Codes: 5603

Received By: Alegria, Johanna

How Received: Telephone

Agency: SPD

Responding Officers: Montoya, Carlos

Requested By:

Responsible Officers: Montoya, Carlos

Disposition: Closed 07/20/15 P.D. Records

When Reported: 15:05:41 07/20/15

Occurred Between: 15:00:00 07/20/15 and 15:00:45 07/20/15

By: Federal & State Law

Assigned To:

Detail:

Date Assigned: **/**/**

Status:

Status Date: **/**/**

Due Date: **/**/**

NOTICE:

PRIVATE OR CONFIDENTIAL INFORMATION, SUCH AS DATE OF BIRTH, SOCIAL SECURITY NUMBER AND HOME ADDRESS, HAS BEEN REDACTED PURSUANT TO ARIZONA LAW.

NARRATIVE:

INITIAL CASE NARRATIVE BY OFC C MONTOYA SP250 IN SUPPL 1

Radiolog:

Unit: 2370

Enroute: 15:30:00 07/20/15

Arrived: 15:30:04 07/20/15

Completed: 16:08:08 07/20/15

REPORTTEES:

Name: PENDLETON,
JAMES A.

Name: CAPUANO,
DESIREE Y.

Requested By: _____

Released From San Juan P.D. Records
Secondary Dissemination Governed
By Federal & State Law

SUPPLEMENTAL NARRATIVE:

22:59:58 07/20/2015 - Montoya, Carlos

S15070464

A-56.03

Between 5/01/14 and 07/20/15

Reportee 1 of 1:

NAME: JAMES A PENDLETON



INITIAL CASE NARRATIVE BY OFFICER C. MONTOKA SP250

On 07/20/15 at 1505 hours I was dispatched to a telephonic report reference harassment.

Upon making contact with the reportee, via telephone he did verbally identify himself

as James Pendleton. James advised me that his girlfriend's, ex-fiance has been posting

negative things about her on the Internet. He identified his girlfriend as Desiree Capuano.

James stated her ex-fiance was deported back to Canada where he currently lives.

James

said he goes by the name of Richard Reese but also uses several other aliases.

I asked James if Richard has made any threats towards him or his girlfriend and he said no.

He stated this has been going on since May of last year and he has in the past opened up a

web site under Desiree's name. He stated the web site has since been taken down by the domain

owner but he thinks he has started a new one.

I advised James that with no threats or harassing behavior made against him then I would need to speak with Desiree. He advised Desiree was not home and he would talk to her about it and see if she wants to pursue the issue. NFI SP250

Requested By: _____
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Attachments:

None
SP111

SUPPLEMENTAL NARRATIVE:

23:21:25 08/04/2015 - Zimmerling,Rona
S15070464

Supplement:

Date: 08/04/15

Narrative by R. Zimmerling SP240

On 08/04/15 I was dispatched to a call reference supplemental information on this call. The caller, James Pendleton, requested telephone contact. I called James Pendleton. He said he originally made a report with Officer Montoya. He wanted to give additional information on the case as it was escalating.

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I read the original case and then called James. He said his girl friend, Desiree Capuano, has an x boyfriend who has been deported to Canada. His name is James Reese. He started harassing Desiree and James Pendleton in May. Desiree has not made a report. I suggested she call and make a report as she was not present.

James Pendleton said James Reese also uses other names. He has been harassing him on different Internet sites. He said he has posted his resume as well as his security clearance level on the site. He has called the Department of Justice and told them they should take James Pendleton's security clearance. James said he has not threatened him but is harassing him. James Pendleton said he obtained an Order of Harassment against James Reese. He said the Constable, RC Brown, has or is going to send the Order to the Royal Canadian Mounted Police for service.

I told him I would document the information that the activity was continuing.
NFI SP240

Approved, AD, SP106

SUPPLEMENTAL NARRATIVE:

14:57:14 08/17/2015 - Johnston, Thomas
S15080464

REPORTTEE 1 OF 1:

NAME: DESIREE, YVONNE, CAPUANO



SUPPLEMENTAL CASE NARRATIVE BY T. JOHNSTON, SP219:

On 08/17/15 at 1345 hours, I telephonically responded to the report of supplemental information regarding suspicious activity. I spoke with Desiree Capuano, who stated that her husband who lives in Canada, Richard Reese, posted a web site of her personal information at www.desireecapuano.com with horrible information about her. She said that on Saturday 8/15/15, she spoke with Ofc. Montoya who verified that the web site was down. She also said that on 8/16/15, the web site was back up.

I accessed that web site and verified that it was up and running. Ms. Capuano said that an injunction against harassment against Mr. Reese from the Sahuarita Municipal Court is pending service by the Royal Canadian Mounted Police, and that she contacted the web domain abuse department to file a complaint. NFI.
SRC SP104

SUPPLEMENTAL NARRATIVE:

09:53:33 09/07/2015 - Johnston, Thomas
S15070464

Reportee 1 of 1:

NAME: JAMES A PENDLETON



Requested By: _____
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SUPPLEMENTAL CASE NARRATIVE BY T.JOHNSTON, SP219:

On 09/07/15 at 0752 hours I telephonically responded to the report of suspicious activity related to this case. I spoke with James Pendleton, who said that on 09/05/15 at approximately 2000 hours, Richard Reese telephonically contacted his son, and told him that he hired a private investigator and will publish any findings on his web site.

Mr. Pendleton said that all phone calls are recorded by Canadian law enforcement reference the original harassment case. NFI.
SRC SP104

SUPPLEMENTAL NARRATIVE:

13:56:05 01/03/2016 - Amico, Don

S15070464 (Supplement)
Officer Don Amico, SPD 212

On 01/03/2016 at approximately 1130 hours, I spoke via telephone to a Mr. James Pendleton, at his request. James told me that there has been more blogs posted by Mr. Richard Riess, against him (James) and his fiance, Ms. Desiree Capuanao. James mentioned that these blogs have been recently posted on DesireeCapuanao.com and DesireeTomlin.com. He mentioned that Mr. Richard Riess might now be using the name of Mr. Patrick Fox, and has been posting these blogs with the service provider of Shaw Cable, in Burnaby, B.C., Canada. James stated that Richard will often write in the third person, pretending to be Desiree. He sent an email to Desiree stating that these blogs and the website will continue, until Desiree is dead. Richard has also stated that he wishes to isolate James from the community, and wishes to ruin his reputation. James told me he wanted to mention that his Fiance's child custody hearings are still in California, and wished to get this moved to Arizona. Here are the recent postings by Richard, that James has a copy of. These are just the titles to Richard's blogs:

12/15/2015 "Desiree Capuanao Sahuarita's token drug addict."

12/17/2015 "Obsession with Desiree Capuanao."

12/18/2015 "James Pendleton not so smart afterall."

12/19/2015 "The police executed a search warrant on my home and found a stolen assault rifle and meth and marijuana."

12/19/2015 "No, I would not feel harassed."

12/20/2015 "An objective review of James Pendleton's resume."

12/23/2015 "Difference between merely a bad person and truly evil dilusional psychotic person."

12/24/2015 "A white trash Christmas"

12/25/2015 "Living a dream getting a man to pay my way, while I sit around and get high all day."

12/26/2015 "Did I happen to mention that I happen to be quite the hippocrit."

12/29/2015 "Trashy ghetto people and honoring agreements."

James was informed that this information will be documented in the original police report, and forwarded to Detective Montoya. NFI 212

Requested By: _____
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By Federal & State Law