

Patrick Fox

Burnaby, BC V5G 1T3

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Pro Se

IN THE SUPERIOR COURT

IN AND FOR THE COUNTY OF PIMA

Patrick Fox,
Appellant

v.

Desiree Capuano,
Appellee

Case No.: CV2015-00024

**Appellant's Response to Appellee's Objection
to Recorded Coverage of Hearings**

Judge Woods

1 Appellant Patrick Fox respectfully submits his response, to Appellee Desiree Capuano's object
2 to recorded coverage of hearings.

3

MEMORANDUM OF POINTS AND AUTHORITIES

5 All of the recorded coverage obtained by Appellant, has been obtained in compliance with the
6 applicable rules and laws of the respective jurisdictions.

7 Appellant has used the recorded coverage to publicly prove multiple, specific instances of
8 Appellee committing perjury in both their order of protection hearing, as well as in their family court
9 proceedings in California.

10 In February 2016, Appellee went to numerous news media about the website Appellant
11 created, and she made numerous outrageous false allegations against Appellant. Those allegations
12 were published on the television, print, and Internet news and have caused Appellee very substantial

1 hardship. Using the recorded coverage Appellant has been able to prove all of the allegations
2 Appellee made against him, in the news media, were false.

3 Appellant asserts the real reason Appellee does not want hearings in this matter to be
4 recorded is because they have been used to prove she has lied to, literally, thousands of innocent,
5 compassionate people who only felt bad for her and wanted to help her. Moreover, the recorded
6 coverage has clearly and unequivocally proven Appellee has committed perjury in multiple courts,
7 regarding multiple, unrelated matters – and Appellant asserts Appellee simply doesn't want that proof
8 to be publicly accessible.

9

10 **Arizona Supreme Court Rule 122**

11 Appellee is misapplying Arizona Supreme Court Rule 122. Rule 122(h) provides: a person
12 may use a personal audio recorder during a proceeding, and is only required to “notify the judge of
13 the judge's staff prior to using the device”. The rule further provides: a person “is not required to
14 submit a request” prior to using such a recording device.

15 Appellant contends he would not have been required to obtain the Sahuarita Municipal
16 Court's approval prior to recording the audio of the hearing held on December 16, 2015, if he had, in
17 fact, recorded that hearing.

18

19 **Recorded Coverage of the Municipal Court Hearing**

20 Appellee alleges Appellant recorded the hearing in the Sahuarita Municipal Court, on
21 December 16, 2015, without notifying the court or obtaining the court's permission. Appellee is
22 misguided. Appellant did not record that hearing. The recording of the Sahuarita Municipal Court

1 hearing was performed by the court itself. A copy of that recording was provided to Appellant, by
2 the Sahuarita Municipal Court, for a fee, as part of the record on appeal.

3 Moreover, transcripts and/or recordings of court proceedings are, generally, matters of public
4 record and are available to any person upon request.

5

6 **Recorded Coverage of the Los Angeles Superior Court Proceedings**

7 The Los Angeles Superior Court is located and operates outside the State of Arizona.
8 Therefore, it is not subject to the Rules of the Supreme Court of Arizona, and in particular, Rule 122.
9 Appellee does not allege or submit any evidence Appellant recorded the California hearings in
10 violation of any laws or rules of the Los Angeles Superior Court.

11 For that reason, Appellee's averments regarding Appellant allegedly recording the hearing in
12 the Los Angeles Superior Court are immaterial to the instant matter.

13

14 **Appellee's Misuse of the Terms "Harass" and "Intimidate"**

15 In her objection, Appellee repeatedly declares Appellant has been using the recorded
16 coverage of prior hearings to "harass" and "intimidate" her.

17 The definition of "harassment", as provided in A.R.S. §13-2921, explicitly requires the
18 conduct in question be "directed at a specific person". Statements addressed to the general public,
19 and not intended to be received by Appellee specifically, do not meet that requirement. The
20 statements and content referenced by Appellee in her objection, were publicly posted to a public
21 website, addressed to the general public – *not* to Appellee. The only way Appellee could possibly be
22 subjected to the statements and content of the website is for *her* to deliberately go to the website.

The definition of “intimidation”, as provided in A.R.S. §13-1202, explicitly requires the offending party to threaten to cause physical injury or damage to property of the other party. Such conduct has *never* occurred between Appellant and Appellee, nor does Appellee allege it has. Appellee is simply misusing the term to attempt to make Appellant's exercise of his First Amendment rights seem more egregious.

Appellant's Use of Recorded Coverage

Appellee repeatedly references specific instances of Appellant's use of the recorded coverage. In particular, Appellee cites Appellant's commentary relating to specific coverage. However, Appellant's First Amendment right to state his opinion, to critique, and to comment on *any* matter or event is not material to the instant matter. Appellee does not allege Appellant has used any recorded coverage to threaten to physically harm her.

CONCLUSION

Appellant has not violated any laws or rules of court by purchasing a copy of the audio record of the hearing in this matter. Having lawfully obtained any recorded coverage of any court proceedings, any person is then free to discuss that recorded coverage as he sees fit.

Appellee is simply trying to prevent Appellant from exercising his First Amendment right to publicly express his opinions about her, and to prevent him publishing proof that she has, and continues to commit the felony of perjury.

Dated April 3rd, 2016.

Patrick Fox

CERTIFICATE OF MAILING

I CERTIFY that I mailed a copy of this Response to Appellee's counsel:

Peter Limperis
Haralson, Miller, Pitt, Feldman & McAnally, P.L.C.
1 S. Church Ave, Ste 900
Tucson, AZ 85701

Date: May 3, 2016

By: _____
Patrick Fox, Appellant