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Pro Se

**IN THE SUPERIOR COURT
IN AND FOR THE COUNTY OF PIMA**

Patrick Fox,
Appellant

v.

James Pendleton,
Appellee

Case No.: CV2015-00025

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

Judge Aragon

1 Appellant Patrick Fox respectfully submits his response, to Appelle James Pendleton's object
2 to recorded coverage of hearings.

MEMORANDUM OF POINTS AND AUTHORITIES

3
4
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
8 **Arizona Supreme Court Rule 122**

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

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

4 5 **Recorded Coverage of the Municipal Court Hearing**

6 Appellee alleges Appellant recorded the hearing in the Sahuarita Municipal Court, on
7 December 16, 2015, without notifying the court or obtaining the court's permission. Appellee is
8 misguided. Appellant did not record that hearing. The recording of the Sahuarita Municipal Court
9 hearing was performed by the court itself. A copy of that recording was provided to Appellant, by
10 the Sahuarita Municipal Court, for a fee, as part of the record on appeal.

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

13 14 **Appellee's Misuse of the Terms “Harass” and “Intimidate”**

15 In his objection, Appellee repeatedly declares Appellant has been using the recorded coverage
16 of prior hearings to “harass” and “intimidate” him.

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 his 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 *him* to deliberately go to the website.

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

6
7 **Appellant's Use of Recorded Coverage**

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

13
14 **CONCLUSION**

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

18 Appellee is simply trying to prevent Appellant from exercising his First Amendment right to
19 publicly express his opinions about Appellee.

20
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, Stre 900

Tucson, AZ 85701

Date: May 3, 2016

By: _____
Patrick Fox, Appellant